COMMISSION OF INQUIRY INTO ALLEGATIONS OF FRAUD, CORRUPTION, IMPROPRIETY OR IRREGULARITY IN THE STRATEGIC DEFENCE PROCUREMENT PACKAGE

(ARMS PROCUREMENT COMMISSION)

REPORT

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<td>Armament Acquisition Council</td>
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<tr>
<td>AASB</td>
<td>Armament Acquisition Steering Board</td>
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<td>ALFA</td>
<td>Advanced Light Fighter Aircraft</td>
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<td>Armscor</td>
<td>Armament Corporation of South Africa SOC Ltd</td>
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<td>COD</td>
<td>Council of Defence</td>
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<td>DIP</td>
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<td>DOD</td>
<td>Department of Defence</td>
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<td>Directorate of Priority Crime Investigation</td>
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<td>IMC</td>
<td>Inter-Ministerial Committee</td>
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<td>Lead-in Fighter Trainer</td>
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<td>Light Utility Helicopter</td>
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<td>MLA</td>
<td>Mutual Legal Assistance</td>
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<td>MOD</td>
<td>Minister/Ministry of Defence</td>
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<td>NIP</td>
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<td>RFI</td>
<td>Request for Information</td>
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<td>Strategic Defence Procurement Package</td>
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CHAPTER 5

FINDINGS AND RECOMMENDATIONS

A. INTRODUCTION

Based on its own inquiries and the evidence submitted to it, the findings of the Commission are presented in this Chapter. The sequence follows the Commission’s six objects as set out in its terms of reference. For ease of reference, the objects are repeated in full:

‘1. The Commission shall inquire into, make findings, report on, and make recommendations concerning the following, taking into consideration the Constitution, relevant legislation, policies and guidelines:

1.1 The rationale for the SDPP.

1.2 Whether the arms and the equipment acquired in terms of the SDPP are underutilised or not utilised at all.

1.3 Whether job opportunities anticipated to flow from the SDPP have materialised at all:
   1.3.1 if they have, the extent to which they have materialised; and
   1.3.2 if they have not, the steps that ought to be taken to realise them.

1.4 Whether the off-sets anticipated to flow from the SDPP have materialised at all and:
   1.4.1 if they have, the extent to which they have materialised; and
   1.4.2 if they have not, the steps that ought to be taken to realise them.

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

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

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

1.6 Whether any contract concluded pursuant to the SDPP procurement process is tainted by any fraud or corruption capable of proof, such as to justify its cancellation, and the ramifications of such cancellation.'

B. FINDINGS

1 THE RATIONALE FOR THE SDPP

[2] The Reader’s Digest Oxford Complete Wordfinder defines the word ‘rationale’ as follows: ‘the fundamental reason or logical basis of anything.’

[3] The word ‘rationale’, when read in conjunction with the other terms of reference of the Commission, means the professed reasons and legal justification for the SDPP.

[4] When considering the rationale for the SDPP, one has to consider whether the reasons to purchase the equipment in question were justifiable.

[5] Section 227(1) of the Interim Constitution, which was applicable at the time of the launch of the SDPP, described the function of the SANDF as:

- Service in the defence of the Republic and the protection of its sovereignty and territorial integrity
- Service in compliance with international obligations of the Republic with regard to international bodies and other states
- Service in the preservation of life, health or property
- Service in the provision or maintenance of essential services
Chapter 5: Findings – rationale for SDPP

- Service in the upholding of law and order in support of the South African Police Service, and
- Service in support to any department of State for the purpose of socio-economic upliftment.


‘(1) The defence force must be structured and managed as a disciplined military force.

(2) The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force.’

[7] Section 201(2) of the Constitution provides that:

‘Only the President, as head of the national executive, may authorise the employment of the defence force
a. in co-operation with the police service;
b. in defence of the Republic; or
c. in fulfilment of an international obligation.’

[8] The Constitution provides that the SANDF may be employed in a range of ‘non-military’ activities, including disaster relief, the provision and maintenance of essential services, search and rescue, evacuation of South African citizens from high threat areas and the protection of maritime and marine resources.

[9] Section 18(1) of the Defence Act 42 of 2002 provides that:

‘In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for services inside the Republic or in international waters, in order to –
(a) preserve life, health or property in emergency or humanitarian relief operations;
(b) ensure the provision of essential services;
(c) support any department of state, including support for purposes of socio-economic upliftment; and
(d) effect national border control.’

[10] Section 19 provides that the Defence Force may be employed in cooperation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic.

[11] Section 22 provides that the Chief of the Defence Force under certain circumstances may authorise the use of any military aircraft of the Defence Force or any warships of the Defence Force or any member of the Defence Force for the purpose of enforcing any provision of South African law at sea.

[12] Section 28 provides that a warship or military aircraft of the Defence Force must render assistance to any person found at sea in danger of being lost, or render assistance to any other ship which might require assistance.

[13] Section 29 provides that the Defence Force may in certain circumstances assist in combating the violation of laws of foreign states.

[14] Section 93 provides for the service of members of the Defence Force in fulfilment of international obligations and conditions attached to such service.

[15] South Africa has international commitments, particularly on the African continent, to support operations under the auspices of the United Nations and other organisations—such as the OAU/AU and SADC—that involve military resources.

[16] The White Paper on Defence recognises the function of the SANDF in peace support operations. It says:
‘As a fully-fledged member of the international community, South Africa will fulfil its responsibility to participate in international peace support operations’.

[17] The SANDF has the additional task of protecting the coastline and marine resources of the Republic.

[18] Paragraph 2 of Chapter 13 of the Defence Review stipulates that:

‘2. The White Paper on Defence, as approved by Parliament on 14 May 1996, states that the SANDF will be a balanced, modern, affordable and technologically advanced military force, capable of executing its tasks effectively and efficiently …

2.1 The government will not endanger the lives of military personnel through the provision of inadequate or inferior weapons and equipment.

2.2 The SANDF has to maintain a core defence capability because of the inherent unpredictability of the future. Such capability cannot be created from scratch if the need suddenly arises. The maintenance and development of weapon systems is necessarily a long term endeavour.

2.3 Deterrence requires the existence of a defence capability which is sufficiently credible to inhibit potential aggressors. Although South Africa is not confronted by any foreseeable external threat, this capability cannot be turned on and off like a tap. It is therefore necessary to maintain a core defence capability. A core defence capability includes a balanced and sustainable nucleus with, amongst other features, the maintenance and, where necessary, the adequate and appropriate upgrading or replacement of equipment and weaponry.’

[19] General Gerald Malinga testified that the Strategic Objectives of the SANDF are:
to defend and protect South Africa, its sovereignty, its territorial integrity, its national interest and its people

- to contribute to freedom from fear and want, including the promotion of human security both nationally and internationally, and

- to contribute to a better life for the people of South Africa.

[20] In order to carry out its constitutional mandate and other obligations thrust upon it, the SANDF had to have the necessary personnel and equipment. Without any of the two, the SANDF would not be able to carry out its mandate efficiently. This requires that the SANDF had to be adequately equipped.

[21] Rear Admiral Allan Graham Green testified that prior to 1994, much of the equipment of the then SADF was at the end of its life cycle. That was partly due to the arms embargo that was imposed on South Africa by the United Nations and lack of funds to upgrade some of its equipment. His view was shared by Rear Admiral Robert Higgs, Rear Admiral Philip Schoultz, Rear Admiral Derek John Christian, Brigadier General John William Bayne, Major General Gerald Malinga, Colonel Frank Kevin Sargent Viljoen and others.

[22] Rear Admiral Anthony Neville Howell testified that in the early 1990s, the SADF realised that its equipment was ageing and was concerned about ‘block obsolescence’ throughout the Defence Force.

[23] All three arms of service—the SAAF, the Navy and the Army—were of the view that there was a need to replace the ageing and obsolescing equipment.

[24] Admiral Green further testified that during the 1970s, 1980s and early 1990s the SADF recognised the need to rejuvenate its main equipment in order to be able to effectively carry out its mandate.
When the SANDF was established, after the dawn of the new dispensation, it was clear to the SANDF that there was a dire need to renew its equipment.

Mr David Griesel testified that prior to the approval of the SDPP acquisitions, Armscor was in the process of procuring various product systems on behalf of the DOD but before these procurement processes could be completed, they were suspended at various stages in 1997.

Mr Griesel further testified that the DOD and Government decided that some of the individual procurement processes that were initiated by Armscor on behalf of the DOD prior to 1997 would be superseded by the package approach reflected in the SDPP. Prior to the SDPP the following acquisition programmes were underway:

- Light Utility Helicopters – an RFI had been issued
- A corvette/frigate programme that was initiated in 1992 became the subject matter of a review process initiated by the Cabinet in 1994-1995
- Advanced Fighter Trainer – an RFO was issued in May 1995 and a supplementary one in March 1996. The process was altered before the RFO was issued
- Submarines, in respect of which a Staff Target document was compiled in August 1996 for the replacement of the Daphne class submarines by Upholder class submarines.

The above projects were administered in terms of the standard policies and practices of Armscor and the DOD until they were suspended.

Former President Thabo Mbeki testified that when they came into Government in 1994, they realised that the SANDF required additional equipment. He further said that they also realised that the previous Government was on the verge of signing a contract to buy four corvettes for the Navy from Spain.
Chapter 5: Findings – rationale for SDPP

[30] The seven programmes that constituted the SDPP emanated from the Defence Review, which identified 14 required equipment types, seven of which were deemed to require foreign participation. The remaining seven were considered to be of such a nature that they could be developed or manufactured by the local South African industry with the possible cooperation with foreign partners.

i. The SA Navy

[31] For many years prior to 1994, the Navy operated large ships, the last of which were frigates. At the time they had three frigates (a small ship is a 400 ton ship and a frigate is a 2 500 ton ship). When the frigates were taken out of service in 1985, due, inter alia, to the fact that they had reached the end of their design life, the Navy was left only with small ships or strike craft.

[32] It was therefore necessary for the Navy to restore its capability to patrol South African’s territorial waters and exclusive economic zone by acquiring new corvettes with helicopters and by replacing the 33-year old Daphne submarines.

[33] In the 1970s the Navy started upgrading its frigates. It took up to seven years to upgrade one frigate.

[34] The Navy also started a process of acquiring corvettes—1 200 tons at the time—from France. The corvettes were smaller than frigates but larger than strike craft. It was necessary for it to increase the number of ships because when there are three ships one can only be guaranteed to have one ship ready to use at any given time, because the other two would be in various stages of maintenance.


[36] The Navy initiated upgrade programmes of the frigates but the attempt failed and the frigates were decommissioned in 1985.
Chapter 5: Findings – rationale for SDPP

[37] Admiral Schoultz testified that the need to replace the frigates was first raised in 1980. In that year, the Navy decided that there was a need to acquire six vessels during the period 1987 to 1991. These new vessels were going to replace the frigates. The Navy wanted to acquire frigates since they had better capabilities than strike craft.

[38] According to Admiral Higgs, Mr Robert Maxwell Vermeulen (Programme Manager Naval Systems Division, Armscor), and other witnesses, at the time the SADF had three Daphne class submarines which they acquired from France. They were built in France and commissioned in 1971/1972.

[39] According to Mr Vermeulen, in the mid-1990s the submarines were reaching the end of their economic lifespan and they had to be replaced. Admiral Higgs further said that they were becoming increasingly difficult and expensive to support. It was envisaged that by the year 2005 it would no longer be cost-effective or possible to maintain them to the required level of operational effectiveness and safety. The usual design life of a submarine was about 30 years. The last of the Daphne submarines was decommissioned towards the end of 2004.

[40] It is significant to note that in the mid-1970s, the Navy had another two French-built Agusta submarines on order. As a result of the arms embargo they were not allowed to come to South Africa.

[41] As already said, when the SDPP was initiated, the SANDF was facing ‘block obsolescence’.

[42] The process of acquiring larger vessels and submarines comes a long way. Throughout the years, acquisition of equipment has always been in the mind of the South African Navy. Warships have a lifespan of approximately 30 years. A process of acquisition can take up to 10 years and consequently a process of acquiring replacement vessels should start when the vessels are 20 years old.
The force design that was in the implementation phase in the 1970s included five submarines, namely the three Daphne coastal submarines and two medium range Agusta submarines. A project to acquire four new submarines for delivery in the 1990s was approved but later cancelled.

The Navy also had nine vessels known as strike craft. They were 400-ton ships and were the only combatants left once the frigates were decommissioned. The strike craft were not suited for tasks around our coast, which is very rough. They were small vessels with various disadvantages. The first one was built in 1977 and the last in 1986. They were nearing the end of their lifespan.

The strike craft are still operational today. They are now considered to be offshore patrol vessels rather than surface combatants.

Admiral Higgs testified that in order to maintain an army which is capable of fulfilling its constitutional mandate there has to be continuous maintenance and renewal of its equipment.

South Africa’s exclusive economic zone includes the sea surrounding the mainland as well as the Prince Edward Islands and totals 1 535 538 km², 314 501 km² more than South Africa’s land mass. The integrity, safety and security of these waters are the direct responsibility of the Navy, which requires the capacity to ensure these effectively. The Navy’s surface ships form an integral and vital part of this capacity.

Admiral Higgs further testified that South Africa’s maritime jurisdiction is extensive. In relative terms the maritime area was three times that of the landed area. The economic zone of the Republic is vast and the core force is modest. The maritime environment to be covered by the Navy is immense and to cover that area with three submarines and four frigates was modest.

When the SDPP was announced, the Navy had a desperate need to replace the equipment that had either aged or had been retired. The frigates had been taken out of service and the submarines were engaged in an upgrade programme.
[50] As stated earlier, Mr David Griesel, Acting General Manager of the Armscor Acquisition Department, testified that prior to the SDPP, Armscor was in the process of procuring various product systems on behalf of the DOD but before these processes could be completed they were suspended at various stages in 1997. It was later decided by the DOD that the individual procurement processes that had been initiated by Armscor prior to 1997 would be superseded by the package approach reflected in the SDPP.

[51] As mentioned before, prior to the SDPP the following acquisition programmes were underway:

- Light Utility Helicopters – an RFI had been issued
- A corvette/frigates programme, initiated in 1992, had been the subject matter of a review process initiated by the Cabinet in 1994-1995
- Advanced Fighter Trainer – an RFO had been issued in May 1995 and a supplementary one in March 1996, which process was altered before the RFO was issued; and
- In respect of the submarines, a Staff Target document was compiled in August 1996 for the replacement of the Daphne class submarine by the Upholder class submarine.

[52] The above projects were administered in terms of the standard policies and practices until they were suspended.

[53] The acquisition process is time consuming and can take up to ten years. This is the reason that caused the Navy to start a process of acquiring new equipment long before the equipment they had in their inventory reached the end of its life cycle. Most of their equipment was due to be decommissioned in 2004.

[54] After the Defence White Paper and the Defence Review the concept of ‘packages’ was conceptualized and became Government policy. The Defence White Paper contains the policy framework and the guidelines are given by the Defence Review. The Defence Review is a much more detailed
document than the White Paper. It contains various options of the required equipment.

[55] The 1996 White Paper on Defence set out the defence policy of Government. It followed a very inclusive process and interaction and consultation between, amongst others, the DOD and Parliament’s Joint Standing Committee on Defence. The White Paper was finally tabled in Parliament in May 1996 and was endorsed by all political parties represented in parliament at the time.

[56] Members of the public and non-governmental organisation also made inputs to the formulation of the White Paper on Defence.

[57] The Defence Review process began in March 1996 and was completed in 1998. It was a very inclusive consultative process as well. The White Paper called for a review in order to elaborate on its policy framework through comprehensive and long-term planning on matters such as posture, doctrine, force design, force levels and armaments.

[58] The main purpose of the Defence Review was to provide a comprehensive basis on which arms purchasing decisions and defence policy could be based. It was approved by both the Cabinet and Parliament in May 1998.

[59] The first part of the Defence Review dealt with the structure, functions and force design options for the SANDF in the future.

[60] When formulating the various force design options, amongst others the nation’s vast territorial expanse, extended borders and maritime jurisdiction were properly taken into account. In addition, South Africa’s Defence Cooperation Agreements with other countries and its international commitments, particularly in the African region, to support operations under the auspices of the United Nations and other organisations such as the OAU/AU and SADC, were also considered.
[61] It was recognised that the defence capabilities and expertise that were lost would take a longer time to re-establish than the period during which a military threat could emerge, and that maintenance of that capacity and expertise as part of deterrence was prudent (see paras 8.5 and 8.6 at p 11 of the Defence Review).

[62] In Chapter 8, the Defence Review developed four alternative force design options. After some debate and in May 1998, the Cabinet approved Option 1, although the SANDF favoured Option 2. The Cabinet’s decision was basically the adoption of the outcome of the Defence Review, which was a rigorous and inclusive process and which ended with an endorsement by all political parties in Parliament.

[63] The total projected cost of Option 2, favoured by the SANDF, was much higher than the projected cost of Option 1. In certain areas, the number of units of equipment contained in Option 2 was higher than the number of units of equipment mentioned in Option 1. The number and type of equipment eventually acquired under the SDPPS was much lower than that recommended in either Option 1 or 2 of the SANDF Force Design Alternatives of the Defence Review. It was also less than what the SANDF thought needed to be acquired.

[64] Thus, the SDPP resulted in the acquisition of less equipment than what was recommended as being necessary to constitute a core force. No quantity of any equipment acquired in terms of the SDPP was more than the quantities mentioned in Options 1 and 2 of the force design contained in Chapter 8 of the Defence Review.

[65] As mentioned earlier, the Defence Review identified seven types of equipment that the SANDF required, including helicopters, submarines, fighter jets and warships. Options 1 and 2 in Chapter 8 of the Defence Review recommended, *inter alia*, 48 fighter aircraft (16 Light Fighters and 32 Medium Fighters); 96 transport helicopters, 12 combat support helicopters, 4 submarines and 4 corvettes.
Chapter 5: Findings – rationale for SDPP

[66] A Preliminary Staff Requirement 1/99 for the submarines was submitted in November 1999 and formed the baseline against which the new submarines were eventually acquired under Project Wills. This took place after the Cabinet had already announced that South Africa was to acquire three submarines.

[67] Normally, the Staff Requirement preceded procurement packages. Approval of the Staff Requirement for the acquisition of the 3 submarines announced by the Cabinet was sought by the Chairperson of the AACB in a Memorandum dated 6 January 2000.

[68] The late submission of the Staff Requirement was a deviation from the normal process, although it was not fatal as the need for the acquisition of new submarines was identified much earlier.

[69] The last Daphne class submarine was decommissioned towards the end of 2003. Both the White Paper and the Defence Review confirmed the requirements for a submarine capability and recommended that four submarines were needed.

[70] Frigates or corvettes are the workhorses of any navy, whilst submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value.

[71] The Navy, through the SDPP, acquired four frigates of 120 meters in length and about 3 500 tons in weight and three Heroine class 209 submarines. Frigates are capable of conducting autonomous, sustained operations in virtually any sea conditions. Until recently, our surface combatant was the very small patrol vessel. It was also a vessel that was becoming rapidly obsolete, and they had to be replaced. The Meko or the Valour class frigates we received effectively replaced the frigate capability acquired in the mid-1950s.

[72] Submarines and the frigates complement each other in capabilities. The three submarines that were acquired under the SPDDs are SAS
Manthatisi, SAS Charlotte Maxeke and SAS Queen Modjadji. They replaced the Daphne submarines that were becoming obsolete and very difficult and expensive to maintain.

[73] The three submarines arrived in South Africa on 7 April 2006, 27 April 2007 and 22 May 2008 respectively. As stated earlier, it was envisaged that the Daphne submarines would probably be decommissioned by the year 2005, but they were actually decommissioned in 2004. This means that for a period of approximately two years the SANDF did not have the capabilities offered by submarines.

[74] The three submarines acquired under the SDPP were less than the number recommended as being necessary to constitute a core force.

[75] The four frigates that were acquired under the SDPP are SAS Amatola, SAS Spioenkop, SAS Isandlwana and SAS Mendi. They arrived in South Africa during November 2003, January 2004, February 2004 and September 2004 respectively.

[76] It is worth noting that the frigates that were acquired by SADF were decommissioned in 1985 and the new frigates that were acquired under the SDPP arrived in the country from November 2003. The SADF and the SANDF were without the capabilities offered by frigates for a period of approximately 18 years.

[77] From the above information it is abundantly clear that the SANDF had to acquire frigates under the SDPP in order to replace the frigates that were decommissioned in 1985, and to acquire under the SDPP new submarines to replace the ageing Daphne class submarines which were reaching the end of their lifespan. At the time of the SDPP process, the Navy’s submarines were 27 and 29 years old and were due for replacement.

[78] The capabilities offered by frigates and submarines are critical to the ability of the SANDF to successfully carry out its mandate. The frigates provide a surface combat capability which is critical to the Navy and the SANDF, which capability is necessary to provide proper maritime service.
The submarines, because of their inherent stealth capabilities, are necessary as a strategic deterrent weapon system. These capabilities are the essential tools that the Navy and SANDF require in order to carry out the mandate of the SANDF.

ii. The SA Air Force

[79] Brigadier General John William Bayne, Director of Combat Systems, and other senior officials of the SANDF testified that the SAAF had maintained a three-tier training system throughout its history.

[80] The initial wings training was done on the piston-engine Harvard and jet-engine Impala MK1 aircraft. The SAAF flew the Harvard for 50 years, which is much longer than the norm of between 25 and 30 years. The SAAF got the MK 1s between 1950 and 1967, which were used mainly for air-to-ground and air-to-air training.

[81] After the initial training, the selected aircrew would go to Combat Flying School for fighter training on the Impala MK 1 aircraft (jet trainers) and then fly the Sabre, which was later replaced by the Impala MK II (light fighter aircraft) as a stepping stone before completing training on the Mirage III.

[82] Although the Impala MK II was a training aircraft, it was also used as a collateral light fighter, doing various tasks which it could perform safely and very effectively. However, it was not designed to be a fully operational aircraft. The Impala jet trainer was acquired from 1966 and it was reaching the end of its economic lifespan.

[83] After flying the Impala jet trainer, the aircrew would be posted to any one of many operational squadrons to fly Mirage III, Mirage F1 (an update of the Mirage III), Canberra and/or Buccaneer types.

[84] The Mirage F1 became the frontline fighter of the Air Force. There were two versions, one called the FCS, a dedicated air-to-air aircraft, and the other, an air-to-ground aircraft, designated the AZ.
[85] The Canberra, which served in a bombing role, was introduced into the SAAF in 1963 and served until 1990. The Buccaneer, a large bomber aircraft, which was introduced in 1965, had bombing capacity and also played a role in reconnaissance activities.

[86] In 1980, the SAAF introduced the Cheetah, an upgrade of the Mirage III, done jointly by the Israeli aircraft industries and the South African local industry.

[87] All these types of aircraft were procured from various countries and companies throughout the seventies and eighties, a period when the sanctions were becoming more and more effective. The process of acquiring equipment is an ongoing one and as equipment is about to reach the end of its lifespan, a project for the replacement of the equipment is undertaken.

[88] Air forces have become an integral part of most balanced defence forces worldwide, participating jointly with armies, navies and special forces.

[89] In the late eighties, wars in the region receded and peace talks ensued. The Defence budget was cut drastically in the early nineties and many squadrons closed down and a lot of aircraft was phased out. These included the Canberra, Buccaneers, Mirage I and some Impala and Cheetah aircraft. Certain Impala and the Cheetah aircraft were fulfilling the bombing and fighter roles. The Cheetahs were medium fighters and the initial idea was to replace them with a medium fighter.

[90] General Bayne and General Malinga testified that just before phasing out the Sabre aircraft in 1980, the SAAF had around 350 jet trainer, fighter, bomber and reconnaissance aircraft. Today, all in all the SAAF has only 52 fighter aircraft, which is a mere 15% of the number of aircraft the SAAF had in the 1980s.

[91] Through the years the SAAF was using a three-tier training system. At some stage it considered a two-tier system due to costs and not due to operational requirements. After further consideration, it was decided to revert
to the three-tier training system as it was found that the three-tier system was more beneficial than the two-tier one.

[92] General Malinga testified that in the sixties and early seventies the SAAF acquired the first jet bomber and reconnaissance aircraft. The SAAF also acquired 57 MIR III variants from Dassault in France. He further said that Armscor and the local industry in co-operation with the Israeli aircraft industry embarked on a programme to upgrade the SAAF’s Mirage III aircraft. As we have seen earlier, the result of these efforts was the Cheetah. Three variants of Cheetah aircraft were delivered to the SAAF between 1986 and 1994.

[93] The second level in the Air Force design of the three-tier training system was the Impala MK I and MKII, and the third line was the frontline fighters, namely the Cheetah D and F and Mirage F1.

[94] The Mirage F1 was phased out in 1997.

[95] There were no funds to do a midlife upgrade of the Impala MKI and MKII in order to extend their service life. The Cheetah D dual-seater had been in operation in the Air Force since 1986. It was planned to stop flying these aircraft in 2008.

[96] The Cheetah C, a fighter solo aircraft had been in operation in the Air Force since 1963 and they could be utilised until 2012. The Cheetahs C and D were old frames and the original aircraft were bought in 1963, 1964 and 1965. Throughout their life cycle they received the necessary midlife upgrades and even beyond that.

[97] The Impala MKI (dual-seater) and MKII (single-seater) came into SAAF’s service progressively from 1966 up to and including 1975. No midlife upgrade was done on these aircraft due to lack of funds. It was planned to phase out the Impala fleet between 1997 and 2004.

[98] The SAAF had to retire these aircraft because of safety concerns.
General Bayne testified that the Hawk LIFT was purchased as part of the SDPP to replace the fleet of Impala aircraft and the Gripen ALFA was purchased to replace the Mirage F1 and Cheetah fleet. The Impala fleet was ageing, with a lifespan of up to the latest 2003, while the remaining Cheetah fleet was estimated to have an upgrade-life until 2008 for the dual seater and until 2012 for the single seater.

The Alouette III helicopter entered service in the SAAF progressively from 1984 onwards. No mid-life upgrades were done because of lack of funds. The Alouettes were the basic platform for training young pilots to fly helicopters.

It is clear that there was an urgency to replace major air systems in the SAAF, and its priority for replacement of its major air systems was identified in the early 1990s.

The SAAF was facing block obsolescence.

The replacement of equipment such as aircraft could take up to 10 years. It is undesirable to allow any gap, and consequently there is a need to start planning long before the existing equipment comes to the end of its lifespan.

Studies were conducted in respect of the Advanced Fighter Trainer (AFT) and the Medium Fighter and these studies indicated that the Medium Fighter capability would be completely unaffordable within the national budget. The latter was then substituted by the Advanced Light Fighter Aircraft (ALFA) and a lead-in-fighter trainer (LIFT).

The main objective of Project Winchester (LIFT) was to acquire aircraft that could replace the ageing Impala MKI and MKII.

The purpose of Project Ukhozi was to acquire aircraft that could replace the Cheetah C and D and Mirage F1 with modern advanced light fighter aircraft.
Chapter 5: Findings – rationale for SDPP

[107] In 1997 another Defence budget cut resulted in the further reduction of fighter aircraft. The impact of the budget cut was, *inter alia*, that the Mir Fl AZ, some Cheetahs and more Impalas were phased out.

[108] In the mid-nineties, a debate began over the replacement of the rapidly ageing Impala and the upgraded Cheetah fleets. Among others, Lt General Willem Hechter, Chief of the SAAF from May 1996 to February 2000, testified that the Impala fleet needed to be replaced by latest 2003 and the upgraded Cheetah medium fighter fleet by 2008 (the dual-seater) and by 2012 (the single-seater).

[109] The SANDF’s idea in 1996 was to replace the Impala fleet with 48 Advanced Fighter Trainers (AFT) and the Cheetah fleet with 32 Future Medium Fighters (FMF).

[110] The Harvard basic-trainer fleet was replaced with the Pilatus Astra fleet in the mid-nineties. The acquisition of the Pilatus was a project on its own and not part of the SDPP. The Astra was used for the basic training of all young pilots in the Air Force up to wing standard.

[111] The White Paper on Defence of 1996 and the Defence Review of 1998 respectively mandated the SAAF’s air defence capability to include two frontline squadrons of 32 FMFs, a light fighter squadron of 16 AFTs and a Combat Flying School of 22 AFTs. The 22 AFTs would be required for training. That meant a total of 70 aircraft.

[112] Further budget cuts in 1997 meant that the SAAF had to lower its sights in terms of the performance class of the future frontline fighter, hence the requirement for an Advanced Light Fighter Aircraft (ALFA). The FMFs are more costly than the ALFA, and they are much larger aircraft. There was then a deviation from the initial force design in several respects.

[113] The initial training would still be on the Astra, followed by the LIFT and then the ALFA.
Chapter 5: Findings – rationale for SDPP

[114] General Bayne further testified that numerous options were considered by the SAAF between 1994 and 1997 and the final solution arrived at, namely 28 ALFA and 24 LIFT, were driven by cost rather than need because of the various competing priorities of the Government. The number of aircraft required was reduced from 70 to 52.

[115] Project processes were carried out for the ALFA and LIFT, and the Gripen and Hawk were selected in November 1998 by the Government as the preferred equipment to satisfy the SAAF’s combat system requirements. The Hawk aircraft were delivered to South Africa from May 2006 over 12 months and the Gripen from April 2008 over 30 months. As stated earlier, the Hawk replaced the fleet of Impala aircraft while the Gripen replaced the Mirage F1 and Cheetah fleet of aircraft.

[116] The official handover to the SAAF of the Hawk system was in 2012 and some project activities are still to be completed by 2015. The Gripen system is still in the final stages of handover to the SAAF and this is also estimated to be completed by 2015.

[117] General Bayne further testified that the Gripen is the SAAF’s only full fighter-capability aircraft, while the Hawk is primarily a fighter trainer with a considerable level of collateral operational capability in low threat environments.

[118] As stated earlier, the Impala fleet needed to be replaced by latest 2003 and the upgraded Cheetahs had to be replaced from 2008 onward.

[119] The Hawks were delivered approximately three years after the date on which the Impalas had to be replaced. The Gripen were delivered in the year in which the Cheetahs had to be replaced.

[120] Dr Richard Young, on the other hand, alleged that it was unnecessary to commence with the acquisition of the Gripen to replace the Cheetah C in 1997 because:
• The Cheetah C had only formally been taken into service in the SAAF in 1997, and
• The Cheetah C had a remaining lifespan of at least 15 years that could have been extended to 20 or even 25 years.

This was also the view of Mr Steyn.

[121] Mr Terry Crawford-Browne testified that the acquisition decision was made by the Cabinet despite objections by the leadership of the SAAF and the SA Navy, including the former Secretary for Defence, Mr Pierre Steyn. He further said that the SAAF did not need fighter jets as they had 50 Cheetah aircraft, some of them still in their crates.

[122] The abovementioned allegations by Dr Young and Mr Crawford-Browne are not supported by any evidence and are in fact incorrect.

[123] General Hechter, former Chief of the SAAF, testified that both the Cheetah C and D aircraft had been in operation in the SAAF since 1986 and that the frames and the wings of the aircraft were produced in 1963/1964. They were upgrades of the Mirage III aircraft by Israeli industries together with SA local industries.

[124] General Hechter further testified that it was planned to stop flying the dual-seat Cheetah D in 2008 and the single-seat Cheetah C in 2012. General Hechter’s evidence was supported by the evidence of General Malinga and other high-ranking officials of the SAAF.

[125] Dr Young and Mr Crawford-Browne’s assertions are not consistent with overwhelming oral and documentary evidence tendered by various officials from the SANDF and Armscor, including high-ranking officers in the SAAF. Their allegations are also not consistent with the Defence Review, particularly Chapter 8 thereof. The various types of armaments and units that were acquired under the SDPP were less than what the SANDF thought it required in order to carry out its mandate.
Chapter 5: Findings – rationale for SDPP

[126] The Grip is the SAAF’s only full fighter-capability aircraft, whilst the Hawk is primarily a fighter-trainer aircraft, but with a considerable level of collateral operational capability in low threat environments, and has growth in this role when operating in a package together with the Gripen.

[127] General Bayne said that the SAAF found both the Hawk and the Gripen to be acceptable aircraft. They meet the needs of SAAF and in fact have exceeded the expectations of the SAAF.

[128] The Gripen is utilised by Sweden and numerous other countries. Various countries, including the UK, Finland, India, Switzerland and Canada have the Hawk in their inventories.

iii. Helicopters

[129] The SAAF formed its first helicopter squadron in 1957. Over the years, the SAAF acquired various helicopters from a number of sources.

[130] All the helicopter pilots trained first with the Harvards at the Central Flying School. After graduating they were trained on the Alouette II before they proceeded to operational helicopters. The three-tier training system was maintained.

[131] The SAAF acquired 16 Super Frelon helicopters from France between June 1967 and November 1969. They were used as heavy lift helicopters.


[133] The Alouette III was used as the basic helicopter trainer after the Alouette IIs that were acquired in 1961 were phased out in 1974. The Alouette III was at a later stage also used for advanced training on the helicopter side.
[134] General Burger testified that the Super Frelon was phased out in 1989 and the LUH replacement project for the Alouette III was initiated in 1992. The replacement of the Alouette III was already a registered SAAF requirement before the SDPP.

[135] The Alouette replacement study indicated that the replacement required 60 units as opposed to the 118 Alouette IIIs that were earlier acquired by the Air Force. Its force design and the Defence Review also specified that 60 LUHs should be acquired to replace the Alouette III.

[136] The SAAF had on its inventory other helicopters, such as the Oryx (a medium lift helicopter), the Rooivalk (a combat support helicopter), and the Super Lynx 300 that was acquired in 2007 and is used as a maritime helicopter.

[137] General Malinga, Colonel Viljoen and General Burger testified that the Alouette IIIs had been in service since 1962 and were becoming more difficult to operate, as costs were increasing and the helicopter was limited in its operational utilisation. Colonel Viljoen further testified that it came to the attention of the SAAF that there were indications that the manufacturers, Eurocopter, were about to discontinue the spares production line of the Alouette III. This meant that even if consideration was given to extend the lifespan of the Alouette III, it was not going to be possible to acquire spares when the need arose.

[138] As stated in the previous paragraph, the Alouette III was acquired in 1962. There was an investigation into the possibility of upgrading or replacing the Alouette III, which was already in service for about 30 years. The study revealed that it would not be advisable to upgrade the Alouette III. A User Requirement Statement was then prepared that dealt with, amongst others, the anticipated utilisation of the LUH. One of the requirements of the Alouette III replacement aircraft was that it had to be suitable for basic helicopter training as the Alouette was used for basic helicopter-flying training.
Chapter 5: Findings – rationale for SDPP

It is important to have a helicopter trainer, so that the SAAF can train helicopter pilots in order to supply pilots to other systems as and when the need for new pilots arises.

Colonel Viljoen testified that the RFO that was issued on 13 February 1998 was for 60 units. The number of units required stemmed from the study that was carried out in 1992 when it was determined that in order to satisfy an Alouette replacement, a quantity of 60 units would be required as opposed to the 118 Alouettes that were acquired earlier by the SAAF.

Mr Johan Odendaal, Senior Manager Technical at Armscor, testified that on 16 May 1996, Staff Target 03/95 of 29 January 1996 was approved for the replacement of the Alouette III fleet of aircraft that was operated by the SAAF since 1962.

After intense evaluations were carried out in November 1998, the Cabinet announced that the Agusta company had been selected as the preferred supplier for the Alouette III replacement. The Agusta A109 replaced the Alouette III. Thirty units were acquired.

The three-tier training system is still in place. The basic flying training happens on the Astra (Pilatus PC7) aircraft at Central Flying School. Trainees who graduate and are earmarked for the helicopter line, are then trained on the LUH A109, and when they qualify they move on to the Oryx Medium Transport Helicopter (MTH).

The first LUH was delivered in 2005 and the last in September 2009. General Burger testified that the LUH fulfils an important role in enabling the SANDF to carry out its mandate. He further said that the LUH is a very useful item of equipment to have on the inventory.

The approved force design option (which emanated from the White Paper on Defence and the Defence Review), made provision for amongst others 12 combat helicopters, 5 maritime helicopters and 96 transport helicopters.
[146] General SZ Shoke, Chief of the SANDF, testified that at the time the various types of equipment were acquired under the SDPP, the country needed those capabilities and indeed others to supplement the SANDF’s capabilities and to replace its ageing equipment that was approaching redundancy. The armaments purchased under the SDPP were and remain essential to the SANDF to enable it to carry out its constitutional mandate. Other senior officials of the SANDF who testified before the Commission were of the same view. Most of them have been in the SAAF and SANDF for several decades and they are experts in their various disciplines.

[147] Admiral Robert Higgs testified that aircraft provided aerial coverage and a rapid response capability that ships and submarines cannot equal. There is a complementary relationship between these types of equipment and the neglect of any one of them has a disproportionate effect on the overall defence capability.

[148] General Shoke further said that he did not agree with the notion that the country faced no threat. Amongst others, there is always a threat to the country’s marine economy, which cannot be protected without a Navy that is adequately equipped for the purpose and could also fulfil other needs which require the utilisation of the SANDF’s equipment.

[149] Various other important activities that the equipment acquired under the SDPP is utilised for include border control, crime control, peace-keeping and peace-enforcement missions in other African countries, piracy control on both the West and East coasts of Africa, humanitarian missions, and protection of the important Cape trade sea route. Piracy has increased the use and importance of the Cape sea route, which needs to be protected.

[150] General Shoke further said that in his view the current SANDF equipment is not sufficient to enable the SANDF to fulfil its constitutional mandate and to honour its international obligations. The SANDF needs to incrementally add to its current capabilities.
[151] The DOD’s experts testified that the equipment acquired under the SDPP constituted the minimum or core requirement without which their constitutional mandate could not be fulfilled. A modern navy and air force was required to defend and protect the territorial integrity of the nation’s land, the territorial waters and the exclusive economic zone.

[152] The SANDF still requires additional equipment as the SDPP covered only a portion of the full requirements. General Malinga and other senior officers of the SANDF expressed the same view. This was echoed by Mr David Griesel of Armscor, who testified that in many cases the quantities of the equipment actually acquired were much lower than the quantities mentioned in the RFOs. This was caused by affordability difficulties.

[153] It is clear that it was important for the DOD to acquire equipment under the SDPP. The equipment acquired enables the SANDF to carry out its constitutional mandate more efficiently.

[154] General Malinga testified that by the mid-1980s the Defence budget was 4,7% of GDP and it was approximately 25,7% of total government expenditure. He further said that today the defence budget is approximately 1,2% of GDP and about 16% of total government expenditure. The expenditure on defence is very modest when compared to what percentage of GDP other countries spend on defence.

[155] Mr Terry Crawford-Browne maintained that there was no need for the acquisition. The acquisition was motivated by the offsets. He further said that the armaments were acquired because of bribes and not because of any defence requirements.

[156] The allegation made by Mr Crawford-Browne is baseless and is not supported by any evidence and consequently it must be rejected.

[157] From the above, it is clear that if the SDPP was not undertaken, most of the equipment of the SANDF would have been obsolete by the early 2000s. What would have been left was also fast approaching the end of their lifespan. This would have seriously hampered the SANDF in their efforts to
carry out their constitutional mandate and international obligations of peace support, peace keeping, and the like.

[158] As stated earlier, General Malinga, the current Deputy Chief of the SAAF, said that the SDPP did not address all the required capabilities of the SANDF. General Shoke, the Chief of the SANDF, expressed the same view. He said that the SANDF still requires additional equipment as the SDPP covered only a portion of the full requirement.

[159] It was necessary and desirable for the Government to acquire, on behalf of the SANDF, the equipment it procured under the SDPP. The need to acquire some of the equipment was long overdue.

1.2 WHETHER THE ARMS AND EQUIPMENT ACQUIRED IN TERMS OF THE SDPP ARE UNDERUTILISED OR NOT UTILISED AT ALL

[160] Rear Admiral Alan Green testified that the utilisation of the armaments is not limited to the airtime flown by the aircraft or the sea-hours spent by the ships. In addition, the assets are utilised for the rotational training of pilots, submariners and other personnel. Force preparation is also a form of utilisation of the equipment.

[161] Admiral Green further testified that maintenance cycles must also be taken into account. Proper maintenance of the equipment would not require that all the ships must be at sea at the same time or that all the aircraft must be in the air at the same time.

[162] Admiral Philip Schoutz testified that the various maintenance periods or cycles are also included in the term ‘utilisation’. When a ship is not operational it does not mean that it is not utilised, as at times it needs to be prepared, maintained and rejuvenated.

[163] Admirals Green and Schoutz and others further testified that budget and operational needs also enter into the equation. Long-term storage of equipment is part of a process of utilisation when one has to manage the life cycle of assets in terms of the available resources.
Funding has an effect on utilisation of assets as well, because utilisation may be planned in terms of a certain funding profile. If that funding profile is less than anticipated, the SANDF is forced to reduce the utilisation cycle. Utilisation was planned on the basis of the allocated funds.

The multinational exercises that the Navy and the SAAF participate in with other countries, also involve technical staff, artisans and engineers. During such exercises the technical staff, artisans and engineers have an opportunity to observe and learn from foreign crews, artisans and engineers performing similar functions. Such exercises are valuable and are an important form of utilisation.

General Shoke testified that the equipment acquired under the SDPP is being used effectively, a fact that can be demonstrated by, amongst others, the use of the equipment to protect and secure major events that took place in the country, such as the 2010 Soccer World Cup, World Economic Forum meetings that were held in our country and many other major events.

Members of a defence force must have confidence in their equipment for their morale to be high. If there is only old and redundant equipment the morale would be low.

The SANDF still need additional equipment as the SDPP provided only a portion of the required equipment. The equipment acquired in terms of the SDPP is well below what the force design of 1998.

The primary role of the SANDF is to be prepared to deter any external hostilities and to deal with conflict. Having corvettes and submarines operationally available is also a form of utilisation. Similarly hours flown by the aircraft serve as a deterrent so that the aircraft are in a sense being utilised to fulfil the primary goal of the SANDF.

i. Frigates

In his testimony, General Pieter Burger said that the primary role of the SANDF is to prepare itself to deter any external hostilities. He further
said this is required even though the possibilities of such external hostilities in the foreseeable future may seem extremely remote.

[171] Having ships and aircraft ready to be deployed when the need arises is a form of utilisation. The availability of the equipment acts as a deterrent to potential aggressors.

[172] Admirals Higgs and Schoultz, amongst others, testified about the frigates and submarines in the inventory of the SA Navy, the importance of frigates and submarines, their utilisation and their capabilities.

[173] The frigates are South Africa’s frontline naval surface combatants. Admiral Higgs described the role of frigates in maritime defence as follows in paragraph 11 of his statement:

’huiher warfare is multi-dimensional and effective maritime defence requires balanced air, surface and sub-surface capabilities. Surface vessels can conduct sustained operations, maintaining a “presence” unequalled by other systems, and have substantial capabilities in countering aircraft, other surface vessels and submarines. Frigates or Corvettes are the workhorses of any navy. They are capable of conducting sustained operations in sea conditions like those off the South African coast.’

[174] The frigates and submarines are utilised in various activities by the Navy, such as peace-keeping and peace support operations, humanitarian and relief activities, and guarding and patrolling our economic natural resources, including the important Cape trade sea route.

[175] Admiral Higgs testified that, taking into account the South African maritime economic zone and other functions performed by the Navy, the investment in the Navy was modest. South Africa’s trade sea route, its dependence on sea trade and its maritime area make maritime defence important for the survival and well-being of the economy.
[176] As mentioned earlier, the four frigates—SAS Amatola, SAS Spioenkop, SAS Isandlwana and SAS Mendi—arrived in South Africa between November 2003 and September 2004. They are capable of conducting autonomous, sustained operations in virtually any sea condition.

[177] The frigates have been utilised since 20 April 2005. Between April 2005 and 2013, they have spent some 1 932 days operationally deployed, engaged in the conduct of joint or multi-national exercises or in other ordered commitments (such as hydrographic survey, search and rescue operations). The mentioned number of days does not include days used for safety checks, internal use or training. 1 932 is the total number of sea-days that the four frigates were deployed, which means that they spent 241,5 days at sea per annum.

[178] Activities in which the vessels were utilised internally within the fleet in order to prepare them for generating the abovementioned number of days, include safety and readiness checks. In the case of the frigates this can take up to 19 weeks to complete.

[179] The planning of the utilisation of equipment by the Navy consists of two components, namely force preparation, on the one hand, and force employment, on the other. Force preparation is what the Navy needs to do in order to ensure that the vessels are prepared adequately for force employment. Force employment, in turn, is directed by the Government.

[180] The actual deployment of the equipment depends, to a very great extent, on the Government’s needs or directions. The Navy’s projected use of the equipment is arrived at after an environmental analysis and is done in terms of sea-hours and not sea days. The Auditor-General directed that the performance of the frigates and submarines should be indicated in hours and not in days as there was some ambiguity about what constitutes a day.

[181] The projected or planned number of hours at sea is affected also by the budget.
Chapter 5: Findings – utilisation of equipment

[182] Admiral Green testified that according to the Navy's plan from 2006 to June 2014, the frigates would spend 87,584 hours at sea. Eventually, they were deployed at sea during the said period for 38,647 hours, which amounts to 44% of the planned hours.

[183] The Navy has always been able to deploy a vessel when directed to do so. The actual number of hours that the frigates were deployed is less than the planned hours, simply because the need for their deployment was less than the planned hours of deployment.

[184] To date, the frigates participated in some 24 operations, 25 joint and multinational exercises and five other ordered commitments. The operations ranged from goodwill visits to countries such as Brazil, Nigeria, China, India, Vietnam, Singapore, Tanzania and Mauritius, to East and West Coast patrols, anti-piracy patrols in the Mozambique Channel, rescuing injured sailors off Tristan da Cunha, safeguarding of the 2010 Soccer World Cup, and drug runner interdiction to the escort of a vessel carrying nuclear waste.

[185] The exercises the frigates participated in were with the navies of Argentina, Brazil, France, Germany, India, Mozambique, Namibia, the United States of America and Uruguay, as well as with the NATO Standing Maritime Group One.

[186] Exercises were conducted off the Southern African coast, off the South American coast and off La Réunion in the Indian Ocean.

[187] During force preparation, the asset is utilised. Force preparation is a mandate of that unit or service. Primarily, though, utilisation depends on where the Government orders the SANDF to utilise its forces.

[188] At the moment, there is a guideline with regard to the various levels of capability of the frigates. It stipulates that the Navy must have one frigate at what is termed a functional level of capability, in other words one frigate must be fully fit for its war-fighting role. Another frigate must be at the basic level of capability, which means it can perform a number of tasks, but not necessarily a full war-fighting role. One frigate must be at a seagoing level of
capability, so that it is safe to go to sea and do limited tasks, and one frigate at no level of capability. The last-mentioned frigate would classically be the vessel that is in a major refit or maintenance period.

[189] The above measures are both cost- and needs-driven. Admiral Schoultz testified that it would be prohibitively expensive to keep all four frigates at their full level of capability all the time, so that the planned and the actual utilisation will be influenced by both costs and the needs that actually arise.

[190] Mr Terry Crawford-Browne alleged that SA acquired the four frigates that are reportedly equipped with defective engines and obsolete combat suite and armoury systems. This alleged report is not supported by any oral or documentary evidence. In our view the said report is false and must be rejected.

[191] On each occasion where the Navy has been called upon to assist in an operation or exercise, it has been able to do so successfully whilst remaining within the constraints of the allocated budget.

[192] When the time spent utilising the frigates for independent training and exercises that are necessary to prepare the vessels and crew for such operation is taken into account, it is fair to conclude that the corvettes are well-utilised.

ii. Submarines

[193] According to Admiral Higgs, submarines can control their visibility and pose a threat to even the most sophisticated surface forces, thus providing great deterrence and defence value. He proceeded (paragraph 13 of his statement):

‘Submarines provide a highly credible threat to any potential enemy or aggressor and are extremely effective covert surveillance platforms. The presence of submarines vastly complicates the freedom of operation as well as force composition of any aggressor, regardless of his strength or
potential. Submarines serve as very subtle instruments for the projection of power over long ranges. Their presence need not be known, but even so they are used across the full spectrum of activity, from peacekeeping through escalating tension and crisis to war.’

[194] Submarines and frigates complement each other in capability.

[195] It was mentioned earlier that the three submarines were delivered to South Africa between 2006 and 2008: SAS Manthatisi arrived at Simonstown in April 2006, SAS Charlotte Maxeke in April 2007 and SAS Modjadji during May 2008.

[196] Since the transfer of the submarines to the Navy, they have spent about 807 days operationally deployed, and were engaged in the conduct of joint or multi-national exercises or in the initial delivery, trials and training. This relates to the period 2006 to 2013. The number of days does not include safety and readiness check days.

[197] The principles applicable to the utilisation of the frigates apply equally to the utilisation of the submarines.

[198] Admiral Green testified that for the period 2006 to June 2014 it was planned that the submarines would be deployed for 47 275 hours. The actual hours of deployment were 18 269, which is about 40% of the planned hours.

[199] The reason for the lower number of hours deployed than the hours planned for, is that the submarines were required to be deployed for fewer hours. In other words, the utilisation of the submarines has been less than originally envisaged as a result of requirement rather than availability.

[200] At all times when the Navy was instructed to deploy the submarines, they were able to do so.

[201] Admiral Green further testified that the actual hours mentioned above refer only to deployment and not to force preparation. As stated earlier, force
deployment depends on need and not the force preparedness to be deployed.

[202] The principle as far as the utilisation of submarines is concerned, is that when two of them are kept operational in a cycle, one would be reserved or will be undergoing maintenance. The period of such maintenance or refit is approximately 30 months and takes place approximately every eight years. At the moment there are instructions as to how many submarines must be at a functional or full level of capability, a safe or seagoing level of capability, and at no level of capability.

[203] As mentioned earlier, a similar principle is applicable to the utilisation and level of functionality of the frigates.

[204] Admiral Schoultz testified that before the submarines could be fully utilised it was necessary to conduct certain trials. He further said that it was also necessary for new personnel to be trained to crew the submarines, as many submariners had come to the end of their careers with the demise of the Daphne class submarines.

[205] The submarines have been utilised for the purpose of training the commanding officers.

[206] The submarines have conducted 16 operations that included East and West Coast patrols, two anti-piracy patrols in the Mozambique Channel, and two patrols to Marion Island. They also participated in safeguarding the Soccer World Cup 2010.

[207] The submarines further participated in about 26 joint and multinational exercises with the navies of Argentina, Brazil, Germany, India, Namibia, the United States of America, Uruguay as well as the NATO Standing Maritime Group One. Most of the exercises were conducted off the South African coast but one of our submarines also attended exercises in Namibia and Brazil.
[208] Multinational exercises allow South Africa continuously to hone its skills and assess its war-fighting capability as well as to keep up with worldwide trends in submarine and anti-submarine warfare.

[209] Admirals Higgs and Schoultz testified that *SAS Charlotte Maxeke* was deployed to the Marion and Prince Edward Islands group to protect fishery resources and to gather intelligence in relation to South Africa’s extended continental shelf claim. *SAS Queen Modjadji* is regularly deployed, particularly up the East Coast, and has also been involved in naval exercises with visiting navies.

[210] The submarines have also been utilised, along with the corvettes, in anti-piracy operations in the Mozambican Channel.

[211] As indicated, the utilisation of the submarines was less than anticipated. According to Admiral Schoultz, this was a result of need rather than availability. The Navy prepares the forces and make them operationally available for utilisation, should the need arise. The submarines were prepared but the occasions on which they were required to conduct operations were fewer than what the Navy had been prepared for. They were available but there was no need to utilise them to the expected extent.

[212] Rear Admiral Christian, Director Naval Logistics, testified that the Type 209 Heroine class submarines the SANDF acquired are much larger and better than the Daphne submarines. They enable the Navy to fulfil its mandate more effectively and efficiently.

[213] Still dealing with utilisation, over the period 2005 to 2013, the SA Navy has trained some 4 042 personnel (647 support personnel, 1 191 technical personnel and 2 204 combat personnel). It is from these trained people that the frigates, submarines and other vessels have been crewed.

[214] Despite this investment in training, critical shortages are still being experienced in mechanical engineering mastering mainly because once qualified, staff are ‘poached’. As a result of this, it has not been possible to staff each ship and submarine fully with qualified personnel at all times,
although it has been possible to ensure that the laid-down minimum seagoing standards are maintained.

[215] The Navy receives instructions on how many submarines should be at a functional level of capacity and capable of performing a war-fighting function, how many must be at a seagoing level of capability, and how many should be at no level of capability to allow for extensive maintenance on the vessel.

[216] The same principle is applicable to the frigates.

[217] It was never the intention of the SA Navy that all submarines and all frigates should be operational at all times.

[218] During his testimony, Admiral Schoultz said:

‘I believe that the strategic packages are well justified, they are necessary and I’ve tried to indicate how we have used them in training to hone our skills, how we’ve used them with other friendly nations to jointly hone our skills and how we are currently deploying them in fulfilment of some of the mandated tasks; therefore I have no doubt that it was a good decision by government to give South Africa this capability.’

[219] He further said that despite the budgetary constraints, the naval vessels acquired in terms of the SDPP have fulfilled all their mandated obligations.

[220] Mr Crawford-Browne, on the other hand, said that South Africa acquired submarines that spend most of the time on the ‘hard rock’ at Simon’s Town.

[221] This statement is contradicted by the evidence of various naval officers.

[222] There is no factual basis for the averment made by Mr Crawford-Browne and therefore the averment is false and is accordingly rejected.
The frigates and submarines are capable of performing the functions that require the utilisation of a frigate or a submarine. They are always available to be utilised if required. Admiral Schoultz testified that having ships and submarines operationally available can also be construed as utilisation. If a potential aggressor is aware of the capabilities of the SANDF, this will act as a deterrent. This view is shared by other senior officials of the Navy and the SANDF.

Admiral Schoultz further said that every request that was directed to the Navy was complied with and there is no instance where they were unable to supply forces when requested to do so.

The training provided by the Navy contributes positively to the skilling of our people and to some extent contributes to the reduction of unemployment.

Despite challenges in terms of budgetary constraints, the naval vessels have fulfilled all of their mandated obligations.

iii. **Light Utility Helicopters (LUH)**

Brigadier General Pieter Burger, Director Helicopter Systems, testified about various helicopters in the inventory of the SAAF, the acquisition of new helicopters, the training of pilots and the utilisation of the Agusta light utility helicopters (LUHs).

The LUH is being deployed to units where the Alouette III previously served. Its deployment did not require any major infrastructure development.

The LUH plays an important role in deterring external hostilities, rescue operations, and assisting other services and Government Departments to carry out their tasks.

The LUH is also utilised as the basic helicopter for training air crews. The training on the LUH prepares trainees better to fly bigger platforms like the Rooivalk and the Lynx.
[231] The LUH fulfils various roles, both during conflict situations and peacetime, including various humanitarian services to local communities and other countries, such as Mozambique and the DRC.

[232] Among the roles of the LUH are the following:

- Supporting the South African Police Service in the maintenance of internal stability
- Supporting the other services of the SANDF
- Assisting both local and foreign Government Departments in accomplishing their tasks or missions
- Supporting the maintenance of regional stability and the rendering of aid
- Supporting the South African Police Service in crime prevention operations in order to reduce the local crime rate
- Supporting the Department of International Relations and Cooperation in carrying out national foreign policy
- Conducting rescue missions in mountainous terrain, at sea and in disaster situations.

[233] The helicopters are continuously utilised in a collateral role.

[234] Thirty A109 LUH helicopters were delivered between 2005 and September 2009, when the last one was received.

[235] The SAAF Helicopter Section had three accidents and the LUHs are down to 27. These catastrophic accidents occurred over a period of seven years.

[236] General Burger testified that the LUHs had since their acquisition participated in various exercises and operations, such as air force exercises with other arms of service, securing the 2010 Soccer World Cup competition, army border protection and control, anti-rhino poaching operations, supporting the National Parks Board in nature conservation, supporting the South African Police in crime prevention operations, rescue missions, and supporting the Department of International Relations and Cooperation.
The LUHs have flown over 18 000 hours since entering service in 2005. It was initially planned that they would fly 6 000 fleet hours per year, which, given the build-up of the fleet, would amount to about 40 000 hours to date. They have flown almost half the expected hours.

Generals Burger and Pelser testified that the LUH fleet flew fewer than the expected number of hours for the following reasons:

- They did not receive all the aircraft at the same time. They received them at different times, the first in 2005 and the last one in 2009
- Austerity measures did not allow them to fly at all the times they were supposed to fly
- Some of the damaged aircraft have not flown for some time.

General Burger further testified that the current resources available to the helicopter system are insufficient to achieve full and sustainable operational status. Sufficient resources must be made available to achieve this objective.

The helicopters have always been available when required. They are utilised for the tasks which require the capabilities of LUHs and the SAAF is satisfied with the capabilities of the LUH A109.

iv. Hawk and Gripen

Brigadier General John William Bayne, the Director of Combat Systems in the SAAF, testified about the acquisition process of the Hawk and Gripen aircraft, their capabilities and their utilisation. Resources and requirements of the Hawk and Gripen systems fall under his supervision.

Both the Hawk and Gripen are capable of assisting other services and Government Departments with, amongst others:

- Support to the South African Police Service, the SA Army, the SA Navy, Special Forces, Defence Intelligence and joint and multinational exercises and operations
- Command and controls
Chapter 5: Findings – utilisation of equipment

- Surveillance
- Border control
- Search and rescue
- Communication support.

[243] The SAAF, in the Staff Requirements, estimates the average flying hours per year, and working on flying hours per year as a baseline per type of aircraft, predicts all its costing and funding-resources planning. In doing these exercises the average lifespan of an aircraft is estimated at 30 years.

[244] The final number that was introduced in the User Requirement Specification was that the Hawk was designed to fly 4 000 hours a year and the Gripen 3 000 hours.

[245] General Bayne testified that the current fleet of 26 Gripens and 24 Hawks are adequate to meet the needs and requirements of the SAAF.

[246] Fighter air and ground crews have been well-trained and developed and are capable of operating and maintaining the aircraft. The SAAF has trained engineers and other support staff to service and maintain the aircraft. They have a fully-fledged Air Service Unit.

[247] All aircraft have to be serviced either after a number of flying hours or according to calendar. The Hawk is on calendar and the Gripen is on flying hours. The airframe on the Hawk is calendar-based but the engine and the avionics are time-based, which is much better because when the aircraft is not flown it does not have to be serviced.

[248] Major portions of the Hawk and Gripen maintenance and repairs are done on the premises of the SAAF or by the local industry. Only a small portion of repairs and maintenance is done offshore.

[249] Brigadier Bayne testified that their records indicate that as far as the Hawks are concerned, between 2005 and 2012 the budgeted hours were 11 305 and the actual flown hours 10 527.
The variance between the budgeted and flown hours was as a result of availability of the aircraft and funding.

Both the budgeted hours and the actual flown hours increased from one year to the other because of various factors, mainly funding. In some years, such as 2007, 2010, 2011 and 2012, the flown hours exceeded the budgeted hours. In the years 2006, 2008 and 2009, the actual flown hours were slightly less than the budgeted hours.

The increase in the flying hours was as a result of the threat level, extra funding and the tasks that the Hawks were required to undertake.

General Bayne further testified that their records dealing with the Gripen indicate that the budgeted hours that were to be flown by the Gripen between 2008 and 2012 were 2 525, while a total of 3 523 hours were actually flown.

In the year 2008, the flown hours exceeded the budgeted hours as a result of extra funding that was provided. In 2009 the flown hours were less than the budgeted hours as a result of a lower number of available aircraft. In 2010 the flown hours were almost double the budgeted hours. This was the result of extra funding and the increased demand for the services of the aircraft, mainly because of the 2010 Soccer World Cup.

It is worth noting that the Hawk and Gripen were utilised extensively to ensure the safety of the 2010 Soccer World Cup. This task was carried out successfully. The flown hours exceeded the planned flying hours during that period.

In 2011 and 2012 the flown hours were more than the budgeted hours. This was as a result of more money made available for fuel and not for spares.

All the aircraft have flown, some more than others. As stated earlier, the number of hours that are flown depends, to a significant extent, on funding and demand for the services of the equipment.
Currently they have an adequate number of pilots on the Hawk to feed the Gripen, and the training of their crew is continuing although it is at a lower level because of budgetary constraints.

General Bayne testified that since 2005 both aircraft have participated in many SAAF, joint SANDF and multi-national exercises, in and outside South Africa, as well as in certain specific SANDF operations, including with the land forces. More specifically, the Hawks and Gripens participated in joint and multinational exercises with the German Air Force, a multinational naval exercise with the Brazilian and Indian navies and a multinational exercise with seven SADC countries. They also participated in an exercise hosted by the Swedish Air Force in Sweden along with the Czech, Hungarian and Norwegian Air Forces.

Two ‘Flight Test Instrument’ aircraft are being utilised for various test programmes and clearances at the SAAF Test Flight and Development Centre in Overberg.

The performance of both aircraft systems has met the expectations of the SAAF.

In his concluding statement, General Bayne said:

‘The SAAF today has an excellent, well-balanced and well-equipped fighter system capability within the ideal three-tier system wherein the gap is higher between the first and second tier and relatively small between the second and third tier. The Hawk has also proven to have a cost-effective collateral operational capability, especially when packaged with the Gripen.’

The version of the Hawk purchased by the SAAF represents a new generation of aircraft. It is equipped with a powerful Rolls Royce engine and has high level technology navigation and weapon delivery systems. Although the Hawk has certain fighting capabilities, its primary function is to train pilots to fly fighter aircraft.
The Hawk is used in Australia, Bahrain, Canada, Finland, India, Indonesia, Kenya, Kuwait, Malaysia, Oman, Saudi Arabia, South Korea, the UK, Zimbabwe and Switzerland. It is a training aircraft of choice for many countries.

Both the Hawk and the Gripen have exceeded the expectations of SAAF and the SANDF. According to General Bayne, they have been well-utilised since their delivery in line with the applicable security requirements and the funding allocations to the SAAF.

Since delivery and up to 2012, the Hawk has flown almost the budgeted hours. The variance between the budgeted hours and the flown hours is minimal (778 hours), and is of no consequence. As stated earlier, the variance was mostly due to funding.

On the other hand, the Gripen has flown more than the budgeted hours.

General Bayne further testified that, since 2000, the SAAF has attended the Hawk User Group meeting with approximately 17 other air forces. The SAAF also participates in Gripen User Group activities. Six other air forces also participated.

The user groups assist the SAAF by providing the opportunity to learn from the experience of other air forces that use the same or similar aircraft.

Mr Terry Crawford-Browne testified that South Africa acquired the Hawk and Gripen fighter aircraft with almost no pilots to fly them, mechanics to maintain them or even money to fuel them.

On the other hand, General Bayne, amongst others, testified that currently they have an adequate number of pilots on the Hawk to feed the Gripen.

Amongst other witnesses, Major General Johan Daniel Pelser, an engineer and Chief Director Force Development and Support (SAAF), testified that the SAAF has sufficient graduate engineers for 44% of the
posts and an adequate number of artisan and technical officers. He further said that the SAAF is capable of maintaining its fleet of aircraft.

[273] The averment made by Mr Crawford-Browne is not consistent with the evidence tendered before the Commission by various officials. The averments have no factual basis, are false and are therefore rejected.

[274] The SAAF has established a well-balanced and relatively well-equipped fighter system capability, comprising the ideal three-tier system. The gap between the first and second tiers is larger than that between the second and third tiers, consisting of the Hawk and Gripen respectively.

[275] From the abovementioned information it is fair to conclude that all the equipment acquired under the SDPP is adequately utilised. If extra funding can be made available to the helicopter system, it is apparent that the latter system will be utilised to the extent that was envisaged in the relevant Staff Requirement Specification. The utilisation to the envisaged extent will also depend on the extent of the need for their services.

[276] As stated earlier, senior officials of the SANDF are of the view that the SANDF still requires more equipment in order to enable it to carry out its mandate more effectively and efficiently.

[277] The SANDF has met all its obligations within the allocated budget for each period under consideration. It has done so in accordance with the principle that its operations must be ‘needs-driven and cost-constrained.’

[278] The obligations of the SANDF comprise its constitutional mandate and various international obligations, as well as ordered commitments that will vary from year to year and will depend on the need. Given that it is not possible to predict with precision what the obligations in any given year will entail, it is not surprising that the actual utilisation of equipment may not always correspond with the planned utilisation.
[279] The Hawk has proven itself to have a cost-effective collateral operational capability. Both the Hawk and Gripen’s capabilities have exceeded the expectations of the SAAF.

1.3 WHETHER JOB OPPORTUNITIES ANTICIPATED TO FLOW FROM THE SDPP HAVE MATERIALISED AT ALL:
1.3.1 IF THEY HAVE, THE EXTENT TO WHICH THEY HAVE MATERIALISED; AND
1.3.2 IF THEY HAVE NOT, THE STEPS THAT OUGHT TO BE TAKEN TO REALISE THEM

[280] In his opening address during the public hearings, Advocate Aboobaker SC said the following:

‘On the basis of Mr Modise’s address to parliament, the expectation raised was that the economy would benefit by R110 billion of new investment and Industrial Participation Programmes and that 65 000 jobs would be created. What was actually delivered by the SDPP in terms of offsets and jobs has therefore to be tested against this benchmark.’

[281] Mr Terry Crawford-Browne echoed the same sentiments in his statement.

[282] The above quoted statement is incorrect. The statement does not take into account how the projected or estimated investments and jobs to be created were arrived at. It also does not take into account the fact that what was ultimately acquired under the SDPP is less than what was initially planned. The fact that under the SDPP the SANDF acquired less than what was initially planned, affected both the anticipated amount of investment and the number of jobs to be created.

[283] The impact of the reduced amount of equipment and reduced quantities on the projected number of jobs to be created will be dealt with in this section. The impact of the reduced amount of equipment and reduced quantities on the anticipated investment will be dealt with in the next section.
[284] Dr Rustomjee testified that the DTI believed that the estimated number of jobs resulting from the NIP projects that had emerged from the original bid evaluation scores was achievable. He further said that Defence Minister Modise referred to some 65 000 potential jobs in a statement to Parliament in March 1999. This figure, he said, had emerged from the original 1998 NIP evaluation of projects proposed by the bidders.

[285] Mr Alexander Erwin and several other witnesses testified that the primary objective of the SDPP was to enhance the capabilities of the Defence Force in the discharge of its constitutional and legislative mandate. At the time of the conceptualisation of the SDPP, the Cabinet formed the view that it was in the best interest of the country to harness the opportunities for economic growth and development that these procurement packages presented.

[286] Mr Erwin further said that industrial participation, including job creation, was not used to justify a decision to purchase equipment, but was seen as a benefit that could be extracted from the SDPP.

[287] The initial number of jobs to be created, as announced by the officials, was based on projections or estimates contained in the business plans of the various potential obligors.

[288] Mr Johannes Bernhardus De Beer, Project Manager at Armscor, testified that after all the offers were evaluated in terms of value for DIP and NIP as at 20 November 1998, the evaluation results were submitted to the Inter-Ministerial Committee (IMC). The results were based on the original equipment quantities required, namely four corvettes, four submarines, 61 Light Utility Helicopters, 24 Lead-in Fighter Trainers, 38 Advanced Light Fighter aircraft and six maritime helicopters.

[289] It was projected that approximately 64 165 jobs would be created.

[290] The DOD made a presentation to the Cabinet prior to the Cabinet making a final decision. The presentation indicated that the SDPP would create the following number of jobs:
Chapter 5: Findings – job opportunities

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Jobs Created</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corvette Project</td>
<td>10 153</td>
</tr>
<tr>
<td>Submarine Project</td>
<td>16 251</td>
</tr>
<tr>
<td>LUH Project</td>
<td>4 558</td>
</tr>
<tr>
<td>Maritime Helicopter Project</td>
<td>2 536</td>
</tr>
<tr>
<td>LIFT Project</td>
<td>7 472</td>
</tr>
<tr>
<td>ALFA Project</td>
<td>23 195</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>64 165</strong></td>
</tr>
</tbody>
</table>

[291] Mr de Beer testified that the maritime helicopter project was not contracted concurrently with the other projects and the costs, IP values and projected number of jobs reduced. Since the maritime helicopter project was not proceeded with, it was anticipated that the remaining five projects would create 61 629 jobs (64 165 minus 2 536).

[292] Quantities of other equipment were reduced but the impact of the reduction was not significant on the estimated number of jobs to be created.

[293] As a result, the SDPP as contracted was expected to create 61 629 jobs.

i. **NIP projects**

[294] The South African National Industrial Participation Programme (NIPP) came into force on 1 September 1996. According to the NIPP Guidelines published by the DTI, the objectives of the NIPP policies are to:

- Ensure sustainable economic growth
- Facilitate access to new markets and establishment of new trading partners
- Encourage foreign direct investment into South Africa
- Increase exports of South African value added goods and services
- Encourage research and development collaboration in South Africa
- Contribute to job creation in South Africa
- Develop human resources in the country, and
- Ensure technology transfer to South Africa.
Chapter 5: Findings – job opportunities

[295] All government and parastatal procurement with an imported content equal to or exceeding US$10 million are subject to offset obligations.

[296] The seller or supplier who incurs an IP obligation will be required to participate in the South African economy in accordance with the NIPP. The projects or business proposals must be based on the principle of mutual benefit and business sense.

[297] The mission of the NIPP of the Republic of South Africa is stated as follows:

‘The mission of the Programme is to leverage economic benefits and support the development of the South African industry by effectively utilising the instrument of government procurement.’

[298] The function of DTI is therefore to trace all procurement values of or above US$10 million in order to work out the offset obligations as a percentage of not less than 30% of the value of the imported content.

[299] The NIPP Guidelines set out the crediting methodology used to award NIP credits. NIP credits are awarded for each of the following:

- Sustainable economic growth: for every US$1 revenue generated by the project over the fulfilment period, 1 NIP credit is awarded
- Export promotion: for every US$1 export revenue generated, an additional 1 NIP credit over and above the one allocated for sustainable economic growth
- Job creation: for every US$1 spent on salaries and wages over the fulfilment period, 1 NIP credit is awarded
- Training and development: for every US$1 spent on training and development costs, 1 NIP credit is awarded
- SMME promotion: for every US$1 of work out-sourced to an SMME, 1 NIP credit is awarded
- Historically disadvantaged individuals: for every US$1 spent on outsourcing to historically disadvantaged SMMEs, 2 NIP credits are awarded
Chapter 5: Findings – job opportunities

- Investment: for every US$1 invested on capital outlay, 2 NIP credits are awarded
- Research and development expenses: for all costs expended on research and development expenses, 2 credits are awarded for every US$1 spent
- Technology transfer: 1 NIP credit is awarded for every US$1 offered.

[300] The DTI managed the NIP projects flowing from the DSPP. In some projects they measured jobs created, but their main focus in managing the projects was based on the criteria mentioned in the contracts, namely awarding credits for investment, local sales and exports only.

[301] The criteria mentioned in the contracts made no mention of job creation. The projects were not measured on the number of jobs to be created, although the individual business plans would in some cases mention the jobs to be created. Sometimes the obligors would mention the number of jobs created in their claims documentation.

[302] In managing and monitoring the SDPP projects, the DTI relied on both the contracts and the NIP guidelines.

[303] Mr Masizakhe Zimela, Chief Director IPS in the DTI, and Mr Sipho Zikode, Deputy Director General of the DTI, testified that a report prepared by the DTI at the end of 2013 indicates that:

- BAE (Hawk and Gripen) projects created 22 422 jobs and saved or retained 5 768 jobs
- GFC (corvette platform) projects created 2 340 new jobs and saved or retained 920 jobs
- GSC (submarines) projects created 6 606 jobs and saved or retained 4 889 jobs
- Thales (combat suite) projects created 4 875 jobs and saved or retained 706 jobs
Agusta (LUH) projects created 2,652 jobs and saved or retained 258 jobs.

[304] Mr Zimela testified that the information in their possession indicates that the various SDPP projects created 38,895 jobs (12,965 new direct jobs and 25,930 indirect jobs), and saved 12,541 jobs.

[305] It should be noted that according to DTI witnesses, they were not required in terms of the contracts to monitor the number of jobs created, and their main focus was on the three performance criteria, namely investment, local sales and exports. Consequently, the monitoring of jobs may not have been consistent.

[306] The term ‘jobs saved or retained’ is used in the case where, without the involvement of the obligor, a company or factory would have closed down and employees would have lost their jobs.

[307] Mr Zimela testified that the figure for jobs saved/retained is not an estimate but the actual figure.

[308] With regard to the number of jobs created, they obtained the figures from the obligors themselves and during the site visits at the various premises where the projects were carried out. Business plans were also used to extract the number of jobs created or retained.

[309] DTI witnesses referred to a project called the ‘Package Tourism Project’ that was undertaken in Port Elizabeth by one of the obligors. The project created new jobs that were never accounted for. The project caused a big number of tourists from Scandinavian countries to visit Port Elizabeth and other parts of the country.

[310] The initial number of jobs to be created was obtained from the business plans and during engagement with the obligors. It was not a requirement of the NIP Programme that obligors should indicate the number of jobs to be created.

[311] During his testimony, Mr Zimela said:
‘The “Jobs created” comes from two sources. There was never a requirement for the obligors to account for the jobs created but when we were doing the monitoring had review meetings every six months with the obligors. In some cases they would provide jobs for the projects, but in some cases they did not provide jobs, so we then went back to the business plans to arrive at the number of jobs created, where in the review reports there was no number of jobs created.’

[312] Mr Zimela further said:

‘The new indirect jobs were an estimate of what is the figure of indirect jobs. We economists use different figures to calculate indirect jobs, we have used a number of 2, like if you have 700 direct jobs, then you will have 1400 indirect jobs. The sort of multiplier for indirect jobs differ depending on the different sectors, each sector will have a different multiplier for indirect jobs. We took a decision to use 2 to calculate indirect jobs.’

[313] It is clear from the above statements that it is not possible to obtain an exact figure of direct and indirect jobs created. In the absence of exact figures, we have to work on the estimates provided to the Commission by the various witnesses.

[314] The failure to track or monitor the actual number of jobs created was occasioned partly by the fact that although job creation was regarded as an important element, it was not an evaluation element.

[315] The initial projections of number of jobs to be created were based on the projects initially submitted by the obligors. There were 38 initial projects, but not all of them were proceeded with, for a variety of reasons.

[316] The contracts allowed projects to be substituted, and when that happened, the number of jobs to be created also changed. Initially, the number of jobs to be created was estimated to be 61 629. The total number
Chapter 5: Findings – job opportunities

of direct and indirect jobs created, saved or retained under the NIP Programme, is approximately 51 436.

[317] Mr Lionel Victor October also testified that the initial projection of the number of jobs expected to be created was based on the projects initially submitted by the obligors. He further said that initially there were 25 projects, but not all of them were proceeded with, for a variety of reasons.

[318] He confirmed other evidence that the contracts allowed projects to be substituted and when that happened, the number of jobs to be created also changed. Initially the number of jobs to be created was estimated at about 60 000. The number of jobs created saved or retained and indirect jobs created was 51 436, a figure which is not far off the initial projected figure of 60 000.

[319] Some SDPP projects are still continuing to date. They continue to create or retain jobs. Exports and local sales are still ongoing. For example, Ms Christine Guerrier, Vice President Dispute Resolution and Litigation for Thales, testified that the Thales Group had and still has other interests in South Africa where it employs more than 300 people at present.

[320] There are other successful projects, such as the already-mentioned Package Tourism Project in Port Elizabeth that created jobs that were never accounted for, for one reason or another. This implies that the number of jobs created or retained is much higher than the number recorded.

[321] Mr Zikode also testified about the Package Tourism Project. When tourists arrived in Port Elizabeth, young people would be employed as security personnel to ensure that the tourists were safe. The jobs thus created were never accounted for. Initially the tourists were going to Port Elizabeth, but later they went all over South Africa.

[322] He further said that this project caused about 244 000 tourists from Scandinavian countries to come to South Africa. According to him, it is accepted in the tourism industry that when 10 foreign tourists come to South Africa, one job is created. In fact, Mr Zikode said the following:
‘[I]n terms of the number of tourists that came to South Africa, we have about 244 000 tourists if you add them up. To show that the numbers are simple, if you use a factor of 10, not 7, normally they said 7 tourists create a job; if you say 10 tourists create a job the potential for job creation for this project, which obviously I cannot prove, that is why we didn’t even put here, this project created about 24 000 jobs alone, this project if you follow the logic which is out there in the market that 7 tourists create 1 job … but I’m just being modest, I say 10 tourists now, let us say 10 tourists create a job, the potential jobs that were, or let me say, the jobs that were created roughly would amount to about 24 000. If you take 7 it goes to about 34 000 jobs. But we didn’t want to put all these numbers here because if a person says “prove”, that it’s very difficult to prove.’

[323] As Mr Zikode has said, it is difficult to prove the number of jobs created as a result of the Package Tourism Project, but we believe that it is fair to infer that a reasonable number of jobs were created by this project.

[324] The probabilities are that the total number of direct, indirect and retained or saved jobs under the NIP Programme is much higher than the 51 436 jobs mentioned earlier.

[325] Mr October testified that they commissioned a number of independent audits of the SDPP programme, including an internal audit. He further said that some of the independent audits indicated that the benefits the country achieved from this programme were much more substantial than what the Department had indicated. The figures that the DTI gave the Commission were very conservative.

ii. DIP projects

[326] As stated earlier, it was projected that the SDPP projects both DIP and NIP—would create approximately 61 629 jobs, of which 16 000 were apportioned to DIP projects.
Mr Daniel Burger, Acting Senior Manager of Armscor’s DIP Division, testified that the creation of new jobs was never the rationale for having the DIP programme. The creation of new jobs was also not the main focus of the DIP programme.

Prior to the SDPP, South Africa had over a number of years built up a substantial defence industry. For a variety of reasons, the defence industry started experiencing a decline in the demand for its products and services, and as a result jobs were negatively affected.

The main focus of the DIP programmes in the SDPP was to secure as much business as possible for the local defence industry. That was the position before and after the SDPP.

At some stage, the local beneficiary companies were requested to provide information regarding the impact of the DIP obligation on jobs, with specific reference to the number of jobs created or retained. The local beneficiary companies or the obligors were not duty-bound to provide the DIP Division with information relating to jobs created or retained.

Mr Burger testified that the requests for information relating to the number of jobs created or retained were sent to local beneficiaries. According to the DIP Division’s records, only about 80% of the local beneficiary companies responded. About 20% of the local beneficiary companies did not respond to the enquiries about jobs created or retained.

According to the responses received by the DIP Division, 11 916 jobs were created or retained.

As approximately 20% of the local beneficiary companies did not respond to the request of the DIP Division, the probabilities are that the number of jobs created or retained is much higher than 11 916.

Mr Terry Crawford-Browne testified that of the 65 000 jobs that were promised, only 3 815 jobs actually materialised. This statement is not
consistent with the evidence of Mr Burger of the Armscor DIP Division and that of Messrs October, Zikode and Zimela of the DTI.

[335] The said averment by Mr Crawford-Browne is false and should be rejected.

[336] From the above information, it is apparent that the anticipated number of jobs to be created by the SDPP was achieved.

[337] As stated earlier, the recorded number of direct and indirect jobs created as well as the jobs saved, is 51 436 (NIP) and 11 916 (DIP). The probabilities are high that the number of jobs created by other projects, which are not recorded, is substantial.

[338] It is worth noting that Mr Simon Edge, Head of Industrial Participation of Agusta Westland, testified that despite the fact that they discharged their NIP obligations about seven years ago, some of the projects they introduced are still operating. They are still providing employment and export revenue. They are still creating both direct and indirect jobs.

[339] In its submission, dated 10 October 2012, SAAB indicated that to date some of their NIP projects are still operating in South Africa and they have employed 1 100 employees.

[340] It is fair to conclude that the SDPP projects created or retained the number of jobs that were projected. The SDPP assisted the country in creating or saving the much needed jobs.

[341] According to the evidence tendered before the Commission, some projects—both DIP and NIP—are still in operation, some projects are still generating both local and export sales, and they are still retaining jobs and possibly creating new jobs.
1.4 WHETHER THE OFF-SETS ANTICIPATED TO FLOW FROM THE SDPP HAVE MATERIALISED AT ALL AND:

1.4.1 IF THEY HAVE, THE EXTENT TO WHICH THEY HAVE MATERIALISED; AND

1.4.2 IF THEY HAVE NOT, THE STEPS THAT OUGHT TO BE TAKEN TO REALISE THEM.

[342] Mr Masizakhe Zimela, Chief Director: Industrial Participation Secretariat (IPS) in the DTI, testified that industrial participation (IP), also known as ‘offsets’, ‘countertrade’ or ‘reciprocal trade’, forms part of the South African Government’s industrial strategy, geared towards achieving the country’s developmental objectives.

[343] Mr Alexander Erwin, who was the Minister of Trade and Industry from 1996 to 2004, testified that offsets were negotiated in an effort to:

- stimulate economic growth and development
- promote investments and in particular foreign direct investment that would have broad spin-offs that would improve the socio-economic circumstances of the populace, and
- generally enhance South Africa’s ability to change the economic landscape that the democratic Government inherited.

[344] He further said:

‘It is imperative to emphasise that industrial participation was not used to justify a decision to purchase equipment. What is central to commercial negotiations is the concept of leverage, which implies that mechanisms are used to optimise the desired objectives.’

[345] Offset obligations require the suppliers of foreign goods or services to reciprocate with investments in order to ameliorate the negative effects of the procurement on the purchasing country’s economy and its balance of payments account.
Mr Zimela testified that in their view, offsets were a special tool to be used to direct investments into certain priority areas of our economy where it was not easy to attract investors.

Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that offset programmes are practised in over 100 countries worldwide, among them Canada, Norway and Australia, and require suppliers of defence or other major systems to governments to provide benefits to the economy in the customer country.

Mr de Beer, Project Manager in the Command and Control Division of Armscor, testified that offset and countertrade are instruments of international business, based on government procurement. They are utilised by both developing and developed countries, such as Denmark, Sweden, Belgium, the United Kingdom, Spain, the United Arab Emirates and South Korea. He further said that in the Armscor environment, the practice of countertrade goes as far back as the 1960s. Between the period 1988 and 2000 (before the SDPP), the Armscor portfolio of countertrade agreements amounted to R5.4 billion, which agreements were successfully completed.

Offset programmes are particularly favoured by customer countries where development of their defence industry is considered to be important.

Mr de Beer testified that according to Armscor Policy Document A-POL-6100, the main objectives of DIP were the following:

- Retention and where possible creation of jobs
- Establishment of a sustainable and economic defence industry with strategic logistic support capabilities
- Promotion of defence exports of value-added goods
- Promotion of technology transfer and joint ventures
- Provision for a sustainable local defence industry capacity.

Mr de Beer further said that the countertrade agreements lead to long-term arrangements between foreign suppliers and the local defence industry, the benefits of which were still in existence today.
Projects to fulfil offset obligations are evaluated and approved by the IPS in conjunction with the IP Control Committee of the DTI. The monitoring carries on until the obligor has discharged all its obligations.

During the RFI and RFO phases, the potential bidders were informed about the South African National Industrial Participation Policy and the obligations they might incur if they were chosen as the suppliers of certain equipment. The IP obligation of the preferred supplier, which had to equal the contract price of the equipment, was split into an NIP obligation of 50% and a DIP obligation of 50%. The NIP obligations were managed and monitored by the DTI and the DIP obligations by the DIP Division of Armscor.

Mr de Beer testified that after receipt of the offers, they were evaluated in terms of NIP and DIP value systems. The results of the evaluations, based on the original number of units to be supplied, revealed that the projected IP (NIP and DIP) was R110,575 billion.

The anticipated IP of each project was as follows:

<table>
<thead>
<tr>
<th>Project</th>
<th>Value (million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corvette project</td>
<td>R16 007</td>
</tr>
<tr>
<td>Submarine project</td>
<td>R30 274</td>
</tr>
<tr>
<td>LUH project</td>
<td>R 4 685</td>
</tr>
<tr>
<td>Maritime helicopter project</td>
<td>R 2 720</td>
</tr>
<tr>
<td>Trainer aircraft</td>
<td>R 8 850</td>
</tr>
<tr>
<td>Fighter aircraft</td>
<td>R 48 313</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>R110 575</strong></td>
</tr>
</tbody>
</table>

The maritime helicopter project was not proceeded with and therefore the R2,720 million estimate that was anticipated to flow from this project should be deducted from the total projected IP values. That leaves the figure of the projected IP value at R107,859 million.

The presentation made to the Cabinet prior to the latter's final decision to proceed with the SDPP, indicated that the following financial benefits would flow into our economy:
Chapter 5: Findings – off-sets

Investment - R 26 012 million,
Exports - R 59 180 million
Local sales - R 25 387 million
TOTAL R110 579 million

[358] The total cost of the SDPP was estimated at R29 773,13 million, made up as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corvettes</td>
<td>R 6 001,25 million</td>
</tr>
<tr>
<td>Submarines</td>
<td>R 5 212,50 million</td>
</tr>
<tr>
<td>Utility helicopters</td>
<td>R 2 168,75 million</td>
</tr>
<tr>
<td>Maritime helicopters</td>
<td>R 787,50 million</td>
</tr>
<tr>
<td>Trainer aircraft</td>
<td>R 4 728,13 million</td>
</tr>
<tr>
<td>Fighter aircraft</td>
<td>R10 875,00 million</td>
</tr>
<tr>
<td>TOTAL</td>
<td>R29 773,00 million</td>
</tr>
</tbody>
</table>

[359] The initial cost of the LUH helicopter was based on 61 units, but the number was reduced to 30. This implies that the anticipated IP to be generated by the LUH project should be reduced accordingly, and the result thereof is that the anticipated cost of 30 units was approximately R 2 342 million (which is 50% of R4 685 million).

[360] The outcome of the above exercise means that the total anticipated IP was reduced to approximately R104 975,91 million (R107 280 million minus R2 342 million).

[361] In order to arrive at the Rand values an exchange rate of US$1 = R6,25 and €1 = R6,40 respectively was used.

[362] Obligors were required to submit proposals on how they would fulfil their IP obligations. Business plans were submitted. The plans were approved or rejected based on, inter alia, the principles of causality, additionality and sustainability.

[363] Mr Zimela testified that projects that were not sustainable for any particular reason had to be replaced by one or more projects of the aggregate value in order to fulfil the obligation.
When monitoring the performance of the obligors, the approach was to look at the aggregate of all the projects submitted by an obligor in fulfilment of a particular obligation.

The SDDP contracts stipulated that 1 NIP credit would be awarded only for each of the following:

- 1 US$ investment
- 1 US$ export sales
- 1 US$ local sales

i. Defence Industrial Participation (DIP)

Armscor is responsible for the execution and management of the DIP agreements or ‘DIP terms’. The DIP obligations of the supplier equalled 50% of the contract price.

The total DIP commitments negotiated with the preferred bidders came to a total of R15,326 billion and the NIP came to approximately R84,93 billion. The NIP obligations were administered in terms of the NIP Programme administered and managed by the DTI.

Mr de Beer of Armscor testified that the DIP commitments achieved after negotiations were 27% higher than those contained in the original offers, despite the reduction in equipment quantities.

Mr de Beer further testified that within the SDPP context, a total of 111 local companies were included in the DIP business plans, with a combined value of approximately R14,4 billion in 1999 economic terms. This represented close to 50% of the combined contract value of R29 billion in 1999 economic terms.

Mr Burger of Armscor testified that various DIP terms were concluded with the various preferred bidders:

- GSC committed to DIP obligations amounting to €175 200 423
- GFC (corvette platform) committed to DIP obligations valued at €88 123 584
• Thompson CSF (combat suite) committed to a DIP obligation to the tune of €371,322,167
• BAE (Hawk) committed to a DIP obligation valued at $680,314,667
• SAAB (Gripen) committed to DIP obligations valued at €808,049,501
• Agusta (LUH) committed to DIP obligations valued at $190,987,395

[371] For reporting purposes, the values were converted to Rand at the fixed-base exchange rate for 1999 of R6.25 to the US Dollar and R6.40 to the Euro.

[372] The DIP obligations were actively managed by the foreign obligors, the South African defence-related industry and Armscor.

[373] Mr Burger testified that performance figures as at 31 March 2013 indicated 93.83% completion. The value of claims approved amounted to R13,625 billion in 1999 economic terms. These figures indicate that GSC, Agusta, BAE and BAE/SAAB have all fulfilled their DIP obligations. GFC has complied with only 68.28% of its obligations. Part of the reasons for the latter’s failure to perform in full is that one of their combat suite foreign contractors failed to perform in full. The platform portion of the obligation has been fully complied with.

[374] Mr Burger testified that as at 31 December 2013, the DIP obligations in respect of the Hawks, Griens, LUH and submarines have all been fully complied with. After the obligors had complied with their obligations—from 14 December 2007 up to 22 February 2012—Armscor addressed letters to the various obligors, advising them that they had fully complied with their obligations.

[375] As far as MAN Ferrostaal’s portion of GSC’s obligation is concerned, the letter addressed by Armscor to MAN Ferrostaal stated: ‘According to our records an over achievement of €474,083 has in actual fact been registered.’
In respect of the corvettes, the value of the DIP obligations were R2,9 billion. To date only R2 billion has been discharged, leaving a balance of R932 million worth of DIP obligations which must still be performed.

Armscor has negotiated with the foreign company MBDA that has failed to meet its obligations. In terms of the new arrangements, MBDA was granted an additional seven years from 2009 to discharge the outstanding obligation. The obligation must now be discharged by the end of March 2016.

No multipliers were used in the case of the DIP obligations.

Mr Burger testified that the total DIP obligations of all obligors were R14,557 billion, while the DIP obligations carried out as at 31 December 2013 amounted to R13,625 billion, equalling 93,59% of the total DIP obligations.

As mentioned above, one of the obligors, MBDA, has not fully complied with its obligations. The DIP Division has put in place measures to ensure that MBDA complies with its obligations.

Once the DIP obligations have been discharged, the DIP Division no longer monitors performance of the projects. Some DIP projects of the obligors who have fulfilled their obligations are still ongoing, benefiting the local defence industry and our economy.

Mr Burger analysed the activities of the obligors. His analysis indicates that R267 430 041 was invested in our economy and that sales and exports realised an amount of R9 375 765 240. The value of technology transfer was R3 982 070 071.

Mr Burger concluded his evidence by stating that in his capacity as Senior Manager DIP, he was of the view that the DIP programme has achieved its intended objectives. The anticipated benefits did materialise.
ii. NIP projects

[384] As stated earlier, the NIP obligations were managed and monitored by the DTI. The DTI relied on both NIP contracts and the NIP Policy and Guidelines when administering and monitoring the SDPP projects.

[385] Mr Zimela, Chief Director IPS in the DTI, testified that the various obligors had the following NIP commitments:

i. BAE (Hawk and Gripen) had an obligation of US$7.2 billion, made up as follows:
   a. Investments of US$2 000 000 000
   b. Export sales of US$3 640 000 000
   c. Domestic sales of US$1 560 000 000

ii. GFC undertook to perform GFC NIP activities and Thomson CSF NIP activities with an aggregate value of:
   a. Investments of US$700 million, of which US$509 100 000 was allocated to GFC and US$190 900 000 to Thomson CSF
   b. US$2 billion for local sales and export revenues, of which US$1 538 500 000 was allocated to GFC and US$461 500 000 to Thomson CSF

iii. GSC undertook to perform NIP obligations with an aggregate value of €2 856 460 450, made up as follows:
   a. Investments of €960 300 000
   b. Export sales of €1 641 512 454
   c. Domestic sales of €250 648 000

iv. Agusta’s NIP commitment was US$767 930 000, made up as follows:
   a. Investments of US$184 500 000
   b. Export sales of US$468 230 000
   c. Domestic sales of US$115 200 000

[386] In general, with the exception of BAE, the obligors had seven years to meet their obligations. BAE had 11 years to meet its obligations.
[387] In other cases substitute projects were introduced late—which was allowed—and where there was a potential for future sales, credits were granted upfront. The future sales were not included in the monitoring figures but obligors were credited for the future sales.

[388] In other instances, the DTI directed the obligors to invest in sectors which the DTI regarded as important to drive the Government's objectives. Investments were also directed to areas of the economy in which it was not easy to attract local or international investors.

[389] In order to incentivise the obligors to invest in the sectors mentioned above, the DTI granted obligors credits that were more than their investment. Obligors were granted what is termed 'multipliers'. The granting of multipliers was negotiated with the obligor, and credits were granted after the obligor had made the investment. Multipliers were subject to the approval of the Minister, which was sought after the DTI had negotiated with the obligor.

[390] Mr Zimela further testified that strategic matters were considered for the use of the multipliers, including:

- Risky and commercially unattractive projects developed or proposed by the Government. These projects had significant implications for job creation or the prevention of job losses and were highly unlikely to be funded by the market
- Important projects for the development of the essential skills desperately needed in the economy and which played a crucial role in developing poorer areas in South Africa, and
- Projects promoting economic transformation, especially promoting participation of historically disadvantaged individuals in the ownership and control of economic assets.

[391] In terms of the SDPP contracts, only investments and revenue generated from exports and local sales qualified for NIP credits.
[392] When awarding credits, with the exception of package deals where multipliers were negotiated, the DTI confined itself to the contracts, as the credit methodology contained in the NIP Guidelines differed from the credit methodology contained in the SDPP’s NIP contracts.

[393] It is clear that multipliers were generally used as a tool to direct investments into certain priority areas of the economy where it is not easy to attract investors. They were also used where there was going to be no returns on investments.

[394] In certain cases, where the obligor would not have sufficient time to generate sales within the obligation period, the IP Control Committee would consider awarding credits upfront. These upfront credits were only granted where there was proof that the investment had already been made by the obligor.

[395] Mr Zikode, Deputy Director General: Broadening Participation Division in the DTI, testified that:

‘Package deals arose in order to increase and spread the NIP uptake across all sectors of the economy and to deal with substitute projects. Package deals comprised both upfront credits and multipliers. Credits for investment and sales were awarded simultaneously.’

[396] In turn, Mr Zimela said during his testimony:

‘[P]ackage deals were more an exception than the norm. They were not part of the NIP guidelines, but there were certain instances where it was deemed that some of these projects were important in terms of achieving certain strategic goals of government.

[397] He further said:

‘My understanding with the NIP terms … has been that where credits are concerned the credits should be awarded one-for-one
for investment, one-for-one for sales, and one-for-one for export sales. But my understanding as participating in the Committee has always been that where there are imperatives to deviate from the NIP terms, the unit (IPS) has always a right to apply to the Minister to make some deviations in order to achieve certain strategic objectives of the DTI.’

[398] This strategy was introduced in order to facilitate the achievement of strategic goals of the DTI and Government. Obligors were incentivised to invest in strategic industrial areas, sectors and businesses where the return on investment was not attractive and where the risk of not earning NIP credits on revenue was high, and the time for generating NIP credits would be longer than the time frame stipulated.

[399] Some of the package deals made provision for upfront credits. These credits were awarded in advance on the basis of projected sales revenue over a period of time, usually beyond the obligation discharge period.

[400] Mr Zikode further testified that the upfront sales credits were granted together with the investment credits to complete the package deal.

[401] As stated earlier, in certain instances obligors were requested to invest in strategic projects. In these instances the IPS negotiated multipliers with the obligors subject to the approval of the Minister.

[402] Both Messrs Zimela and Zikode testified about the type of projects where multipliers were used after obtaining the approval of the Minister.

[403] When determining the value of multipliers to be applied, the IPS took the following factors into account:

- The potential credits the project would likely generate over several years
- The potential number of investors
- Whether the obligor is the only investor, and if so, whether it was not likely to receive a return on investment, and
Chapter 5: Findings – off-sets

- Whether is it a training project or not.

[404] In instances where obligors invested in projects where they expected no commercial return, higher multipliers were used. Multipliers were negotiated on a project-by-project basis.

[405] Ms Carmela Teresa de Risi, former employee of the DTI, testified that she was involved in the management of the obligations of the GSC and GFC consortium projects. She confirmed that in administering the SDPP projects, multipliers were used, particularly in projects that were of high risk or when there were no returns on the investment.

[406] Upfront credits were awarded in projects where credits were going to be generated beyond the obligation period. This occurred mostly in instances of substitute projects.

[407] Mr Zikode testified that when upfront credits were granted, the DTI would demand that the obligor report back to the DTI about the actual realisation of the sales before a performance guarantee was released. He further said that the DTI would monitor the sales of the obligor in order to ensure that the anticipated sales were realised.

[408] The credits methodology stipulated in the contracts was varied or amended by the parties to the contract as they were entitled to do. Parties agreed to the variation and effected the amendments of the contracts.

[409] The evidence of the officials of the DTI suggests that the above mentioned amendments enabled the DTI to efficiently meet its strategic goals and the objectives of the industrial policy of the Government and the NIP Programme as adopted by the Cabinet on 30 April 1997.

[410] In his testimony, former Minister of Trade and Industry, Mr Alexander Erwin, said:

‘It is evident from the NIPP that it involves a process of engagement with the private sector, which is to all intents and purposes a form of commercial negotiations. It is imperative to
emphasise that industrial participation was not used to justify a decision to purchase equipment. What is central to commercial negotiation is the concept of leverage, which implies that mechanisms are used to optimise the desired objectives. This is inherently a process of negotiation and agreement rather than the application of a fixed formula. In addition the requirements of additionality, sustainability and causality make this engagement an inherent feature of such a facilitative policy.’

[411] The process of negotiation allows each party to improve their position to the benefit of all involved.

[412] In this process, the DTI succeeded in directing direct investments to other sectors which they thought were critical for the achievement of their strategic goals.

[413] The policy choice made by the DTI was to allow the obligors to reach their credit target or fulfil their obligation without depending only on investment, exports and local sales. Other factors contained in the NIP Guidelines were taken into account. This allowed the DTI to achieve the full range of its industrial policy objectives.

[414] During their reviews of the performance of the obligors, they did not necessarily look at specific projects only, but they also looked at the aggregate projects in order to determine whether an obligor had met its obligation or not.

[415] The obligor was required to do a feasibility study, as the obligor was responsible for the success of any project that it undertook. If a particular project failed, the obligor was allowed to introduce a substitute project.

[416] Both Messrs Zimela and Zikode testified that the total actual investments of each obligor were the amount that was invested by the obligor plus the amount that was invested at the instigation of the obligor. The obligors provided proof of such investments. In instances where they
had not received proof of investment, the figures were not included in the total actual investment figure.

[417] Sales recorded included both local sales and export sales.

[418] Messrs Zikode and Zimela testified that at the end of 2013, the DTI prepared their monitoring report and it indicated the following:

<table>
<thead>
<tr>
<th>Company</th>
<th>Actual investment</th>
<th>Investment credits</th>
<th>Sales credits</th>
<th>Total credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>(An effective multiplier of 3,02 was applied to their actual investment and that earned them investment credits of over $2 billion.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GFC (platform)</td>
<td>US$173 444 127</td>
<td>US$516 724 126</td>
<td>US$1 545 361 235</td>
<td>US$2 062 085 360</td>
</tr>
<tr>
<td>(A multiplier of 2,98 was applied to their actual investment and that earned them over US$515,7 million credits.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>THALES (combat suite)</td>
<td>US$139 656 198</td>
<td>US$199 279 454</td>
<td>US$591 255 265</td>
<td>US$790 534 719</td>
</tr>
<tr>
<td>(A multiplier of 1,43 was applied to their actual investment and that earned them over US$199,2 million investment credits.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GSC (submarine)</td>
<td>€149 405 863</td>
<td>€961 383 389</td>
<td>€2156 377 635</td>
<td>€3117 761 024</td>
</tr>
</tbody>
</table>


(A multiplier of 6.43 was applied to their actual investment and that earned them over €961,38 million investment credits.)

The GSC figures, when converted into US Dollars are the following:

<table>
<thead>
<tr>
<th>Category</th>
<th>US Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual investment</td>
<td>$179,287,036</td>
</tr>
<tr>
<td>Investment credits</td>
<td>$1,153,660,067</td>
</tr>
<tr>
<td>Sales credits</td>
<td>$2,587,653,162</td>
</tr>
<tr>
<td><strong>Total credits</strong></td>
<td><strong>$3,741,313,229</strong></td>
</tr>
</tbody>
</table>

As stated earlier a multiplier of 6.43 was used.

v. AGUSTA (LUH)

<table>
<thead>
<tr>
<th>Category</th>
<th>US Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual investment</td>
<td>$82,267,852</td>
</tr>
<tr>
<td>Investment credits</td>
<td>$184,630,165</td>
</tr>
<tr>
<td>Sales credits</td>
<td>$619,371,019</td>
</tr>
<tr>
<td><strong>Total credits</strong></td>
<td><strong>$804,001,184</strong></td>
</tr>
</tbody>
</table>

(A multiplier of 2.24 was applied to their actual investment and that earned them over US$184,6 million investment credits.)

[419] An average multiplier of 3.35 was used in all projects in awarding investment credits.

[420] The above figures indicate that the SDPP generated the following NIP figures:

<table>
<thead>
<tr>
<th>Category</th>
<th>US Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total actual investments</td>
<td>$1,210,058,000</td>
</tr>
<tr>
<td>Sales credits</td>
<td>$10,357,014,000</td>
</tr>
<tr>
<td><strong>Total of investments plus sales</strong></td>
<td><strong>$11,567,072,000</strong></td>
</tr>
</tbody>
</table>

[421] The above mentioned figures in Rand, using an exchange rate of 6.25, are the following:

<table>
<thead>
<tr>
<th>Category</th>
<th>Rand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total actual investments</td>
<td>R 7,562,862,500</td>
</tr>
<tr>
<td>Sales credit</td>
<td>R64,731,337,500</td>
</tr>
<tr>
<td><strong>Total of sales plus investments</strong></td>
<td><strong>R72,294,200,000</strong></td>
</tr>
</tbody>
</table>
[422] Messrs Zikode and Zimela testified that in order to convert the total actual investments and sales into Rand, and average exchange rate for the period January 1999 to December 2010 of R7,64 to US$1 should be used.

[423] Using this exchange rate, their calculations yield the following figures:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total actual investments</td>
<td>R 8 845 089 724</td>
</tr>
<tr>
<td>Total sales</td>
<td>R77 694 615 978</td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td><strong>R86 539 705 702</strong></td>
</tr>
</tbody>
</table>

[424] The NIPs and DIPs generated the following figures:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIP projects</td>
<td>R13,625 billion</td>
</tr>
<tr>
<td>NIP Projects</td>
<td>R86,539 billion</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>R100,164 billion</strong></td>
</tr>
</tbody>
</table>

[425] When you use an average exchange rate of US$1 = R6,25 to convert the NIP figures into Rand, the NIPs and DIPs figures are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIP projects</td>
<td>R13,625 billion</td>
</tr>
<tr>
<td>NIP projects</td>
<td>R72,294 billion</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>R85,919 billion</strong></td>
</tr>
</tbody>
</table>

[426] The figures for both local sales and export sales were extracted from the records of the IPS. They represent actual sales. The upfront sales that were projected in the package deals are not included in these figures.

[427] The SDPP’s NIP projects as a portfolio performed very well. To date some of those projects are still generating local and export sales.

[428] Other projects, such as those introduced by AgustaWestland—according to the evidence of Mr Simon Edge of AgustaWestland—are still operating and generating export revenue. In 2014, AgustaWestland procured from South African aerospace companies products worth more than €5 million. Using an exchange rate of €1 = R13,50 in April 2015, it means that the value of products procured by AgustaWestland in 2014 were worth R67,5 million.
[429] In its submission, dated 10 October 2012, SAAB stated that some of their NIP projects are still operating in South Africa and they have an annual turnover of R1,1 billion.

[430] BAE/SAAB, GSC, GFC, Agusta and Thales have discharged their obligations. The latter have over-achieved by US$68 502 473.

[431] The difference between the total credits of R107 355 193 724 on the one hand, and the figures of total actual investments plus sales credits on the other, is not too significant. The difference was occasioned, *inter alia*, by the average multiplier of 3,35 applied to the granting of investment credits.

[432] All the obligors, with the exception of one, have fulfilled their obligations. One obligor still had to prove its actual sales that resulted from the project that was approved as a ‘package deal’.

[433] In certain identified strategic projects, the DTI, with the approval of the Minister, used multipliers in order to achieve certain strategic goals of the Government.

[434] All projects were closely monitored to ensure that obligors met their obligations.

[435] As far as the NIP projects are concerned, the South African economy has received investments and sales worth approximately R72,294 billion, when using an exchange rate of US$1 = R6,25, or approximately R86,539 billion, when using an exchange rate of US$1 = R7,64. Funds were also directed into sectors where the DTI thought that there was a dire need for investments. To some extent the DTI managed to meet their strategic goals and the economy has benefited.

[436] As stated earlier, the DIP projects generated R13,625 billion for our economy.

[437] Mr Terry Crawford-Browne testified that instead of offset benefits of R110 billion, described by the late Mr Modise in 1999, the most recent media
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estimate is that at best a dismal R6 billion in offset benefits actually materialised. He further said that the offset projects failed dismally.

[438] If there is such a media estimate, it is incorrect and is not consistent with evidence led before the Commission. The estimate can therefore be regarded as false.

[439] It is fair to conclude that the anticipated offsets have substantially materialised. Adequate arrangements are in place in order to ensure that the obligors who have not met their obligations do so in the immediate future.

[440] The DTI also managed to direct investments into sectors that are critical to the economy, which sectors are also critical to enhance the ability of the Government to meet its strategic goals. To date, some of the SDPP projects are still operating and generating local and export sales.

1.5 WHETHER ANY PERSON/S, WITHIN AND/OR OUTSIDE THE GOVERNMENT OF SOUTH AFRICA, IMPROPERLY INFLUENCED THE AWARD OR CONCLUSION OF ANY OF THE CONTRACTS AWARDED AND CONCLUDED IN THE SDPP PROCUREMENT PROCESS AND, IF SO:

1.5.1 WHETHER LEGAL PROCEEDINGS SHOULD BE INSTITUTED AGAINST SUCH PERSONS, AND THE NATURE OF SUCH LEGAL PROCEEDINGS; AND

1.5.2 WHETHER, IN PARTICULAR, THERE IS ANY BASIS TO PURSUE SUCH PERSONS FOR THE RECOVERY OF ANY LOSSES THAT THE STATE MIGHT HAVE SUFFERED AS A RESULT OF THEIR CONDUCT.

i. Selection process

[441] A Request for Information (RFI) was issued to several countries to obtain information relating to the equipment that the DOD intended to acquire from overseas companies.

[442] A value system for the evaluation of the RFI responses to each programme was prepared.
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[443] An evaluation of the RFI responses with regard to the various programmes was undertaken, using the RFI value system. The results of the RFI evaluations were compiled by the various designated officials.

[444] After the evaluation of the RFI responses against the RFI value system, a shortlist of bidders in respect of each programme was compiled and a Request for Offer (RFO) was distributed to the respective shortlisted foreign suppliers of the different types of equipment. The shortlisted bidders were arrived at after evaluation of the RFI responses against the RFI value system for each product type. The shortlisted products were identified on the basis that all of them met the minimum functionality requirements. The shortlist was confirmed by the COD.

[445] The RFO addressed, inter alia, technical requirements, industrial participation (IP) and financing requirements. The IP portion was divided into two parts, namely, the NIP and DIP parts.

[446] The Armscor Procurement Secretariat was responsible for issuing the RFOs to the prospective offerors and receiving offers from the bidders.

[447] The evaluation of the offers was undertaken using the approved RFO value system.

[448] The main function of the RFO was to provide potential bidders with the required instructions and guidelines, so the solicited offers would all be to the same standard and format and include the same level of information.

[449] The RFO value system is an adjudication tool designed to ensure that an objective, forced decision-making process takes place.

[450] It was necessary to coordinate and consolidate the evaluation results. In order to achieve this, a Management Committee, which later became known as SOFCOM, was established. The aim of SOFCOM was to support the Minister of Defence in the management and execution of the DOD’s involvement in the SDPP acquisition. SOFCOM consisted of senior representatives from Armscor, the Defence Acquisition and Procurement
Division (DAPD), the arms of service (SANDF), the DTI and the Department of Finance (Treasury). It consisted of 13 members and was co-chaired by the Chief of Acquisition and the General Manager: Aero Maritime of Armscor.

[451] SOFCOM operated under a formal constitution, which spelt out the functions of the committee. The constitution did not provide for decision-making authority in respect of any matters that would materially affect the evaluation as it pertained to the selection of the preferred bidders.

[452] SOFCOM was responsible for developing the Second Order Evaluation Value System that was eventually used for the consolidation of the evaluation results from the respective Integrated Project Teams.

[453] SOFCOM could not change any of the recommendations of the Project Teams.

[454] At some stage, prior to finalisation of the evaluation process, the DOD, the Department of Finance and the DTI agreed that the three elements of each offer, namely Military Value, Industrial Participation Value and Financing Value would carry equal weight in the final consolidation of the evaluation results.

[455] The final consolidation of the evaluation results of the respective elements of the offers was achieved by aggregating the three indices mentioned above, to obtain a Best Value option, being the bidder obtaining the highest score. Thus, Best Value = Military Value Index + Industrial Participation Index + Financing Index, or in brief: \( BV = MV + IP + FI \).

[456] The recommended option in each equipment category was the option achieving the highest BV score.

[457] The Military Value Index for each offer in the respective equipment categories was determined by dividing the technical evaluation outcome by programme cost and then normalizing the results to a value of 100, with the best value option carrying a weight of 100.
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[458] The Financing Index is the score of financial arrangements offered by the bidder normalised to a value of 100 with the best option carrying a weight of 100.

[459] The IP Index consisted of the combined DIP and NIP evaluation results.

[460] Rear Admiral Kamerman testified that in keeping with the strict instructions of SOFCOM, the execution of each respective evaluation of the Military Value, the IP value and the Finance Value was kept strictly separate.

[461] The various evaluation teams were operating in silos. Their evaluation results were submitted to SOFCOM for consolidation. After consolidating the evaluation results, SOFCOM submitted the evaluation results to other higher structures for further processing.

[462] Dr Young and Mr Terry Crawford-Browne testified that the award of the contracts was pre-determined. Mr Crawford-Browne went further and stated that during 1995 and 1996, the Cabinet decided who would be the suppliers of the various categories of equipment.

[463] The above averments are not supported by any evidence and are inconsistent with the volume of evidence presented to this Commission in regard to the process that was followed, and which culminated in the selection and announcement of preferred suppliers.

[464] The Commission is of the view that these averments are false and should be rejected.

[465] Dr Young alleged that from documentary evidence it would appear that the AASB and the AAC were mainly omitted from the acquisition process and it was SOFCOM that dealt directly with MINCOM (the Inter-Ministerial Committee). He further said that SOFCOM made most of the decisions and reported directly to MINCOM.

[466] Mr David Griesel, the Acting General Manager of the Acquisition Department at Armscor and a secretary of SOFCOM, testified that SOFCOM
had no decision-making powers and in the normal course of events made presentations to the AASB. In terms of the normal procedure, the AASB would then make recommendations to the AAC.

[467] SOFCOM made a presentation to the AASB on 8 July 1998. Mr Griesel was present at the meeting. SOFCOM was also invited to a special AAC meeting held on 13 July 1998. The main purpose of the meeting was to discuss the consolidation of all the evaluation results by SOFCOM.

[468] Mr Griesel further said that the AAC submitted its recommendations to the Inter-Ministerial Committee and the latter in turn forwarded its recommendations to the Cabinet. Mr Griesel testified about the reporting lines that were followed by SOFCOM.

[469] The final decision relating to the preferred suppliers was taken by the Cabinet. There is no documentary or oral evidence to support Dr Young’s allegations as aforesaid; they are inconsistent with the direct, credible evidence and stand to be rejected.

ii. Submarines

[470] The Project Wills technical team decided that decisions would be taken on a consensus basis.

[471] The technical evaluation team consisted of various experts from the arms of service and Armscor. The team consisted of approximately 10 persons, who evaluated various technical areas of the military performance of the submarines offered by the respective bidders.

[472] The DIP team consisted of three members, the NIP team of 12 members and the financial team of 10. The members of those teams came from Armscor, the Defence Secretariat, the SANDF, the Department of Finance and financial institutions. There was only one finance team for all the programmes.

[473] In order to determine the Military Value Index of each of the bidders, the ratio of the performance value and the acquisition costs were taken into
account. The results indicated that the GSC 209 1400 MOD (Germany) scored the highest, followed by Sweden’s T192, Italy’s Fincantieri and the French Scorpene S1600. As far as both the IP value index and the Financing Index were concerned, the GSC 209 1400 MOD scored the highest.

[474] After the consolidation of the all the indices, the GSC 209 1400 MOD was ranked first, followed by Sweden’s Kockums Type 192, then Italy’s Fincantieri S1600 and finally France’s DCN Scorpene.

[475] It is worth mentioning that the GSC 209 1400 MOD was R800 million cheaper than the closest contender and was best value for money.

[476] Dr Richard Young testified that the acquisition of the Type 209 conventional submarine was a contrived affair with a pre-determined outcome. He further said that in the evaluation results, GSC was ranked last until pretty close to the announcement by the Cabinet on 18 November 1998. He further said that a few days before the announcement, GSC moved into the first position, and this happened because of the bribes allegedly paid.

[477] These are wild allegations without any factual basis. Dr Young ignored the intensive evaluation process that was undertaken and the evaluation results that were used to recommend and select the preferred supplier. Regarding the allegations that bribes were paid to secure the award of submarine and frigate contracts, Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that he was not aware of any person or entity convicted in Germany on corruption charges relating to the SDPP. He further said that Ferrostaal was investigated by the German prosecutors but the investigation was discontinued and no consequences followed.

[478] He also said that the allegations that a Mr Hoenings signed bribe agreements with Messrs Tony Yengeni and Shamin Shaik was investigated
by the German prosecutors and no evidence was found to support the allegations.

[479] He further maintained that the company could not find any evidence that supported the allegation.

[480] Mr Vermeulen, the current Programme Manager of Armscor’s Naval Systems Division, testified that he is aware that there are other 40 countries that make use of various versions of the German Type 209 submarines, which attests to their popularity or demand.

[481] Captain Reed, who is currently employed by SAAB AB in Sweden, testified that to date 61 Type 209 submarines have been built and exported to 13 countries.

[482] Mr Wiercimok also testified that HDW has so far built 61 Type 209 submarines, which continue to serve in 13 navies worldwide. He further said that this makes the Type 209 submarine internationally the most successful submarine type in service in the modern era.

[483] In our view the evaluation and selection process of GSC as the preferred bidder cannot be faulted.

[484] This conclusion is consistent with the following finding of the JIT Report that appears at paragraph 6.8.8 and which reads as follows: ‘There is no evidence to indicate that any individuals influenced the selection process.’

iii. LUH

[485] The technical evaluation team for the light utility helicopters (LUH) consisted of 11 members from the arms of service and seven from Armscor.

[486] The DIP team consisted of three members from Armscor and one from the arms of service. The NIP team had 12 members, mostly from the DTI, and the Finance team consisted of 10 members.
Members of the various evaluation teams are experts in different relevant fields.

The RFI for LUHs was issued to 16 countries. Only Agusta, Italy (A109), Bell Helicopter, Canada and Eurocopter, France (EC635) responded to the second RFI. The evaluation was carried out. All bidders complied with the mandatory criteria.

An RFO was issued to the three bidders. Evaluations of the bids were carried out.

The evaluation results indicated that the Agusta A109 had the best Military Performance Index, Military Value Index, IP Value Index, FIN Index and overall Best Value. It was ranked first, followed by the Eurocopter EC 635, while the Textron Bell M427 was ranked last.

Mr Johan Odendaal, Armiscor’s Senior Manager Technical, testified that the Agusta proposal was technically the best of the three and it also cost the least of the three.

It is worth noting that the Agusta A109 was the cheapest LUH on offer.

The engine to be used by the helicopter was recommended by the evaluation team after an evaluation was carried out.

In paragraph 5.7.3 of the JIT report, as far as the selection of the preferred bidder for the supply of the helicopter is concerned, the following is stated: ‘No evidence could be found that any person had improperly influenced the selection of the prime bidder.’

This conclusion is consistent with the evidence led before the Commission and accords with our conclusion.

Mr Terry-Crawford-Browne alleged that Bell Helicopter pulled out of the bidding process because it refused to pay a bribe that was demanded from it. The allegation is false. Bell Helicopter participated in the bidding
process and it was not successful. It was ranked last. Bell Helicopter does not have a record of a bribe ever being requested from it.

iv. **Corvettes**

[497] The technical evaluation team for the corvettes consisted of seven members from the arms of service and four from Armscor. The DIP team consisted of three members, the NIP team of 12 and the Finance team of nine members.

[498] Members of the various evaluation teams are experts in different relevant fields.

[499] The evaluation results indicated that the German GFC Meko A200 had the best Military Performance Index, IP Value Index and the Best Value, and was ranked first. Spain’s Bazan 590 had the best Military Value Index and a marginally better Fin Index than the GFC Meko A200. The overall results indicated that the GFC Meko A200 had the Best Value and was ranked first, followed by the GFC Meko 200. Spain’s Bazan 590B was ranked third and France’s DCN Corvette and the United Kingdom’s GEC F300 were ranked fourth and fifth respectively.

[500] The GFC corvettes were not the cheapest on offer, but they won the competition based on the financial proposals and industrial participation scores.

[501] The German GFC Meko A200 had the best Military Performance, but when Military Performance is divided by the offer cost, the Spanish Bazan 590B achieved the best Military Value score and it was ranked first as far as the Military Value Index was concerned. However, as indicated earlier, the overall results favoured the GFC Meko A200.

[502] Dr Richard Young testified that the acquisition of the GFC Meko A200 corvette was a contrived affair with a pre-determined outcome.

[503] He further said that the corvette platform and the submarine contracts were predestined to be awarded to the German companies. He further
claimed that earlier—1993 to 1995—the Germans were excluded from the competition (*Project Sitron*), but that they were later allowed to compete because they paid bribes.

[504] There are no facts to support these allegations and they are inconsistent with the volumes of documentary and oral evidence presented before the Commission. A number of officials testified about how the Germans came into the competition. Their evidence is not contradicted by any credible evidence.

[505] The above allegations can without any hesitation be rejected as false.

[506] Dr Young further alleged that GFC was nominated the preferred bidder on the basis of its NIP offer.

[507] This allegation is not supported by any evidence whatsoever and is false. The formula to determine the Best Value did not take into account only the NIP offer. As stated earlier, other factors came into the equation.

[508] Dr Young further alleged that GFC won the tender because of bribes paid. This is a wild allegation, it is not supported by any evidence, and should consequently be rejected.

[509] Dr Young further alleged that the evaluation of the corvettes bids were all wrong, with the exception of the calculation of the Military Value. No facts were produced by Dr Young to support his allegations and therefore the Commission has no hesitation in rejecting his allegations as false. There is no factual basis for the allegations.

[510] It is worth noting that the DPCI took over the investigations into the SDPP from the DSO. Some of the investigators who were investigating the SDPP whilst employed by the DSO, joined the DPCI. In September 2010, the DPCI closed the investigations, stating, *inter alia*, that there was no prima facie case against anybody.

[511] General Meiring, Head of the Commercial Crime Component, Detective Service in the DPCI, recommended the closure of the GFC and
BAE legs of the investigations after receiving a briefing from Colonel du Plooy. Colonel du Plooy for several years investigated the allegations of wrongful conduct relating to the SDPP, and in that whole period he could not find any prima facie evidence of wrongdoing against any person.

[512] Mr Klaus Wiercimok, a senior in-house attorney at Thyssenkrupp since 1982, testified that in 2006 the State Prosecutor’s Office in Düsseldorf conducted a number of raids on the TKMS offices and on the homes of some of the company’s employees. No evidence was found to support allegations made against TKMS. The investigations were closed without charges being preferred against anybody. He further said that GFC never paid or authorised payment of $3 million to influence the procurement process of the corvette. He also said that the State Prosecutor’s Office in Düsseldorf investigated the allegations and no evidence was found to support the allegations. No prosecution followed from the investigations.

[513] A proper and fair process was followed to select GFC as the preferred supplier and, as it will become clear later, the selection of sub-systems was also fair.

[514] There is no evidence to suggest that the selection of the preferred bidder was unduly influenced by any person or entity. The bidder that was recommended to the various structures, including the Inter-Ministerial Committee and the Cabinet, was the bidder who had the Best Value and was ranked first after the consolidation of the Technical, IP and Finance indices.

v. Combat suite

[515] As stated by the Navy officers who testified, including Admiral Kamerman, their contracting strategy meant that the prime or main contractor would be contracted and held responsible for all contractual performance for the main elements of the corvette vessel to be acquired. These elements are the ship platform, the combat system and the integrated logistic support, as well as the integration of the three elements.
The prime contractor had to administer its own processes with regard to the sourcing of subcontractors. It also had to deal with the question of a risk premium for some of the subsystems acquired from sub-contractors.

The DOD had limited control over the selection of subsystems and components in the programmes. Most of the combat suite negotiations concentrated on the Joint Project Team acting as a facilitator between the main contractor and the local combat suite industry.

Mr Johannes de Beer testified that Armscor was not involved in the appointment of local suppliers. This was the responsibility of the seller. Armscor only played a facilitating role by making foreign obligors aware of what local companies could offer.

During October 1998, the Project Control Board adopted certain ‘Principle Concepts’, one of which reads as follows:

‘16. Preference may be given to the procurement of defence products and services from local suppliers, providing such procurement represents good value for money.’

Mr Fritz Nortjé, Programme Manager at Armscor, testified that when Armscor and the DOD embarked on the project to acquire the patrol corvette for the SA Navy, the intention was to acquire the ship platform and certain identified subsystems from overseas, and to make maximum use of the local industry capabilities to the extent that it was affordable and made good business sense to do so.

The combat suite was to be populated by largely locally-sourced subsystems. Certain important subsystems, namely the Hull Mounted Sonar, Surveillance Radar and Surface-to-Surface Missiles, were to be sourced overseas. GFC was instructed to obtain quotations from three competitors for each type of these three subsystems.
The evaluations of the offers of the various competitors were carried out by the evaluation team at the Armscor offices. The evaluation team consisted of specialists from Armscor and the Navy.

MBDA was recommended to supply the Surface-to-Surface Missiles, Thomson Marconi to supply Hull Mounted Sonar and the Surveillance Radar was to be supplied by Thomson MRR.

These recommendations were ratified for inclusion into the Naval Combat System baseline by the Naval Board and the Project Control Board.

GFC had offered in its original response to the RFO that, if selected, it would enter into a partnership with African Defence Systems as its contractor for the supply of the combat system. ADS was the only South African company with naval system integration technology and experience.

The documents produced by the DOD and Armscor officials indicated that the whole combat suite was nominated in the RFO solely to provide a design baseline for the platform offer. The RFO indicated that the intention of the State was that after the selection of the preferred bidder, a tendering process for the combat suite elements would follow. The nominated element suppliers were actually proposed and not prescribed by the State.

After GFC was selected as the main contractor, it formed a consortium with ADS, obtained quotations and made a series of combat suite offers to the State. On numerous occasions during the negotiation phase, GFC was requested to offer cost-effective alternatives to its proposed equipment, and it obtained various bids for some of the sub-systems.

During December 1998, Dr Young’s CCII Systems was seeking to oust ADS, the South African nominated supplier of the combat suite, and the other SA nominated suppliers of the combat suite sub-system, by making a competitive bid. This clearly indicates that CCII Systems understood that ‘nominated’ meant proposed and that GFC could consider any other local sub-systems it considered more appropriate. Thus, there were other nominated suppliers against whom CCII Systems competed.
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[529] It is worth noting that at the time when competitive bids were called for, GFC was in the process of attempting to reduce the price of the combat suite. There was also competition for locally sourced sub-systems.

[530] During the acquisition process, CCII Systems, after competitive bids were called for, submitted bids for the supply of the following subsystems:

- The Navigation Distribution System (NDS) – *Project Sitron*
- Tracker consoles – *Project Sitron*
- The software and MMI adaption of *Project Wills* combat system
- The Integrated Management System (IMS) – *Project Sitron*
- The System Management System (SMS) – *Project Sitron*
- The IMPS Simulator – *Project Sitron*

[531] CCII Systems won the first three contracts, valued at approximately R63 million (on the version of the DOD), and lost the last three. Dr Young put the value of the contracts awarded to him at R38 million.

[532] Dr Young testified that in instances where CCII Systems won the contracts, the processes were fair and legitimate, but in instances where CCII Systems lost the bids, the processes were either unfair or irregular or they were manipulated.

[533] It is worth noting that the same team evaluated the bids that CCII Systems won and those that CCII Systems lost.

[534] The evidence presented before the Commission by various witnesses does not support the allegation that where CCII Systems lost the bids, the processes were unfair or that they were manipulated.

[535] Dr Young’s abovementioned complaints are baseless and should be rejected. A legitimate and fair process was followed when evaluating the bids.

[536] Dr Young alleged that the CCII Systems IMS was deselected and unfairly replaced by the Detexis Diacerto databus.
This allegation is false. The main contractors on whom the risk fell was not prepared to assume risk for the CCII Systems IMS, and CCII Systems was not prepared to put up a financial guarantee after being requested to do so.

The State was also not prepared to assume risk for the CCII Systems IMS. In order to reduce costs, the State was left with no option but to accept the selection of the Detexis Diacerto databus, which came cheaper than the CCII Systems IMS.

The procedure followed and reasons for the selection of the Detexis Diacerto databus cannot be faulted.

The contention that the State was unfair to CCII Systems by refusing to carry the risk of the CCII Systems IMS is untenable.

The other complaints by Dr Young relating to bids his company lost, are without merits and should be rejected. We do not deem it necessary to deal with all Dr Young’s complaints in this part of the report.

Approximately 60% of the technology acquired for the combat system for the corvettes was purchased in South Africa from South African companies relying on South African technology. About 18 companies, including CCII Systems, participated in Project Sitron.

As stated earlier, CCII Systems submitted bids for six contracts on Project Sitron and Project Wills and won three of the six it tendered for. The three it won were the following:

- Project Sitron Navigation Distribution System (NDS)
- Project Sitron Tracking Radar Consoles (TRC)
- Submarine software custodian for the Combat Management System (CMS)

The corvette radar contract that was awarded to CCII Systems was cancelled on the grounds of non-performance. The submarine combat
system contractor cancelled CCII Systems’ CMS contract, also on the grounds of non-performance.

[545] There were justifiable reasons for the State to accept the selection of the Detexis Diacerto databus. The selection of the latter databus relieved the State of any possible risk for the failure of the databus, because the risk for the failure of the databus fell squarely on the main contractor. The selection of the Detexis Diacerto databus also enabled the State to reduce the costs.

[546] Rear Admiral Kamerman testified that for contractual purposes, in order to reduce costs, the Joint Project Team divided the various components comprising the corvette into three categories. Category A, consisted of the vessel platform for which the main contractor assumed full responsibility. Category B consisted of the subsystems for which the main contractor was expected to assume full responsibility. Category C included subsystems for which the main contractor was not expected to assume full responsibility until satisfactory and successful completion of factory acceptance tests.

[547] The CCII Systems IMS was categorised as a Category B sub-system as the State was not prepared to assume the risk relating to it. The main contractor was not willing to carry the risk for the failure of the CCII Systems IMS. The State was also not prepared to absorb additional costs associated with the selection of the CCII Systems IMS, or to assume risk for the failure of the IMS.

[548] The risks occasioned by the CCII Systems IMS to the Navy or the SANDF were much higher than those attached to the Detexis Diacerto databus. In the case of the latter, the main contractor was assuming the risk associated with the databus. Dr Young was requested to put up a performance guarantee but he refused, and the State was left with no option but to select the databus of Detexis.

[549] Dr Young testified that the French authorities conducted an investigation during which the offices of Thomson-CSF International and
those of their chairman, Mr Jean-Paul Pereira, were raided and searched. He further said that these raids yielded a vast amount of documentary evidence indicating criminal conduct on the part of certain individuals.

[550] On the other hand, the investigations in France were closed some time ago. The investigation did not lead to any prosecutions. If a vast amount of documentary evidence indicating criminal conduct were found, the probabilities are that a prosecution would have followed. From the fact that no prosecution followed, an inference can be drawn that no evidence was found indicating criminal conduct on the part of any person or entity.

[551] In the selection of the sub-systems, a fair and open process was followed. There is no basis to suggest that the process followed was flawed, unfair, tainted by corruption or improperly influenced by any person. Experts were appointed to assist the main contractor and the Joint Project Team in the selection of the sub-systems of the combat suite, and the procedures followed were fair.

[552] In concluding this topic, we wish to point out that we found Admiral Kamerman and Mr Nortjé to be reliable witnesses. They gave their evidence in a straightforward manner and there are no improbabilities in their versions. The Commission can rely on their evidence.

[553] The same cannot be said about Dr Young. He was argumentative and he refused to withdraw his unsupportable allegations. Some of his evidence was contradicted by unassailable documentary evidence, but he persisted in his unfounded allegations, for example, the reasons offered by BAE for withdrawing from the consortium to bid for the combat suite sub-systems. Dr Young said that the reasons put forward by BAE for withdrawing from the consortium were not correct.

[554] Some of his allegations could not be reconciled with the documents that were made available to the Commission, but despite that fact he persisted in his allegations without providing any documentary or cogent
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evidence to contradict the contents of the documents before the Commission.

[555] His evidence to the effect that where he won the bids, the process was fair, but in instances where he lost, the process was unfair, is untenable.

[556] He published on his website vicious attacks on various persons, including the late former President NR Mandela and his cabinet colleagues. The attacks were reckless, vicious and without any factual basis.

[557] Dr Young also published on his website foul, vulgar and offending remarks about the Commission. Amongst others he said:

“This Commission is a farce—but not a funny ha ha one. It is a farce of the most odoriferous and pungent kind. Something that reminds me of something that came out of the anuses of my neighbour’s pigs when they invaded my farm last year.’

[558] He further stated:

‘I think it is a reasonable conclusion that the APC is klaar. At least for me. How can I work with it ever again when its members bullshit so much? How can I accept a new evidence leader who is going to be adversarial?’

[559] Senior naval officers and some senior counsel representing some of the interested parties were given the same treatment by Dr Young. Our view is that Dr Young is not a reliable witness and his evidence should be approached with caution. He has demonstrated his propensity to make and persist with baseless but serious allegations.

[560] Besides, Dr Young was not an impartial witness and he could not conceal his bitterness in having lost some of the bids in the combat suite sub-systems. Nor could he hide his animosity towards some of the officials who were involved in the selection of the suppliers of the sub-systems. He seemed particularly hostile and vindictive towards Admiral Kamerman, whom he partly blamed for his company’s failure to win some of the sub-
contracts and made derogatory comments about him. Yet, Admiral Kamerman impressed us as a reasonable, professional person who did not betray any vindictiveness towards anybody. Where the version of Dr Young is in conflict with that of Admiral Kamerman, we will prefer the latter’s version.

[561] He also refused to disclose the identity of the senior SANDF officials whom he alleged were aware of the wrongdoing that took place during the SDPP process.

[562] During his testimony, Dr Young said that Ferrostaal paid larger bribes for GSC to win the South African submarines than Thyssen paid for GFC to win the South African corvette deal. When asked who told him about the bribes, he said he was not prepared to divulge the name of the person. He said it was someone who worked and lived in Germany.

[563] Dr Young is the only bidder involved in the bidding process of the combat suite elements, who is complaining bitterly about the bids he lost. He attributes his losing of the bids to a variety of reasons that are unfounded.

[564] Mr Wiercimok testified that by choosing the naval vessels built by TKMS, South Africa joined 12 other countries worldwide, including five NATO navies and the leading navies in Latin America, Australasia and Asia—all utilising the company’s surface vessels.

vi. ALFA

[565] The Advanced Light Fighter Aircraft (ALFA) technical evaluation team consisted of 11 members from the arms of service and 14 from Armscor. The DIP team consisted of three members, the NIP team of 12 and the Finance team nine members.

[566] Members of the various teams were experts in their own fields.

[567] The results of the evaluation of the various indices indicated that the UK/SAAB JAS39 Gripen had the best Military Performance Index, Military Value Index, IP Value Index, and FIN Index—and overall the Best Value—
and was ranked first. Germany’s DASA AT 2000 came a distant second and France’s Dassault Mirage 2000 was ranked last.

[568] The Gripen was also the cheapest on offer.

[569] Mr Cornelius Johannes Ferreira, Programme Manager of the LIFT programme, testified that the Gripen came first in virtually all categories of the value system, such as military value, programme management, engineering plan, military functionality, logistic support system, mission and training support system, and operational support system.

[570] He further said that the Gripen was found to have the lowest programme risk, followed by the Mirage 2000 and the AT2000.

[571] Dr Young testified that the South African Government and the British Government made arrangements to the effect that BAE would be awarded the Hawk and Gripen contracts.

[572] No evidence, either oral or documentary, was tendered to support the above-mentioned allegation.

[573] This allegation is inconsistent with much oral and voluminous documentary evidence tendered before the Commission, dealing with invitations issued to various countries, the receipt of bids and the evaluation of those bids.

[574] There is no doubt that the above-mentioned allegation by Dr Young is false and should be rejected.

[575] There is no evidence to suggest that the selection process of the preferred bidder was flawed or improperly influenced by any person.

**vii. LIFT**

[576] The technical evaluation team for the Lead-in Fighter Trainer (LIFT) consisted of 11 members from the arms of service and 12 from Armscor. The DIP team consisted of five members, the NIP team of 12 and the Finance team of nine members.
Again, the members of the various evaluations teams were experts in their respective fields.

When using the standard equation to determine the Best Value, the Aermacchi MB339FD was ranked first, followed by the BAE Hawk and then two other bidders. However, when costs are excluded, the BAE Hawk received the Best Value figure.

The Hawks were the only item of equipment acquired as part of the SDPP that did not win the third-order evaluation round, due to their high cost.

Lt General Hechter, the Chief of the SAAF at the relevant time, testified that at the Ukhozi Control Council meeting held on 24 April 1998, the various aircraft on offer were discussed. Note 2 of the minutes of the said meeting reads as follows:

‘The Hawk 100 is the only aircraft in the recommended shortlist that could be linked to the ALFA procurement in the Government packages.’

On 30 April 1998, there was a special Ukhozi Control Council meeting, chaired by Lt General Hechter and attended by at least 13 SAAF senior officers and three senior Armscor officials. The minutes of the meeting indicate that various issues were discussed and various decisions taken. Paragraph 5.1.2 of the said minutes reads as follows:

‘Decision 1: The following manufacturers/aircraft should receive an RFP, based on a Military Value result from the value system above 68% and cost not taken into account at all.’

Mr CJ Ferreira, Armscor programme manager of the Hawks programme, testified that the heading of the minutes of the meeting of 30 April 1998 is incorrect. He was present at the said meeting and the meeting was that of the Special Air Force Command Council.
[583] At a combined AASB/AAC meeting held on the same day, the Project Officer and Programme Manager presented the meeting with the two options, namely the ‘costed’ and ‘non-costed’. Paragraph 8 of the minutes reads as follows:

‘The project team presented the meeting with an affordability analysis of LIFT contenders. Without cost considerations the selection process is biased towards the higher performance category of aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. Thus, unless additional funding could be found to support the acquisition a more superior aircraft, the Air Force would have to take cognisance of budgetary constraints in the selection process.’

[584] Mr Pierre Steyn testified that the concept of a non-costed option was discussed for the first time at the combined AASB and AAC meeting of 30 April 1998.

[585] At this meeting, the Minister of Defence cautioned that a visionary approach should not be excluded, as the decision on the acquisition of a new fighter-trainer aircraft would impact on the South African defence industry’s opportunity to be part of the global defence market through partnerships with major international companies.

[586] The Minister recognised that this vision might mean that the most inexpensive option may not necessarily be the best option.

[587] The Minister requested that the DOD’s acquisition staff bear this vision in mind during the selection process.

[588] Mr Esterhuyse testified that the decision by the AAC during the 30 April 1998 briefing on the shortlist of offerors required the project team to consider a solution taking cost into account and a solution where cost was not taken as a deciding factor.
On 5 May 1998, there was a meeting of Ukhozi Control Council. The meeting was attended, amongst others, by nine senior SAAF officers and five senior Armscor officials. The minutes of the said meeting indicate that the meeting of 30 April 1998 was an Air Force Command Council meeting and not an Ukhozi Control Council meeting. Paragraph 7.1.3 of the minutes reads as follows:

‘The reason why the recommendation to the combined AASB/AAC was not based on cost-effectiveness, was because it was felt that the cost-constraints for the inclusion of the LIFT into the strategic Defence packages should be determined by the AAC.’

On 8 June 1998, the final results were presented to the AASB by members of SOFCOM. A full presentation was made. The LIFT programme had both a costed and a non-costed option. The AASB recommendation was that the cheaper option was the preferred option.

The SAAF Command Council meeting of 29 June 1998, chaired by the Chief of the SAAF, Lt General Hechter, decided, inter alia, to present to SOFCOM the 'costed' and 'non-costed' options for the LIFT programme.

Mr Steyn favoured the MB339FD due to its relatively low price. At the AASB and the AAC meetings he strenuously opposed the choice of the Hawk, due to its costs.

On 13 July 1998, the AAC meeting was briefed and again the LIFT programme had the two options mentioned earlier.

At a COD meeting on 21 August 1998, the LIFT programme was also discussed. The two options were still on the table. During the discussions, General Beukes said:

‘At issue is whether LIFT should be the Hawk or the MB339. From a purely training point of view, the Air Force can do the job with either. The Hawk is more expensive because it has operational capabilities which the MB339 does not offer.’
The recommendation of the AASB to acquire the cheaper aircraft was conveyed to the COD.

Mr Steyn testified that as far as the LIFT programme was concerned, the meeting of the COD on 21 August 1998 recognised that both contenders, the MB339 and the Hawk, should remain as possible contenders. According to him, the meeting did not make a choice as to which aircraft should be recommended to the Inter-Ministerial Committee (IMC).

At the meeting, the impact of either bid on the country’s economy and the local defence industry was also considered.

On 31 August 1998, an IMC meeting took place. A presentation was made to it. With regard to the LIFT programme, two options were presented. After discussing the two options, a decision was made to select the Hawk. It was recorded that the decision was based on –

‘national strategic considerations for the future survival of the Defence Aviation Sector and the best teaming up arrangements’

as well as –

‘the strategically important Industrial Participation programmes offered with the best advantage to the State and local industries.’

When the evaluations were made, without taking into account the cost of the equipment, the BAE Hawk was ranked first as far as the Best Value was concerned, followed by the Aermacchi MB339FD and then the other two bidders.

The Hawk was recommended to the Cabinet by the IMC despite the objection by Mr Steyn, who preferred the cheaper option. The strategic concerns that were considered by the IMC and the Cabinet outweighed the ordinary preference for the cheaper offer. These strategic concerns were recorded in the relevant minutes of the various meetings.
In terms of the LIFT evaluation, there were two classes of aircraft. On the one hand, there was the Aermacchi, which was cheaper but with a lower flying performance and capability. On the other hand, there was the Hawk, which was in a higher flying performance domain or capability, but more expensive.

General Bayne had this to say:

‘The Hawk is primarily a fighter-trainer aircraft but with a considerable level of collateral operational capability in a low-threat environment, and has growth in this role when operating in a package together with the Gripen.’

The SAAF has already trained pilots on the Hawk from the Astra, and successfully onto the Gripen. This demonstrates that their three-tier training system operates well.

General Bayne continued:

‘The Gripen and Hawk aircraft systems have proven to be highly deployable, adaptable and have the flexibility to satisfy a wide range of airpower and national security requirements of the Republic.’

It is apparent that the SAAF is satisfied with the capabilities of the Hawk and with the combination of the Hawk and Gripen. The combined effects of the capabilities of the Hawk and the Gripen have exceeded the expectations of the SAAF.

It is worth noting that during his testimony, the then Deputy Minister of Defence reiterated that the most inexpensive option might not necessarily be the best option. There are other important factors that come into the equation.

In fact, the MODAC 2 Report, in paragraph 2.4.2 headed ‘Tender adjudication’, reads as follows: ‘Adjudication of tenders shall not necessarily
be based on the lowest price, but on value for money and industrial development goals.’ (See also para 56, page 128 of the Defence Review).

[608] At its meeting of 31 August 1998, the IMC endorsed the recommendations of the AAC as far as the other programmes were concerned. As regards the LIFT programme, the Hawk was their preferred option.

[609] The minutes of the meeting of 31 August 1998 recorded, inter alia, the following:

‘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 arrangement offered by the respective bidders.’

[610] It is important to note that best value for money includes taking into account long-term strategic alliances and the broader national interests in a global context. Best value for money also required considering industrial development and transformation imperatives. Best value for money required a consideration of DOD requirements, life cycle costs, local technology and industrial development, social responsibility, financing and strategic international relations. It also required taking into account the national objectives of job creation, wealth generation, trade balance and counter-trade (see para 56 of the Defence Review and para 3.1.2 of MODAC).

[611] Mr Shamin Shaik testified that as far as acquisition programmes were concerned, the final decision rested with the Cabinet, with the Minister of Defence as the overall custodian of the defence acquisition programme as outlined in the Defence Review and MODAC 1, 2 and 3.

[612] He further said that the MODAC policies and the Defence Review placed the final authority for the acquisition, procurement and production of military equipment on the Minister of Defence and Cabinet, as the final executive decision-making body of the country.
[613] Mr Ronald Kasrils testified that a departmental policy, such as MODAC, did not negate or invalidate the overall control function of the Minister of Defence as the executive authority whose decisions were final.

[614] Former President Mbeki testified that at no stage did the IMC take a decision without reference to cost. The Affordability Report they commissioned was discussed by the IMC and Cabinet. The whole procurement process was discussed within the context of the other national challenges. He further said that the IMC made a presentation to the Cabinet, which endorsed the recommendations.

[615] With the exception of the LIFT programme, the Cabinet selected as preferred bidders those which ranked first in the consolidated results of the various evaluation teams.

[616] Another reason for preferring the Hawk appears to be that it is easier for trainee pilots to train on the Hawk and from there proceed to the Gripen.

[617] It is at this point worth noting that Mr Steyn, who opposed the non-costed option and preferred the cheaper option (MB339), did not dispute the fact that the inexpensive option might not necessarily be the best option. He also conceded that under MODAC procedures the Minister had the final say and to convey such decision to the Cabinet.

[618] As indicated earlier, Mr Steyn initially alleged that the IMC meeting of 31 August 1998 did not make any decision relating to the LIFT programme. His allegation was proved wrong by the minutes of the meeting. The minutes were confirmed by the then Deputy Minister of Defence, who was present at the meeting and later, together with his colleagues, signed the minutes.

[619] Mr Steyn went out of his way to try to have the decision of the IMC to recommend the selection of the Hawk, changed. He and Mr Esterhuyse claimed that no decision was taken at the meeting of 31 August 1998 in Durban when the IMC was briefed on progress made with the SDPP. The evidence was that after the briefing, the officials who attended as invitees (including Mr Steyn and Mr Esterhuyse) had left, where after the IMC
continued with the meeting and took the decision to recommend the Hawk as the preferred aircraft. Mr Steyn and Mr Esterhuyse disputed this and also challenged the minutes reflecting the decision. Despite claiming that such meeting never took place, they nonetheless crafted their own version of the minutes of the meeting, which minutes stated that regarding the choice between the Hawk and the Aermacchi, no decision was taken.

[620] Mr Steyn’s version collapsed under cross-examination by counsel for the DOD when his earlier version during the interrogation in terms of section 28 of National Prosecuting Authority Act 32 of 1998 was produced. He was forced to relent and to accept that the IMC meeting did in fact take place and that the decision to select the Hawk as the preferred aircraft was taken.

[621] The latter incident, coupled with his opportunistic denial of the applicability of Policy Directive 4/147 to the SDPP, as well as other discrepancies in his evidence, clearly indicate that Mr Steyn was not a reliable witness.

[622] Mr Steyn maintained that at the Special Briefing Meeting of 31 August 1998, no minutes were taken. When the various versions of the minutes were produced, he said none of the versions were correct. He even made a bizarre suggestion that it is possible that the Ministers signed the minutes without reading them.

[623] Mr Steyn testified that in some cases SOFCOM circumvented the AACB and AASB and further that the organisational structures for the management of the SDPP created by MODAC, namely the AAC, AASB and AACB, were side-lined.

[624] Oral and documentary evidence produced by Armscor and DOD officials contradicts the latter allegation of Mr Steyn.

[625] The evidence tendered before the Commission by Mr Steyn differed in material aspects from his version during the interrogation in terms of section 28 of the National Prosecuting Authority Act 32 of 1998.
As stated earlier, Mr Steyn was not a reliable witness. His evidence must be approached with caution.

The complaints raised by Mr Steyn relating to process and the selection of the Hawk are baseless and are rejected as being false. During his cross-examination he could not substantiate his allegations that improper procedures were followed and that it was wrong to select the Hawk aircraft.

As already indicated, the Cabinet gave full reasons for selecting the Hawk for the LIFT programme. Mr Steyn criticised this decision, but his concerns were addressed and shown to fall short of justifying any inference that the acquisition of the Hawk was as a result of improper conduct on the part of any person.

It is also worth noting that Mr CJ Ferreira, programme manager of the LIFT, testified that they were aware that the MB339FD family of aircraft was probably approaching the end of its production run. If the manufacturers stopped the production, it was going to be difficult and expensive to maintain the MB339FD aircraft.

Mr Terry Crawford-Browne testified that during 1995 and 1996 the Cabinet had decided that the Hawk will be acquired from Britain, the Gripen from Sweden, and the frigates and submarines from Germany, without any evaluation of the bids. He further said that the Commission should ignore evidence tendered regarding the various evaluations as that evidence was not reliable.

There is no factual basis for the above averments. They are wild statements and there is no doubt that they have no merit whatsoever.

There is no justifiable reason why the evidence of the various evaluation teams should be deemed unreliable.

Dr Young testified that the Hawk contract was pre-destined to be awarded to British Aerospace through the dealings of the late Mr Joe Modise. There is no factual basis for this allegation and it should be rejected.
[634] Mr Terry Crawford-Browne testified that in June 2003, the British Secretary for Trade and Industry admitted that BAE had paid bribes to secure its contracts with South Africa. Under cross-examination it emerged that this allegation was false.

[635] The evidence tendered before the Commission indicates that the various officials of the DOD, Armscor, the DTI and the National Treasury who were involved in the acquisition process, acted with a high level of professionalism, dedication and integrity. Despite the fact that numerous allegations of criminal conduct on their part were made, no evidence was found or presented before the Commission to substantiate the allegations.

[636] In paragraphs 2A and B of a report entitled ‘SCOPA Hearings: Key Findings by the Auditor-General on the Strategic Defence Packages’, the following is stated:

‘(A) The Air Force Command Council instructed the Project Team to prepare a costed and non costed technical evaluation when the evaluation was presented to it on 29 June 1998. The MB339 was the winner in the technical domain in both costed and non costed technical evaluations.

The costed and non costed technical options were consolidated with the Financing and Industrial Participation evaluations at the SOFCOM on 02 July 1998. The MB339 was the winner of the costed evaluation while the Hawk headed the non costed evaluation.

(B) The cost/benefit considerations of the LIFT aircraft extended beyond that evaluated.

The COD of 21 August 1998 recommended both options to the political level because the decision on international alliances in the aerospace industry was required.

The additional operational capabilities of the Hawk over the MB339 (dual role capabilities) plus the best teaming-up arrangements for the future of the local aviation industry coupled
to strategically important industrial participation projects, offered by the Hawk supplier resulted in the recommendation of the Hawk to cabinet.’

[637] The version of the Hawk purchased by the SAAF represents a new generation of aircraft. The same aircraft is used by various countries including Australia, Canada, Finland, India, the UK and Switzerland.

[638] In its written submission, BAE Systems PLC stated the following:

‘The Hawk aircraft has had a strong export success throughout the world. It has been consistently selected in competitive tenders and is used in Australia, Bahrain, Canada, England, India, Indonesia, Kenya, Kuwait, Malaysia, Oman, Saudi Arabia, South Korea, UK, Zambia and Switzerland. It has operated successfully in a wide range of conditions, including the Arctic Circle, the Middle East and the tropics … With proven low maintenance requirements and low life-cycle costs, the Hawk provides a cost-effective, realistic training environment for future front-line combat aircrew.’

[639] The process followed to select the preferred bidders was such that it made it difficult, if not impossible, for a single individual to unlawfully influence the selection of the preferred bidders.

[640] The Minister of Defence has the final authority on all acquisition matters and has the right to refer decisions on acquisition programmes to the Cabinet (see MODAC, p 40). Captain Jordaan testified that the Minister of Defence was the ultimate political authority. The responsibility for the acquisition function rests with the Minister.

[641] Mr H de W Esterhuysen testified that the constitution of the AAC stated that the Minister of Defence had the final authority on all acquisition matters and the right to refer decisions on the acquisition programme to the Cabinet. Mr Steyn made the same point.
As stated earlier, with the exception of the LIFT programme, all the preferred bidders who were ultimately selected by the Cabinet were ranked first by the combined results of the various evaluation teams.

As far as the Hawk is concerned, although it was ranked second on the results of the costed option and first on the ‘non-costed’ option, there is no indication that the contracts to procure them were tainted by improper influence. On the contrary, the evidence led before the Commission indicates that the decision to acquire the Hawks was properly motivated, well-documented, a strategic one and in the best interests of the country.

Dr Young said that the Joint Investigating Team (JIT) Report was manipulated by the Government to ensure that it gave the Government a clean bill of health. He failed to provide a factual basis for this allegation. When evidence tendered by various officials is taken into account, the inevitable conclusion that we are bound to arrive at, is that this allegation is false and should be rejected.

In paragraph 4.12 of the JIT Report the following is stated:

‘4.1.1 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 Minister’s 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 SDPP 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 strategic reasons, including the total
benefit to the country in terms of counter trade investment and operational capabilities of the SANDF.'

The same sentiments are expressed in paragraph 14.1.7 of the Report.

[646] The views expressed in the above-quoted paragraph of the JIT Report are to a very great extent consistent with the evidence led before the Commission. To some extent this also accords with the key findings of the Auditor-General quoted earlier.

[647] The evaluation process undertaken for the purposes of the SDPP was a tool to enable the Minister and his Cabinet colleagues to select the preferred suppliers. Although the evaluation results were not binding on the Minister, the recommendations made by the evaluation teams were accepted by the Minister of Defence and his Cabinet colleagues.

[648] In paragraph 14.1.1 of the JIT Report, the following is stated:

‘No evidence was found of any improper or unlawful conduct by Government. The irregularities and improprieties referred to in the findings as contained in this report, point to the conduct of certain officials of the government departments involved and cannot, in our view, be ascribed to the President or the Ministers involved in their capacity as members of the Minister’s Committee or Cabinet. There are therefore no grounds to suggest that the Government’s contracting position is flawed. See also Para 1.3; 2.3 of the same report.’

[649] Mr David Griesel testified that the SDPP process was the subject-matter of two internal audit reports. The first audit was carried out over the period 6 to 30 November 1998 and the second internal audit report was produced on 21 July 1999.

[650] The audits were carried out to enquire whether the process followed during the evaluation of the SDPP bids was proper and transparent. The audit reports concluded that no evidence of improper conduct was found on
the part of any of the Armscor employees involved in the evaluation of the various proposals.

[651] Representatives of Armscor were involved in the technical evaluation of the equipment and the CEO of Armscor was a member of the IONT. Programme Managers of the respective projects were employees of Armscor.

[652] Members of Armscor’s Audit Division and Armscor’s bankers were involved in the Finance Evaluation Team. The latter team evaluated the bids from all the offerors for all the equipment acquired under the SDPP. Mr CJ Hoffman, Armscor’s Financial Director and an executive member of the Armscor Board of Directors, was the leader of the Finance Evaluation Team, while other members came from the Department of Finance and the DTI.

[653] The DIP evaluation team, the Joint Project Team and the Integrated Project Team consisted amongst others of Armscor employees.

[654] The evidence presented before this Commission does not suggest that any undue or improper influence played any role in the selection of the preferred bidders who ultimately entered into contracts with the Government. This conclusion is consistent with findings of the Joint Investigating Team, the Auditor-General and the Armscor internal audits that were mentioned earlier.

[655] At this point, it is important to note that Armscor’s general conditions of contract (K-STD 0020), as well as the Defence Review, stipulate that the prime responsibility for the selection of sub-contractors rests with the main contractors. However, Armscor was not precluded from contracting sub-contractors directly if this proved to be cost-effective.

[656] In the main, all the sub-contractors were selected by the main contractors. In a few instances, Armscor did nominate and select sub-contractors, for example, suppliers of the engines for the LUH, the gearbox for the frigates and certain sub-systems of the combat suite. In
the instances where Armscor and/or the Navy selected subcontractors, a fair process was followed.

viii. Is there a need for further investigations?

[657] Colonel Du Plooy, who is currently employed by the SA Police Directorate of Priority Crime Investigations (DPCI), was previously a Senior Special Investigator in the NPA’s Directorate for Special Operations (DSO) and responsible for the BAE and German leg of the investigations. He, together with General Meiring, testified that the BAE and the GFC legs of the investigation were closed in September 2010. They further testified that one of the reasons why the investigations were closed, was that they could not find any prima facie case of wrongdoing in either leg of the investigation against any person, despite the fact that the DSO, as the predecessor of the DPCI, started investigating the SDPP in 2000.

[658] Colonel du Plooy further testified that at the time of the closure of the investigations, they could not find any evidence which indicated that the Cabinet, members of the IMC or Mr Chippy Shaik unduly influenced the awarding of the SDPP contracts. They could not find any evidence to suggest that Advocate Fana Hlongwane paid any money to any official in order to improperly influence the awarding of the contracts, or that he exerted improper influence on any official.

[659] Despite the fact that various allegations of fraud, corruption or malfeasance were directed at Government officials and senior politicians, no evidence was produced or found to substantiate them. They thus remain wild allegations with no factual basis.

[660] During the submissions stage, Dr Young conceded that, on the available evidence, the Commission could not recommend that criminal charges be preferred against any person, but the Commission was urged to recommend that there should be another investigation. This further investigation should look into the possibility that there might be persons who are guilty of fraud or corruption.
[661] The above suggestion is untenable.

[662] In its written submission, BAE Systems PLC said the following:

‘BAES engaged advisors in relation to BAES and SAAB, BAES paid approximately £115 million to advisors in connection with the sale of civil and military aircraft (including Hawk and Gripen) in South Africa and in fulfilling Offset obligations … The use of advisors by international companies exporting to countries where they have no material in-country capability of staff was, and is, commonplace across many industries. This approach offers a lower cost base for long lead-time programmes compared to basing staff in-country, ultimately leading to a lower cost of sales to the customer. It is widely accepted that Offset obligations require contractors to employ advisors to perform roles which include providing local knowledge of market-specific procurement processes and practices. In the 1990s, BAES’s strategy worldwide was to incur no cost in-country itself but rather to engage local advisors upon whom the cost fell. Further, the advisors assumed all the financial risks of the procurement process, saving BAES a fixed overhead which, in the case of South Africa, BAES estimates (based on the cost of other overseas offices) to have been in the order of approximately £4,2 annually.’

BAES’s work in South Africa began 1991 and has run for more than 20 years. The SDPP contracts were worth in excess of £2 billion and incorporated very significant Offset obligations. The actual spend on advisors in relation to BAES and Saab was well within what any company bidding for contracts of this sort would have expected to incur … The conduct of advisors BAES and Saab products in the course of the SDPP has been the subject to a number detailed investigations over many years. None of these investigations has demonstrated unlawful conduct on their part.’
Various agencies investigated the possible criminal conduct of some of the role players in the SDPP, and no evidence was found to justify any criminal prosecution. There is no need to appoint another body to investigate the allegations of criminal conduct, as no credible evidence was found during our investigations or presented to the Commission that could sustain any criminal conviction. The Commission has carried out an intensive investigation, and other local and foreign agencies have investigated the possible criminal conduct of people who were involved in the SDPP. No evidence of criminal conduct on the part of any person was found.

Given that 18 years have elapsed since the launch of the SDPP and 15 years have passed since the award of the primary contracts, it will be extremely difficult, if not impossible, to unearth evidence, if any, that may sustain any criminal prosecution at this late stage. As alluded to in paragraph 657 above, the DSO, and subsequently the DPCI, has over a period of ten years up to 2010 investigated the very allegations around the SDPP and they could find no prima facie evidence of criminal conduct against anybody. If these investigative bodies could not find any prima facie proof of wrongdoing when the events were still fresh, it is highly unlikely that any evidence could be found more than 20 years after the events. Furthermore, similar investigations were carried out in other jurisdictions, such as the United Kingdom, France, Germany, Sweden and Switzerland, and all were closed several years ago without any criminal prosecution being instituted against anybody. In the premises, another investigation into the SDPP will serve no purpose.

ix. German investigations

Dr Young referred to the three reports that emanated from the German Prosecutorial Authority, (annexures RMY52, RMY53 and RMY54) as being the most important of all his evidence.

Dr Young did not know whether the three reports were obtained by lawful or unlawful means or who their authors were. He also did not know who sent them to him but assumed that they emanated from the institution
identified in the header, which is stated as German Investigative Authority in Düsseldorf, Germany.

[667] The documents bore no official letterhead, nor details that one would normally find on a letterhead. The documents were not in final form and could at best be described as rough preliminary documents. Strangely, one was in German and the other two in English. It is not clear why a German investigator would prepare some of his or her reports in English, which is not their official language.

[668] Dr Young said that he had received the documents early in 2010, which was approximately two years after the German investigation was closed.

[669] He said that he contacted police officials and the Public Prosecutor in Germany and was advised that the investigations were preliminary and had been closed by 13 January 2008.

[670] Dr Young became evasive when questioned about how he came into possession of these documents. It is certain though that he did not receive them from any official or lawful source nor did he know who authored them. He could not vouch for their authenticity, save to insist that they emanated from the German investigating authorities, based on the name of the institution identified on the header.

[671] The evasiveness about how he came into possession of these reports manifested itself in another aspect of Dr Young’s evidence. He claimed that Colonel du Plooy had shown him a page of these reports to encourage him to lay a formal complaint in order that the police could launch an investigation into his complaints of malfeasance in the SDPP, which du Plooy denied. He claimed to have received the documents early in 2010 yet in March 2008 he had written to the South African prosecuting authorities and had repeated some of the allegations contained in the documents and had even referred to the German investigation reports, implying that he
already had them. Strangely, du Plooy was also uncertain, if not evasive, about when and from whom he obtained the same reports.

[672] The documents bore no official letterhead containing details customarily associated with an investigative body, no addressee, no signature and no formal salutation, and seem to be probing for information on an informal basis. Considering the comments of the public prosecutor in Bochum as set out in paragraphs 676 and 677 below, it is not inconceivable that the author of these documents was a German investigator who was conducting an informal, unauthorised investigation and they are therefore not official reports. In short, the authenticity and legitimacy of these reports are questionable.

[673] The matter is further complicated by the fact that, on his own version, Dr Young provided the German police with press reports and articles published in South Africa and as such he was the source of some of the allegations contained in the reports. He says that he contacted the German police investigator, Andreas Bruns, and public prosecutor Götte regarding these reports but they declined to collaborate in his probe. Importantly, he had been advised that the investigations were preliminary and had been closed by 13 January 2008 according to him. Despite this he still persisted that the reports presented the strongest evidence of bribery, fraud and corruption in the SDPP.

[674] As already alluded to, Dr Young himself contributed some of the information contained in the reports though he seemed to want to underplay his role. It is apposite to quote from one of the reports:

‘From Richard Young we received information about one payment from Merian Ltd, to Pierce of the amount of 10,000 US$, value date 30th March 2001. The money seems to have been transferred from the UK to the SA Reserve Bank via First National Bank of South Africa Ltd. Richard Young claims that more payments had been made from Merian Ltd to Pierce but the above is the only one he could prove by presenting a
transaction report. Young also presented statements for one bank account of Chippy Shaik but no suspicious deposit could be found yet.’

[675] Given the substantial documentation that Dr Young had stored in his computer over the years relating to the SDPP, it is not inconceivable that a lot more of the contents of the reports emanate from him. This is reinforced by the submission of Thyssenkrupp Marine Systems (TKMS), which was confirmed by Mr Wiercimok in his evidence, that the raid on its offices and the homes of some its employees during 2006 was triggered by a docket being opened on the basis of sources of information from South Africa, which included Mrs Patricia de Lille and Mr Terry Crawford-Browne; meaning that Dr Young was not the only South African source. Yet all of these individuals had no personal knowledge of the information passed on to the author of the reports. Nor has such author established any facts to support the allegations. In this regard, we agree with the submission of counsel for the DOD in her closing written argument where she says the following:

‘It would be unjustifiable to elevate this unauthorised probing by an unnamed official in the German police to “evidence”—it would be tantamount to elevating mere untested opinion by an unidentified author with an apparent ignorance of the issues to a status which the German prosecuting authority itself has roundly rejected.’

[676] Apparently the investigations that led to compilation of these reports were triggered by, and were the side effects of, the tax evasion charges that the German prosecuting authorities had been investigating against Ferrostaal. In withdrawing the tax evasion charges, the public prosecutor at Bochum expressed his disapproval of the concomitant investigations relating to the bribes allegedly paid by Ferrostaal to foreign officials. In a memo dated 1 February 2008 (which is in the possession of the Commission and whose authenticity has been independently confirmed by the attorney then acting for Ferrostaal in the matter, Dr A Dierlamm) the public prosecutor
criticised the absence of any ‘specific or substantial’ evidence that would corroborate the assumptions contained in the reports and expressed his disapproval of the use of unconfirmed press reports as a basis for alleging the commission of a criminal offence. This would explain why the investigations were not pursued further.

[677] The public prosecutor recorded that the documents and deeds found in the Ferrostaal AG offices did not permit the inference that funds paid to Mallar Inc were forwarded to foreign officials. He went on to state that it was both impermissible and wrongful to have embarked upon these extensive investigations under the circumstances, and recorded that there was no cause whatsoever that would justify the further contacting of the persons listed in the reports. In a nutshell, the German prosecuting authorities have rejected the reports.

[678] Mr Klaus Wiercimok, a senior in-house attorney employed by Thyssenkrupp, testified that in 2006 the State Prosecutor’s Office in Düsseldorf conducted a number of raids on the offices of TKMS and on the homes of some of his employees. It was subsequently learned that the prosecutor had opened a docket largely on the basis of two sources of information, namely, the media reports and South African critics of the SDPP, apparently including Ms Patricia de Lille and Mr Terry Crawford-Browne. He further said that no evidence was found supporting the allegations made by these South African sources against TKMS, its predecessor companies or its employees, directors or consultants.

[679] Mr Wiercimok further testified that the investigations were closed without charges being preferred against any person or entity.

[680] Mr Wiercimok testified that an allegation was made that the GFC had paid the then Chief of Acquisition of the DOD an amount of $3 million to influence the award of the patrol corvettes contracts. He further said that this allegation was not true; that the GFC neither made nor authorised any such payment. The State prosecutor’s office in Düsseldorf investigated the allegations made against GFC and no evidence was found to support them.
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He further denied that his company had made any payments or promised Mr Shaik any payment to influence the procurement process relating to any equipment acquired in terms of the SDPP process. Nor has he ever seen the ‘Teutonic memorandum’ annexed to Dr Young’s papers (RMY51).

[681] In our view, no reliance can be placed on these reports which were in draft form and whose source and authenticity are questionable. They contain opinion and speculation on various matters, unconfirmed allegations and no facts, as can be seen from the quotation in paragraph 674.

[682] Most importantly, they have been rejected by the German prosecuting authorities as forming no legitimate ground for even probing the individuals whose names appear therein. In any event, Dr Young was constrained to concede under cross-examination that the so-called German reports do not constitute evidence of conduct amounting to fraud, bribery or corruption on the part of any person. His strong reliance on these reports was watered down to saying that he brought them to the attention of the Commission for it to investigate the allegations contained therein, something that we acknowledge he was entitled to, or even duty bound to do, as a concerned citizen. He submitted, however, that we should recommend that they be referred to a specialised investigative body for further probing as he believed that they warrant closer investigation with a view to possible prosecution of some of the people whose names appear therein. We will revert to this submission when discussing possible recommendations.

[683] The one other document handed in by Dr Young which warrants consideration is the so-called ‘Teutonic memorandum’ (annexure RMY51). This is a copy of a memorandum purporting to have been written by Mr C Hoenings, formerly of Ferrostaal. It was apparently sent to Dr Young by an anonymous person from an anonymous fax purportedly in Germany. It purports to be a recordal of a conversation between Mr Hoenings and Mr Chippy Shaik, confirming the existence of a verbal agreement for payment by Ferrostaal to Mr Shaik of an amount of US$3 million, allegedly for Shaik’s
work in ensuring that the GFC won the contract for the supply of the frigates to the SA Navy.

[684] Apart from the fact that its authenticity could not be established, the essence of the allegations contained therein—payment of a bribe—have been denied by Mr Wiercimok who testified on behalf of TKMS. Mr Shaik has also denied ever soliciting any bribe from the GFS or anybody for that matter. Accordingly, not only is there no corroboration for its contents but, most importantly, its pertinent averments have been contradicted by direct oral evidence. No evidential value can be placed on it.

[685] Various critics, including Mrs de Lille, Mr Crawford-Browne, Dr Woods, Mrs Taljaard and Dr Young, testified before the Commission and could not provide any credible evidence to substantiate any allegation of fraud or corruption against any person or entity. They have been disseminating baseless hearsay, which they could not substantiate during the Commission’s hearings.

[686] As indicated earlier, GFC was selected as the preferred bidder solely on the basis of its superior bid.

x. Miscellaneous observations

[687] It is worth noting that investigations relating to the SDPP that were carried out in other jurisdictions, such as the United Kingdom, France, Germany, Sweden and Switzerland, have been closed and no criminal charges were preferred against any person or entity. The investigations were closed several years ago.

[688] We are of the view that another investigation into the SDPP acquisition will not serve any purpose.

[689] The authors of the several books dealing with the SDPP were given an opportunity to appear before the Commission. Some of them appeared and testified. One appeared but refused to testify and two refused to appear before the Commission. Those who did testify could not provide any
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[690] During her testimony, Mrs Raenette Taljaard, a Senior Lecturer in the Department of Political Science at the University of Cape Town, was referred to various passages in the book she has authored and requested to explain certain of the allegations contained therein. She indicated that she had not included the relevant passages in her written statement because those were merely her opinions. She went on to say that expressing an opinion in a book and giving evidence under oath were two different propositions. She had clearly stated in her statement that a former naval officer who had been involved in the SDPP was now working for one of the successful bidders contrary to the agreement between the Government and the successful bidders. When documents were shown to her indicating that the officer concerned had obtained the requisite permission to take up the employment, she was candid enough to recognise her mistake and duly withdrew the allegations she had levelled against the officer.

[691] Another author, Mr Terry Crawford-Browne, did not deal in his evidence with the various allegations of criminal conduct contained in his two books. He was found to be an unreliable witness. Various serious allegations he had made were proved to be incorrect.

[692] Mr Hennie van Vuuren was subpoenaed to appear before the Commission and give evidence. He appeared but refused to take an oath and testify. Amongst others, he raised, *inter alia*, the flimsy excuse that the Commission was not prepared to allow him to use the Debevoise & Plimpton Report. Apparently, this was based on advice from his counsel, who queried the Commission’s ruling that the Debevoise & Plimpton Report enjoyed the protection of privilege and was therefore inadmissible. We subsequently gave full reasons for the impugned ruling. As stated earlier, Ferrostaal refused to waive their privilege over the report.

[693] Messrs Holden and Feinstein associated themselves with the attitude of Mr van Vuuren. Their legal representative informed the Commission that
they were in the United Kingdom and beyond the jurisdiction of the Commission, that they would not appear before the Commission, and that the Commission would not be in a position to properly serve subpoenas on them.

[694] Colonel du Plooy testified that when they were investigating the SDPP, they went to London and met with Mr Feinstein. Mr Feinstein refused to give them affidavits dealing with the SDPP. He refused to co-operate with the police officials.

[695] From the above facts, it is, in our view, fair to draw an inference that the failure of Messrs van Vuuren, Holden and Feinstein to testify before the Commission stems from the fact that they have no information which could have assisted the Commission. They did not want the allegations they made against various people to be tested under cross-examination.

[696] As will be shown later, various serious allegations made by them are incorrect and without any factual basis.

[697] It should be mentioned that there were several witnesses, including former members of the Cabinet and persons from overseas, who voluntarily appeared and testified before the Commission.

[698] In our view, the process followed in the SDPP from its inception up to Cabinet approval of the preferred bidders, was a fair and rational process. The decisions of the Cabinet were strategic in nature and policy-laden.

[699] One of the functions of the National Executive as set out in section 85 of the Constitution is to develop and implement national policy, including defence policy. Any suggestion that the Cabinet’s decision to proceed with the SDPP was irrational is misplaced.

xi. Policy Directive 4/147 and related policies

[700] Some of the witnesses testified that DOD Policy Directive 4/147 introduced procedures that were not consistent with Armscor procedures and compromised the legitimacy of the entire acquisition process of the
SDPP. The witnesses further alleged that Policy Directive 4/147 was never approved. In fact, Mr Steyn made the startling allegation that Directive 4/147 was not applicable to the SDPP.

[701] Captain J de la Rey Jordaan testified that prior to 1994, South Africa’s ability to acquire arms was restricted by the arms embargo. The SADF dealt with the projects on an individual basis. After 1994, various foreign armaments manufacturers offered their respective products to South Africa, following which the Strategic Defence Procurement Package concept emerged.

[702] At the time it was felt that the international defence equipment offers fell outside the scope of the existing acquisition policy and a specific policy for such international defence equipment offers had to be established.

[703] Captain Jordaan testified that at the time when the SDPP was considered, MODAC 1 and 2 were applicable together with other policies. He further said that VB1000 that applied prior to the launch of the SDPP was insufficient insofar as it did not address the acquisition that was envisaged in the SDPP. The policy had to be augmented in order to deal specifically with the acquisitions foreseen under the SDPP.

[704] In order to deal with international defence equipment offers in the Ministry of Defence, DOD Policy Directive 4/147 was approved by the Council of Defence on 8 August 1997. The COD was chaired by the Minister of Defence. The Policy Directive was signed by both General Meiring, Chief of the SANDF, and Mr PD Steyn, the Secretary for Defence. The Policy Directive dealt with the process to be followed by the DOD and Armscor in dealing with international or government-to-government defence equipment offers.

[705] Mr David Griesel testified that Policy Directive 4/147 basically authorised some of the deviations from Armscor’s standard process where this directive introduced a three-tier evaluation and a three-tiered value system for the SDPP. Policy Directive 4/147 introduced the ‘third order’
value system that had to be developed for each equipment type by the project teams. First and second order value systems were also introduced.

[706] Mr Vermeulen testified that Policy Directive 4/147 introduced three layers of adjudicating teams. The three tiers were the upper tier (Cabinet level), the middle tier (SOFCOM level) and the lower level (IPT level). The Cabinet level was where strategic considerations were taken into account, while at SOFCOM level the consolidation of the results of the various teams took place. At the lowest tier, the technical teams were concerned with technical evaluations. At the same level, other teams were looking at the finances and industrial participation.

[707] The Policy Directive was utilised by all officials—including the Minister of Defence—during the SDPP acquisition process. No person queried its validity. Except for Mr Steyn, all the State officials who testified accepted that Policy Directive 4/147 was specifically designed for the SDPP and was applied throughout. No suggestion was made that Policy Directive 4/147 was not valid.

[708] From the above facts, it can be concluded or inferred that Policy Directive 4/147 was valid and that the use thereof did not compromise the legality of the SDPP acquisition process.

[709] In terms of the MODAC Report (page 40), the Minister of Defence had the final authority over all acquisition matters and had the right to refer decisions on acquisition programmes to the Cabinet.

[710] It is common cause that during the SDPP process the evaluation results were presented to the AASB, the AAC and the IMC (of which the Minister of Defence was a member). The IMC deliberated and thereafter made recommendations to the Cabinet, which took the final decision.

[711] Any suggestion that Ministerial Directive MD 4/147 introduced an undesirable deviation from Armscor’s procedures is unfounded and not supported by evidence led before the Commission.
All the structures envisaged by MODAC participated in the SDPP process. None of the said structures was overlooked or rendered redundant.

In the SDPP process, the usual Armscor tender procedures and controls were replaced by broader and more comprehensive interdepartmental tender evaluation and management arrangements. The final decision was taken by the Cabinet.

The IMC provided executive oversight over the SDPP process. The Cabinet did not require the approval of parliament to proceed with the SDPP. Parliament had an oversight role over all actions of the Cabinet and it carried out its oversight role through various established committees, for example, SCOPA.

Former President Mbeki testified that it was not necessary for the Cabinet to secure Parliament’s approval prior to authorising the signing of the contracts. Parliament was informed about the funding of any project through the national budget that must be approved by Parliament.

Cabinet’s oversight of the acquisition process was enhanced.

Criticism of the rationale of the SDPP

The most strident criticism of the rationale of the SDPP is contained in a 243-page document submitted to the Commission in 2012 by Messrs Andrew Feinstein and Paul Holden. This was in response to the Commission’s invitation to interested parties to make submissions in respect of any of the Commission’s terms of reference. In this document (‘the Joint Submission’), Messrs Feinstein and Holden detailed various instances of alleged corruption, bribes and irregularities in the award of the primary contracts, as well as some secondary contracts awarded in relation to the combat suite for the corvette programme.

These two gentlemen subsequently refused to appear before the Commission to testify and substantiate their allegations. The result is that their allegations could not be interrogated in order to assess their veracity, and they therefore remain allegations. Nonetheless, the Joint Submission is
part of the material before the Commission and we have to deal with the contents thereof. It is important to do so in order to determine whether the allegations warrant any further investigation.

[719] Most of the allegations of corruption, bribes and irregularities in the SDPP contained in the Joint Submission have also been made by Dr Richard Young, in particular, and to a lesser extent by Mr Terry Crawford-Browne and other critic witnesses who testified before the Commission. Interestingly, Messrs Feinstein and Holden make it clear in their submission that some of the allegations have been extracted from the inadmissible Debevoise & Plimpton report. The bulk of those allegations have been traversed and refuted by Rear Admiral Kamerman and other State officials who participated in the SDPP programmes. We have accordingly dealt therewith elsewhere in the body of this report, and it becomes unnecessary to comment further thereon in this chapter. In this section we focus on the averments relating to the rationale for the acquisition.

[720] The Joint Submission challenges the rationale on six main grounds. We comment hereunder on each of the grounds.

[721] First, the authors cite the White Paper on Defence and the Defence Review and point out that South Africa faced no external military threat in the short and medium term and that the real threat to the security of the country was posed by the problems of poverty and unemployment. They contend that it was irrational to expend huge sums of money on the acquisition of military equipment in the face of the pressing internal socio-economic needs, and considering the shaky state of the country’s economy at the time.

[722] It is true that the White Paper acknowledged that the country faced no foreseeable external military threat and that the real security threat was posed by the problems of poverty, unemployment, inequality, crime and violence, and further that the Reconstruction and Development Programme (the RDP) should be prioritised in order to address these problems. However, the document also recognised the need for the country to have a
credible defence force that would be able to fulfil its constitutional mandate ‘to defend and protect the country, its territorial integrity and its people’.

[723] The White Paper noted that the challenge was how to rationalise the SANDF and contain military spending without undermining the core defence capability in the short or long term. This Commission has heard extensive, credible evidence to the effect that the equipment types acquired under the SDPP were necessary replacements of ageing and obsolete equipment. The suggestion that spending money on the SDPP would have resulted in the Government neglecting the pressing socio-economic needs of the country, is not supported by the evidence led before the Commission.

[724] Secondly, it is alleged that there was considerable public opposition to the acquisition. Thus, the decision to proceed with it flew in the face of popular indignation and was therefore undemocratic. In this regard, the authors refer to the programme that was initiated by the DOD and Armscor in 1993 to acquire four corvettes. They allege that this programme was abandoned in 1995 due to popular opposition.

[725] The latter claim stems from a lack of knowledge of the true facts and is patently false. The undisputed evidence on record is that when the Cabinet was approached for final approval, it directed that the corvette programme be suspended to await the outcome of the White Paper and Defence Review processes.

[726] Another false allegation relating to this aspect, made by the other critics, is that the earlier programme was stopped in order to give the German companies an opportunity to enter the bidding process. The true facts are that the German companies had refused to participate in the programme when it started because at that time South Africa was still subject to the United Nations-imposed arms embargo. As soon as the arms embargo was lifted, the German companies requested to be allowed to join the competition, albeit late, and the request was granted. The specific German company, Blohm+Voss, was not shortlisted, though.
[727] Contrary to the assertion of popular indignation, the SDPP followed upon the processes of the White Paper and the Defence Review, which involved participation by a broad cross-section of the South African population, and some kind of national consensus was reached as a result.

[728] The third ground on which the rationale of the SDPP is challenged, is that the imperatives of cost constraints were ignored. The following allegation is made at page 32 of the Joint Submission:

‘It should also be noted that many of the key decisions made during the Arms Deal selection process directly contradicted the imperative to be cognisant of constraints on defence spending in the context of severe socio-economic needs. As we will show in detail in Chapter 3 in every contract bar the Light Utility Helicopter contract the most expensive offer was (irregularly) selected. We estimate that this increased the cost of the Arms Deal by at least 50% if not more.’

[729] It is simply not correct that all but one of the equipment types selected were the most expensive on offer. In fact, the opposite is the case. The German GSC 209 1400 MOD was R800m cheaper than its closest competitor and was best value for money.

[730] The Agusta A109 was the cheapest on offer in its category and the Gripen was the cheapest on offer in its category. Cost constraints played a major role in the various stages of the programmes. We have already catalogued in this report the many instances where cost considerations played a very important role. For example, cost constraints compelled the decision to abandon the future medium fighters (FMFs) in favour of the advanced light fighter aircraft (ALFA).

[731] The undisputed evidence is that the principle that defence spending is ‘needs-driven and cost-constrained’ was generally applied in the whole process.
The fourth ground of attack is that the SDPP was unaffordable. The authors cite, *inter alia*, the Affordability Report that was presented to the IMC in August 1999 and which provided a detailed assessment of the impact that the SDPP would have on the economy, pinpointing the potential risks inherent in the programme. They say that the Affordability Report made it clear to the IMC that the economic impact of the procurement would be broadly negative even in the best scenario case where the offsets flowing from the purchase of the equipment were fulfilled and the impact of the associated interest rates was low. They contend that it was irrational in the circumstances to have proceeded with the acquisition.

The one cardinal mistake that the authors and other detractors of the SDPP make, is to misconstrue the purpose of the Affordability Report. The object of the Affordability Report was to provide the Cabinet with a full appraisal of the financial and economic implications of the SDPP for the country, including the associated risks. The report was meant to put before the Cabinet information that would enable it to make an informed decision whether or not to go ahead with the acquisition.

This issue was fully dealt with by Mr Trevor Manuel in his evidence before the Commission. He made it clear that by commissioning an affordability study, the Cabinet had wanted the experts to provide it with a full appraisal of the risks. He put the matter as follows:

‘... you ask the mathematicians who are the medallists to synthesise a set of circumstances and frequently you ask what the worst possible risks are and in this discussion you run from exchange risks, affordability risks, to inflation risks, all kinds of risks and you ask them what the worst possible things are that can happen.’

He went on to say:

‘We ask the experts to use the mathematics that they know to help us understand what the risks are, because the task of
management is not to avoid taking decisions but to avoid unnecessary risks in the circumstances.’

[736] Mr Manuel also dispelled the notion that expenditure on the SDPP would have had the effect of diverting funds from the country’s pressing socio-economic needs. In this regard, he referred to the evidence of Mr Donaldson, a Treasury expert who was involved in the affordability study and who gave extensive evidence on the Affordability Report. Mr Donaldson disclosed that in the period 2002/2003, the expenditure on the SDPP had been at its peak and amounted to R6,342 billion. In the same period R14,966 billion was allocated to the Department of Social Security and Welfare alone, which far exceeded the SDPP expenditure. The consolidated government expenditure for that year also showed that R13,825 billion was allocated to the Departments of Transport and Communications. It further showed that all the other departments were allocated billions of rand.

[737] Mr Manuel also made the valid point that the issue of affordability was in fact distinct from the decision to acquire the equipment and that once the principal decision was made, it was incumbent upon his Department to find ways of funding the acquisition. This shows that affordability is, strictly speaking, not a valid ground for challenging the rationale of the acquisition. Nonetheless, the evidence is clear that the affordability of the procurement is an issue that was fully considered. It is apposite at this stage to quote the JIT report: ‘Affordability is ultimately a question of political choice.’

[738] It was the Cabinet’s call to determine whether the acquisition would be affordable, and it decided on the matter having considered all the relevant information placed before it. The Cabinet was also confident, as Mr Mbeki had said, that it would be able to implement measures to obviate or minimise the risks.

[739] Furthermore, the Joint Submission contends that Parliamentary approval for the SDPP was not obtained. This contention is based on the wording of paragraph 8 of Chapter 8 of the Defence Review:
‘The approval of a force design by the Parliamentary Defence Committee, Cabinet or Parliament does not constitute blanket approval for all implied capital projects or an immutable contract in terms of the exact numbers and types of equipment. At best it constitutes approval in principle for the maintenance of the specified capabilities at an appropriate level.’

[740] This contention was taken up with both Mr Mbeki and Mr Manuel under cross-examination. Mr Mbeki’s evidence was that acquisition is a matter that falls within the responsibility of the Executive in line with the doctrine of separation of powers that is enshrined in the Constitution. It is not within the competence of Parliament. Parliament’s role is that of oversight. He stated that the Government submits to Parliament for approval on a yearly basis a budget which covers the expenditure of all government departments. The expenditure on the SDPP formed part of the budget of the DOD that was presented to Parliament annually in the period during which the programme was in force. Mr Mbeki further pointed out that the Government’s defence policy was contained in the White Paper and the Defence Review, both of which were the products of an extensive public participation process that was ultimately approved by Parliament. Mr Mbeki’s evidence finds full support in the evidence of Mr Trevor Manuel.

[741] In our view, paragraph 74 of Chapter 8 of the Defence Review appears to support the Government’s stance on the matter:

‘The chosen force design option will become the object of implementation planning for the next decade or longer. However, the realisation of this force design will be influenced by periodic revisions of the Defence Review and subsequent planning will reflect the continuously changing strategic environment and prevailing circumstances. The result is that the exact details regarding the type and quantities of main equipment will inevitably deviate from the vision. Such deviations will be subject to parliamentary oversight and stipulations of the acquisition process.’
This passage clearly envisages that the force design may over time have to be revised or amended depending on the circumstances, and such changes will of necessity result in a change in the types and quantities of the armaments and equipment contemplated in the Defence Review. If that happens, parliamentary approval will have to be obtained before acquisition can take place. In other words, if the approved policy framework is changed, parliamentary endorsement would be required. It would not make sense that each time the Government acquires any of the equipment specified in the Defence Review, it must first seek parliamentary approval.

In terms of section 85(1) and (2) of the Constitution, the executive authority of the Republic vests in the President, who exercises such authority together with members of the Cabinet. The acquisition of military equipment is a matter that falls within the responsibility of the Minister of Defence, and therefore, the Cabinet, in line with the provisions of section 85(2)(e) of the Constitution.

Section 55(2) of the Constitution provides as follows:

‘(2) The National Assembly must provide for mechanisms –
(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
(b) to maintain oversight of –
(i) the exercise of national executive authority, including the implementation of legislation; and
(ii) any organ of state.’

Mr Andrew Donaldson, who was the Deputy Director-General and Head of the Budget Office in the National Treasury, testified that the costs of the SDPP procurement were approved by Parliament annually through its appropriation of the funds for the Defence vote. He further said that, although the appropriation is for a single financial year, the submission of the Main Appropriation Bill to Parliament each year is accompanied by a detailed three-year expenditure on the SDPP annually. Detailed expenditure
projections for the programme were presented to Parliament annually in the Budget Review and Estimates of National Expenditure.

[746] It is clear that the role of Parliament in the SDPP process was that of oversight, and the evidence confirms that it did exercise the necessary oversight over the process. Consequently, no irregularity was committed in not obtaining prior parliamentary approval for the SDPP.

[747] The sixth ground of attack on the rationale is what the authors refer to as the creation of a network of businesses that positioned themselves to benefit financially from the SDPP. The authors list a number of companies registered around 1995 and in which some prominent individuals associated with the ruling party and Government acquired interests. Some of the companies secured stakes in companies associated with the successful bidders and benefitted financially from the sub-contracts awarded under the SDPP, including those awarded in relation to offset activities. The suggestion is made that the SDPP was pursued in order to benefit the individuals concerned.

[748] This is a far-fetched suggestion that does not warrant further comment. Moreover, it is a half-hearted allegation about which the authors themselves concede they cannot make any definite claim.

xiii. Letter of resignation by evidence leaders

[749] Upon their resignation from the Commission as evidence leaders, Advocate BL Skinner SC and Advocate C Sibiya submitted a detailed confidential letter of resignation, which, for reasons unknown to the Commission, found its way into the public domain. In one of the paragraphs of the letter, they state the following:

‘We have reiterated on several occasions our view that Dr Young is an extremely important witness. Indeed he is the only witness (with the possible exception of Johan du Plooy) who will testify to their knowledge of bribery/corruption in connection with the Strategic Defence Procurement Package.’
The above statement is an unfortunate exaggeration of the importance of Dr Young’s evidence. The evidence revealed that his personal knowledge of the SDPP processes was limited—understandably so—to the award of the subcontracts for the sub-systems of the combat suite for the corvettes, for which his company had tendered. His purported knowledge of corruption relates only to this area. As for the rest, his allegations of bribery and/or corruption are based, just like most of the other critics, on either hearsay or documents that had landed on his desk or computer, the contents of which he had no personal knowledge of.

In another paragraph of the same letter of resignation, the following is stated:

‘For the Commission not to permit documents to be referred to in evidence, such as the Debevoise and Plimpton report, nullifies, in our view, the very purpose for which the Commission was set up.’

The above statement emanates from a misunderstanding of our law. As set out elsewhere in this report, in our law the Debevoise & Plimpton report is a privileged document and is not admissible in evidence. Our ruling on this point during the hearings is supported by various decisions of our Courts.

1.6 WHETHER ANY CONTRACT CONCLUDED PURSUANT TO THE SDPP PROCUREMENT PROCESS IS TAINTED BY ANY FRAUD OR CORRUPTION CAPABLE OF PROOF, SUCH AS TO JUSTIFY ITS CANCELLATION, AND THE RAMIFICATIONS OF SUCH CANCELLATION

Clause 20 of the BAE/Hawk/Gripen Umbrella Agreement, dealing with remedies in case of bribes, stipulates that:

‘20.1 If the Seller or any of its members or representatives in relation to negotiating, entering or execution of the Agreement has:

20.1.1 been convicted of having committed an offence under the Prevention of Corruption Act or analogous legislation in
any relevant jurisdiction by for example having promised, offered or given any kind of illegal advantage or illegal consideration; or

20.1.2 been convicted of fraudulent, illegal or criminal acts in obtaining or in the execution of the Agreement;

Armscor and the South African Government acting together may summarily cancel the Agreement and claim damages resulting from the cancellation or claim an amount equal to 5% of the Total Contract Price as agreed pre-estimated damages.’

[754] Clause 20.1 of the GSC Umbrella Agreement, clause 19.1 of the Corvette Umbrella Agreement and clause 18.1 of the Agusta Umbrella Agreement contain similar provisions. It is common cause that no person or entity has been convicted of an offence under the Prevention of Corruption Act, or of fraud or criminal acts relating to the SDPP procurements or execution thereof.

[755] The likelihood of such a conviction seems remote, given the evidence led before the Commission.

[756] It must be borne in mind that General Meiring and Colonel du Plooy testified that their investigations could not reveal any direct evidence indicating that any corrupt payments were made. There was also no evidence that any government official was unduly influenced to select preferred bidders, and there was no evidence that the decision-makers received any corrupt payments.

[757] There is no doubt that if there was any reason to cancel the contracts, and they were indeed cancelled and the equipment returned to the sellers—if that were possible—it would hamper the DOD in carrying out its constitutional mandate. It would also compromise the ability of the Government to fulfil its international obligations.
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The consequences of the SANDF losing the capabilities acquired under the SDPP would be a national disaster. The security of the country would be compromised severely, certain sectors of the economy would be negatively affected, South Africa would lose scarce and specialised skills, morale of the members of the SANDF would go down and jobs would be lost.

Some of the critics of the SDPP correctly conceded that cancellation of the SDPP contracts was not a viable option.

Rear Admiral Robert Higgs testified that if the SDPP contracts were cancelled and the equipment returned (if it were possible at all), the country would have to seek other equipment to replace the returned equipment. The acquisition process takes a long time—about 10 years—and the costs will probably be much higher. Once lost, to re-establish the capabilities we have would be very costly.

Amongst others, Rear Admiral Phillip Schoultz testified that attempting to cancel the whole or part of the SDPP contracts would be extremely complex, if not impossible.

Finally, besides the practical difficulties which would ensue if the contracts concluded pursuant to the SDPP procurement process were cancelled, there is no evidence which suggests that the contracts concluded pursuant to the SDPP procurement process are tainted by fraud or corruption.

There is no basis to suggest that the contracts should be cancelled.

C. RECOMMENDATIONS

We have in paragraph 664 of this report given reasons why it would serve no purpose to recommend that the allegations of fraud, bribery and corruption in the SDPP be referred to another body for further investigation. The only other aspect of the SDPP procurement process that could be considered for further investigation is the deviations from standard procurement policies and procedures. We have, however, heard evidence
from senior Armscor officials that, following the JIT and Auditor-General investigation reports, the procurement policies and procedures have been overhauled and new policies put in place which now guide procurement of all military equipment. In view hereof, we deem it unnecessary to make any recommendations in this regard.