

53.

One of the places which the delegation went to was Mumbai in India. We stayed at the Taj Mahal Hotel in Mumbai at which the delegation was also accommodated. Moynot urged me to facilitate a meeting between him and the Minister of Justice Penuell Maduna ("Maduna"). With this objective in mind I made contact with Maduna who invited me over to his room. We chatted about the media statement which had been made by Ngcuka and I informed him that Moynot wanted to meet him because his company was directly involved with Shaik and it had been announced that his company would be joined as an accused in the criminal action.

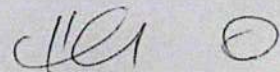
54.

While talking to Maduna, the Minister of Defence Patrick "Terror" Lekota ("Lekota") joined us and participated in the discussions. The reaction of Maduna was that he was not prepared to meet that "rogue" (Moynot). Lekota indicated that he had a JW Black Label whisky which he invited us to participate in.

55.

I interjected at this stage and said that Moynot had two bottles of Blue Label whisky which is, as is well known is, a very expensive whisky. I offered to fetch these from Moynot and both Maduna and Lekota readily acceded thereto.

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56.

I reported to Moynot what had happened and eventually reported back to Maduna and Lekota with a bottle of Blue Label whisky. We subsequently went to the dining room for dinner.

57.

Moynot advised me that evening that he intended to go to the table where the Minister of Justice and Minister of Public Enterprises were seated to greet the Ministers which he did.

STATE VISIT TO PARIS

58.

Moynot instructed me during November 2003 to accompany him to Paris because his boss Jean Paul Perrier who was the chairman of Thales International wished to brief me and if possible he wanted to meet President Mbeki as well, who was there on an official state visit. They apparently knew each other having met previously at Perrier's office (this information had been given to me by Maduna). At the time, Mbeki had been accompanied by deputy minister Essop Pahad and the Ambassador to France Ms Barbara Masakela.



59.

I met Perrier during that visit. He confirmed my appointment to the Fifth Respondent and advised me that I would be rewarded handsomely. He indicated that he wanted to arrange a meeting with President Mbeki. Perrier also told me that I would meet the Chairman of the Sixth Respondent Mr D Ranque at a State banquet to be held that evening, which was to be hosted by the French President Mr F Chirac and was intended to honour President Mbeki on his State visit to France. The banquet was to be held at Elysee Palace, Paris.

60.

I attended the state banquet that evening as a designate of the South African Embassy. Other eminent persons designated by the South African Embassy were also invited.

61.

At the dinner Ranque introduced himself to me, as the Chairman of the Sixth Respondent. Perrier was chairman of Thales International – one below in the hierarchy to Ranque. Ranque said that he wanted to meet me because he was concerned about the charges against Thint (Pty) Ltd.

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62.

Ranque impressed upon me that there were serious implications for the Sixth Respondent if Thint (Pty) Ltd was convicted in a South African Court because he was concerned about the impact of the Foreign Corrupt Practices Act of 1977 USA, if Thint (Pty) Ltd was convicted. Moreover the huge investment which they had made in South Africa running into billions of Rands was at risk.

63.

A further matter of concern was the implications for the Sixth Respondent of the Asset Forfeiture Act and the international implications if action was taken against the Thales Group under the Act. The Foreign Corrupt Practices Act of 1977 (FCPA), was enacted for the purposes of making it unlawful for certain classes of persons and entities to make payment to foreign government officials to assist in obtaining or retaining business. The anti-bribery provisions of the FCPA together with the Prevention and Combatting of Corrupt Activities Act, prohibit the payment of bribe to any state official to procure business. The impact of a conviction locally or internationally for the Thales Group would be serious indeed!

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64.

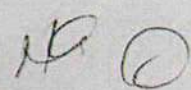
Perrier was also concerned about warrants of arrest that had been issued for Perrier and for Thetard – an employee of the Fifth Respondent through INTERPOL. He told me that there were also allegations of bribes having been paid by these two persons to Shaik and to Zarina Maharaj.

65.

Ranque also advised me that President Chirac was going to approach President Mbeki to facilitate the withdrawal of the charges against the Thint (Pty) Ltd.

66.

The next evening after the banquet, I attended a function at the residence of the South African Ambassador in France. Perrier had apparently made arrangements to meet President Mbeki there. Mbeki confirmed with Perrier that President Chirac had spoken to him about Thint (Pty) Ltd. Mbeki had advised him that he would instruct the Minister of Justice Penuell Maduna, the Treasurer General of the ANC Mr M Msimang and the Secretary General of the ANC Mr K Motlanthe to look into the question of withdrawal of the charges.



WITHDRAWAL OF CHARGES AGAINST THINT (PTY) LTD

67.

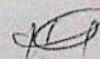

Shaik and eleven others including Thint (Pty) Ltd were summoned to appear at the Durban High Court on the 10th October 2004 in connection with *inter alia* corruption, and other charges. At the time the attorney acting for the Thint / Thales Group was one Mr Robert Driman ("Driman") of attorneys Deneys Reitz.

68.

I discussed the matter with Maduna who suggested that Driman write a letter calling for a meeting between Maduna, Ngcuka and representatives of the Thint / Thales company. The meeting was to be convened to discuss the withdrawal of charges.

69.

Driman acted for the two Thint companies from the commencement of the investigations until May 2004.




70.

Driman was accordingly instructed by Moynot to address a letter to Maduna to formally request a meeting with him knowing that such a meeting had already been facilitated by me.

71.

Pursuant to these instructions, Driman addressed a letter to Maduna on or about 12th March 2004 in which he requested a meeting.

72.

The meeting was held on the 5th April 2004. I was present at the meeting together with Driman, Guerrier (a senior French lawyer in the employ of the Sixth Respondent) and Ngcuka. The purpose of the meeting was to make representations to Maduna in his capacity as Minister of Justice and to Mr B. Ngcuka in his capacity as the NDPP, to bring the prosecutions against Thint (Pty) Ltd in the Shaik matter to an end. The purpose was also to procure the withdrawal of existing warrants of arrests against Thetard and Perrier.

73.

At the meeting amongst other things, Maduna stated that the focus of the prosecution was really on Shaik and the corporate entities that he controlled

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and not on the Thint (Pty) Ltd.

74.

Maduna indicated that the companies in the Thint / Thales companies were regarded by the South African Government as making a useful contribution to the development and improvement of the South African economy and in furthering the Government's policy of Black Economic Empowerment.

75.

Maduna was of the view that the publicity associated with the Shaik trial would impact negatively on the Thint Group and that he was prepared based on his assessment of the matter to recommend to Ngcuka to withdraw the charges and the warrants of arrest in relation to Thetard and Perrier. At the time that the representations were made, Thint (Pty) Ltd had been charged as the eleventh accused in the Schabir Shaik matter.

76.

Ngcuka indicated that he was in agreement with the views expressed by Maduna and the assessment given by Maduna of the matter but he would not be prepared to withdraw the charge and the warrants of arrest unless Thetard provide the state with an affidavit in which he confirmed that he was the author of a document allegedly in his handwriting –the document was subsequently referred to in the Shaik matter as the "encrypted fax".

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77.

In due course Thetard was persuaded to furnish the affidavit requested by Ngcuka. The affidavit was thereafter delivered to Ngcuka's office in April 2004.

78.

The contents of the encrypted fax a copy of which is annexed hereto marked "E" which was signed by Thetard, translated was as follows:-

"Dear Jann:

Following on our interview held on 30/9/1999 with S Shaik in Durban and my conversation held on 10/11/1999 with Mr JP Perrier in Paris I have been able (at last) to meet JZ in Durban on the 11 of this month, during a private interview in the presence of SS.

"I had asked for SS to obtain from JZ a clear confirmation or, at least, an encoded declaration (in a code defined by me) in order to validate the request by SS at the end of September 1999.

"This was done by JZ (in an encoded form). May I remind you of the two main objectives of the 'effort' requested of Thomson CSF are:

-- Thomson CSF's protection during the current investigations (SITRON)

-- JZ's permanent support for the future projects.

-- Amount: 500K ZAR per annum (until the first payment of the dividends by ADS)."

I was informed by Thetard that the code which he had defined were the words "the Eiffel Tower".

79.

I respectfully submit that once again, this incident demonstrates that the Second Respondent was totally compromised when he in his capacity as the First Respondent appointed a commission of enquiry to look into the Arms Deal. I also attach hereto marked "F" the affidavit submitted by Thetard to Ngcuka confirming that he was the author of the encrypted fax.

80.

I should pause to mention that the Thint / Thales Group was represented by Advocate HK Naidu SC in their deliberations with Maduna. Indeed Maduna had requested me to consider engaging Advocate Naidu SC to represent Thales. I passed this information on to Driman.

81.

Naidu had also represented the Second Respondent in answering a series of eighteen questions posed to him by the NPA in relation to the Arms Deal investigation. These questions were raised at a stage prior to Naidu representing the Thint /Thales Companies and it was necessary therefore to obtain clearance from the Second Respondent before he could represent

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the Thint / Thales Group.

82.

Following upon the representations to Maduna and Ngcuka and the agreement concluded with them, the charges against the Fifth Respondent were withdrawn on the first day of the hearing of the Shaik trial on the 10th October 2004.

83.

The Shaik trial was concluded in June 2005.

84.

An application was brought by the State against Shaik and his companies in terms of the Asset Forfeiture Act and all his/its assets were seized including the equity shareholding in Thint (Pty) Ltd. I am aware that a sum of R39.3 million was paid by the Thint Group to acquire these shares from the Curator that had been appointed by the court.



85.

Charges were thereafter reinstated against Thint (Pty) Ltd by the State. In addition charges were brought against the Second Respondent and the Fifth Respondent which was at the time called Thint Holding Southern Africa (Pty) Ltd. Precisely what occurred thereafter is not relevant for purposes of this application. Suffice to say, that lengthy litigation followed in which Thint (Pty) Ltd and the Fifth Respondent applied for a permanent stay of prosecution.

86.

The appeal of Schabir Shaik came before the SCA on the 25th September 2006. The SCA delivered its judgment on the 6th November 2006 and that judgment is reported as *S v. Shaik & Others 2007 (1) SA 142 (SCA)*.

87.

The SCA, in the course of its judgment stated the following concerning the role of the Thomson companies (it is common cause that Thomson is in fact Thales SA and Thomson Africa is Thales Africa).

"[197] Thomson Africa made a payment of R249 925 in terms of the service provider agreement....."

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[203] *The fax, the correspondence, Shaik's false evidence, the service provider agreement and the payment in terms thereof cumulatively, in our view, fully justified the finding of the court below that it had been proved beyond reasonable doubt that what Shaik described as a request for a donation to the Jacob Zuma Education Trust was in fact a request for the payment of a bribe to Zuma. As was found by the court below the service provider agreement was in reality nothing more than a vehicle to give effect to the request recorded in the encrypted fax and to disguise the fact that the amount of R249 925, paid in terms of the service provider agreement, was intended to be a bribe.*

[204] *In terms of the fax Zuma confirmed Shaik's request in a code devised by Thétard and evidently explained to Zuma by Shaik. The appellants submitted in the court below that Shaik could have misrepresented the meaning of the code to Zuma; that there is consequently a reasonable possibility that Zuma did not know of the bribe and did not agree to the bribe; and that in order to succeed the state had to prove that Zuma knew of the request and agreed to accept the bribe. The court below rejected this argument on the ground that Shaik testified that Zuma knew what was being discussed; that Shaik would not have misrepresented the position as there was a risk that his deception would subsequently be revealed; and that it was unlikely that a dishonest broker would arrange a meeting between the two parties that he was deceiving.*

[205] *In their heads of argument the appellants repeated these submissions but during the oral argument before us they made it clear that they were no longer relying on them. In our view they were correct in doing so. It was for the reasons that follow not necessary for the state to prove that Zuma was aware of the request by Shaik and that he agreed to accept the bribe.*

[206] *The State proved that Thomson corruptly offered (the offer having been communicated to Shaik)*

- *to give a benefit*
- *which was not legally due*

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- to a person, being Zuma,
- who had been charged with duties, being the duties set out in s 96(2) of the Constitution
- by virtue of the holding of the office of Deputy President of the RSA
- with the intention to influence him
- to commit or to do an act in relation to such duty.

The State, therefore, proved that Thomson committed an offence in terms of s 1(1)(a)(i) of the CA. The section does not expressly require communication of the offer to the person who is sought to be influenced and there is no reason to read such a requirement into the section. An offer to pay a bribe to an official may for example be made to his secretary and be withdrawn immediately because of the secretary's reaction. In these circumstances an offer, within the natural meaning of the word, was made and there is no reason to think that the intention was to exclude such an offer from the offence of corruption in terms of the section."[emphasis added]

88.

I respectfully hold the view given my understanding and knowledge of the way in which the Thint Group operates that there is no lawful explanation for the payments which were made to the Second Respondent. Indeed I am aware of a string of payments which have been made to the Second Respondent during the period that I was involved with the Fifth Respondent particulars of which are set out hereunder. Moreover payments were made to other parties close to the Second Respondent as would be apparent from the facts set out hereunder.

DUBIOUS PAYMENTS BY THINT / THALES COMPANIES

89.

Mr Perrier was always of the view that due to the political connotations of the Schabir Shaik trial that he would not want any harm to come upon the Second Respondent as it was anticipated by the Thales Group at the time that the Second Respondent would become the next President of the African National Congress at a conference which was to be held in Polokwane during December 2007. The Second Respondent was continuously and regularly funded by the Thales Group for this reason. I was privy to numerous occasions where the Second Respondent was funded in cash and by other means as would be demonstrated herein below.

90.

The strategy adopted by Moynot was that he attempted to establish close relationship with politicians and decision makers in relation to the Arms Deal investigations in order to influence their stance and to ensure that the Thales Group remain unscathed by the impending criminal charges.

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91.

Moynot confirmed with "Gaelic Candour" in evidence, in the State v Schabir Shaik trial that Perrier met with the Second Respondent on the 2nd July 1998 in the course of which the Second Respondent indicated that he was supportive of Mr Shaik and would provide the influence which the Fifth and Sixth Respondents were seeking.

92.

A number of search and seizure warrants were again executed within the Republic in August 2005 against nineteen parties amongst which, were the Second and Fifth Respondents.

93.

The most important document relevant to the search was one which Moynot boasted was not found by the authorities. This is a copy of a bribe agreement, a copy of which is annexed hereto marked "G1 to G3". In terms of annexure "G", the sum of in terms of annexure "E" F1 200 000.00 was to be paid to Shaik from a company called Idmactics into the banking account of Minderley Investments a company controlled by Schaik . Idmactics is a subsidiary of the Sixth Respondent. Payment of this amount was effected by the Sixth Respondent from its BNP Bank account in Paris. The signatory of this account was an employee of the Sixth Respondent who had

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subsequently become a member of a French Political Party bearing the name UMP.

94.

On the 8th February 2007 a request was directed to Federal Department of Justice and Police in Berne Switzerland by one Gerhard Nel of the Scorpions in which access was sought to certain relevant documents required to expose corrupt or irregular activities associated with the grant of certain tenders which the Department of Transport was responsible for including a contract for the supply of driving licences which Mac Maharaj the Minister of Transport was responsible for.

95.

In due course the district attorney's office in Zurich issued an order giving access to the documents requested on certain conditions. The relevant facts are contained in a translated version of the order of the district attorney's office annexed hereto marked "H1 to H9".

96.

As a result of the initiatives taken by Gerhard Nel and the possible implications thereof, Perrier requested Moynot to move to Dubai where Moynot was placed in an apartment rented and paid for by the Thales

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Group. Perrier through the Thales Group also purchased a luxury apartment in Neuilly, Paris for Moynot. These indulgences were given to Moynot because of the role he played in the bribe deal which gave rise to the driver's licence tender being awarded to the Thales Group. It was only after I had intervened, that Perrier permitted Moynot to come back to South Africa.

97.

However it is also relevant, that the costs of Mac Maharaj and Schabir Shaik in opposing the request for assistance made by the Scorpions were paid for by the Thint / Thales Group. The attorneys, instructed in Zurich Gaudenz F Domenig were paid via Advocate P Neyroud SC of Geneva who was regularly employed by the Sixth Respondent in their legal matters. Pivotal to these corrupt arrangements and the persons responsible for their facilitation were Ms C Guerrier and one Mr Thomas the legal affairs director of the Sixth Respondent.

98.

Mr Mac Maharaj was the Minister of Transport in the ANC Government at the time and closely aligned to the Second Respondent. Upon expiry of his term as Minister of Transport he subsequently became the spokesman for

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the First Respondent in the Office of the President. It is instructive to note that Mr Mac Maharaj and his wife were questioned in terms of section 41(6) of the NPA Act, the acting NDPP at the time one Ms Giba declined to furnish a copy of their response to their questioning and informed the Court in opposing an application to compel disclosure, that section 28 record "*would have an impact on the commission of inquiry into the arms deal*"². These words were well chosen as the conduct of the Fifth and Sixth Respondent is littered with actions of a corrupt nature, in which the Second Respondent and his close associates feature prominently.

DONATION TO ANC

99.

Subsequent to the charges being withdrawn in October 2004 and during or about April / May 2006, Perrier instructed Moynot to facilitate a €1 000 000 donation to the African National Congress. This donation was made by cheque from a Dubai Bank, through the account of a "friend" of the Thales Group. The cheque was made payable to a trust registered in South Africa, nominated by Mr Msimang the Treasurer General of the ANC, as the recipient of the donation.

² M and G Centre for Investigative Journalism NPC v National Director of Public Prosecutions and Others (37510/2012) [2016] ZAGPPHC 613 (12 May 2016) @ paragraph 10.



100.

The Treasurer General of the ANC Mr Msimang, in my presence, received the cheque at his home in Pretoria and he advised Moynot to that he would convey his heartfelt thanks to Perrier on the next occasion that he saw him.

COSTS OF LITIGATION IN MAURITIUS

101.

The Sixth Respondent also provided financial assistance in respect of certain ongoing litigation in which the Second Respondent was involved in the Republic and Mauritius.

102.

The Second Respondent requested Moynot in my presence to make representations to the Sixth Respondent to pay for his legal fees in Mauritius. Thereafter permission was granted by Mr Perrier for the payment of the Second Respondents legal fees in Mauritius.

103.

The legal fees were not paid directly by the Sixth Respondent. The arrangement was that the Thales Group would get a "friend" from Mozambique, one Mr Jacinto Veloso who would pay the Second Respondents fees.

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104.

I was given the business card of Mr Veloso which I subsequently gave to Mr Hulley who was the attorney representing the Second Respondent at the time. The Second Respondent's Advocate S Mahomed SC, in the Mauritian case, was paid by Mr Jacinto Veloso from Mozambique, upon the instructions of Moynot. Mr Veloso was known to the Second Respondent.

- 105.

It is noteworthy to mention, that Moynot advised that the Sixth Respondent was also paying Schabir Shaik's legal fees in South Africa. As proof thereof I attach hereto marked "I1 to I3" a letter from Mr Y Vahed to attorney R Parsee (Schaik's Attorney) the contents of which of which speak for itself.

106.

Mr Moynot on behalf of the Thint / Thales Group was given carte blanche to spend any monies which the Second Respondent required in respect of the payment of clothing, accommodation, travel, luxury goods, legal expenses and the like for the Second Respondent . It was also the arrangement that any other work the Second Respondent required done was to be carried

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out at the expense of the Fifth and Sixth Respondent.

107.

When the Second Respondent's luggage did not arrive whilst on a trip to Paris in October 2007 to attend the Rugby World Cup semi-final, Mr Moynot bought an entire new wardrobe for the Second Respondent. The shopping spree was done in my presence and Moynot paid the Second respondent's shopping expenses.

108.

During his stay in Paris, the Second Respondent was accommodated by Moynot in the presidential suite at a local Paris hotel for which Mr Moynot gracefully paid. In this instance the payment was made by Mr Moynot on his credit card. The Second Respondent was however not happy with the Le Meridien Hotel and he requested Moynot to book a better class of a Paris five star hotel being the Concorde Lafayette, which Mr Moynot did.

109.

During April 2007, I accompanied the Second Respondent to Brussels to meet European Union Officials. Moynot attended to payment of the Second Respondent's accommodation at the Sheraton Hotel Brussels and all his

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hotel expenses including VIP chauffer car services. In addition he handed over €25 000 to the Second Respondent in cash.

110.

There were also numerous other travel expenses which were paid for by the Thales Group. I annex hereto marked "J" a statement issued by Flywell travel in support of this allegation. The transaction bearing the date 30th September 2006 and which refers to Nontokoze Luthuli was in fact the tickets purchased by the Fifth Respondent for the Second Respondent and his personal secretary.

111.

The charges against the Thint (Pty) Ltd was withdrawn during or about 10th October 2004. Maduna requested me to convey to Moynot that Maduna wished to be compensated for his services. In September 2005 and in my presence, Moynot paid Maduna €50 000 in cash at the Radisson Hampshire hotel in London.

112.

Shortly after receiving the cash payment, Perrier arrived at the hotel and we all then proceeded to a conference room within the hotel wherein Perrier thanked Maduna for his assistance. Perrier also raised the issue of search warrants that had been reinstated and requested Maduna to assist in that



regard. Perrier also requested Maduna (who was by that time a practising attorney at Bowman Gilfillan) to enquire from the NPA whether it intended charging the two Thint companies together with the Second Respondent.

113.

On Sunday the 12th of August 2012, I was telephonically contacted by the Ms N Luthuli the erstwhile professional assistant of the Second Respondent, who advised me that the First Respondent required me to meet him at 5pm on Monday the 13th of August 2012 at the First Respondent's official residence Mahlamba Ndlopfu, Pretoria. At the meeting with the Second Respondent on the 13th of August 2012 the Second Respondent made the following communication to me:-

"My brother, I have appointed an Arms Deal Commission, to finally put to rest, allegations of impropriety, bribery or corruption in the Defence Review Project. I request you, not to inform the Commission, that the French, were paying me monies, over the years, up to 2009."

I agreed to abide by this request.

114.

I have read the record of the proceedings of the Arms Procurement Commission and in particular the evidence of Ms Christine Guerrier who represented the Sixth Respondent, with a great deal of interest. Her sworn

submission to the Commission and her testimony is of little relevance bearing in mind that Perrier, Moynot and Thetard were the main role players who could testify to matters relevant to the Commission including the corrupt nature of their relationship with the First Respondent. In her testimony to the Fourth Respondent Guerrier testified that I was a consultant engaged by the Fifth Respondent and made a number of allegations both in Evidence in Chief and Cross Examination to which I have not been afforded a right of reply. Guerrier was represented by attorney Driman in these proceedings.

115.

I was amazed on reading the record, that the Commission failed to call all these witnesses, especially bearing in mind that there would have been no difficulty in securing their attendance to the Commission given that Moynot resides at 149 Oudeberg Road, Waterkloof Heights, Pretoria and Perrier's and that Thetard's whereabouts in France and Germany respectively are known. Their evidence would have been of great relevance to the Commission and would have demonstrated the role played by the Second together with the Fifth and Sixth Respondents in matters relevant to the Arms Deal and in the various events which I have described in this affidavit which took place thereafter.



116.

During December 2015 and having reviewed in my mind all the events which I have testified to in this affidavit I felt dutybound to provide this information to the Commission which I thought at the time would assist it in its deliberations. I accordingly sent an email to the Commission indicating my willingness to testify a copy of which is attached hereto marked "K1 to K2". I did not receive a response to the email, I was disappointed because pertinent relevant information had not been placed before the Commission and also because I had not been given the opportunity to refute the allegations which had been made against me. I should point out that I was in Turkey when Ms C Guerrier testified before the Fourth Respondent.

117.

On the 30th of December 2015 the First Respondent received the final Report of the Commission ("the Report"). The Report was released to the public on the 21st of April 2016. I do not attach a copy of the Report but a copy will be made available to the court and to any of the Respondents on request.

118.

I have not made any in-depth study of the Report of the Arms Procurement Commission. I have had sight of an application brought in the North Gauteng High Court (Pretoria) under case number 81368/16 in which one

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Leanne Govindsamy deposed to an affidavit on behalf of the First Applicant, Corruption Watch, in which she summarises the basis upon which the application was brought and the relief sought. The relief included an order for the setting aside of the findings of the Arms Procurement Commission.

119.

I set out hereunder those paragraphs of Govindsamy's affidavit which are relevant for purposes of this application:-

22. *The Commission found that there was nothing wrong with the Arms Deal in its conception, execution or economic impact; and that corruption played no part in the Arms Deal, despite evidence of large payments made to 'consultants' on the part of the defence equipment manufacturers. According to the President: 'The Commission states that not a single iota of evidence was placed before it showing that any of the money received by any of the consultants was paid to any officials involved in the strategic defence procurement package, let alone any of the members of the inter-ministerial committee that oversaw the process or any member of Cabinet that took the final decisions.*
23. *The Report was the culmination of four years of work at a cost of R 137 million to the South African*

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taxpayer (the initial budget was R 40 million), excluding legal costs to which I refer below.

24. The Report runs to 767 pages contained in three volumes. Among its key findings are the following:

24.1. [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.'

24.2. [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.'

24.3. [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.'

24.4. [663] 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.

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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.'

- 24.5. *'[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.'*
- 24.6. *'[688] We are of the view that another investigation into the SDPP acquisition will not serve any purpose.'*
- 24.7. *'[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.'*
- 24.8. *'[731] The undisputed evidence is that the principle that defence spending is 'needs-driven and cost-constrained' was generally applied in the whole process.'*



24.9. *'[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.'*

24.10. *'[762] 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.'*

24.11. *'[763] There is no basis to suggest that the contracts should be cancelled.'*

24.12. *'[764] 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.'*

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25. *The purpose of this application is to have the findings in the report, and the Report itself, reviewed and set aside. The Commission was required by its Terms of Reference to investigate the facts underpinning the six issues identified in the Terms of Reference, and to establish the truth in that regard.*

26. *I respectfully aver that the Commission failed to perform the function which the President assigned to it. It did not investigate the matters which were within its Terms of Reference, with an open and enquiring mind. It failed to carry out its statutory function and duty. This is demonstrated by the following features of what it did and did not do:*

26.1. *First, the Commission did not investigate certain matters which were within its terms of reference and were highly material to the enquiry it was required to undertake.*

26.2. *Second, the Commission did not call as witnesses to give oral evidence, persons who needed to be questioned if the truth was to be established.*

26.3. *Third, where it did call persons involved in the procurement as witnesses, it did not test the veracity of their evidence.*

26.4. *Fourth, it declined to admit into evidence material that was highly relevant to its enquiry and that was made available to it.*

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26.5. *Fifth, it failed to gather relevant material and to investigate properly the material which was placed before it or made available to it.*

26.6. *Sixth, it refused to allow witnesses who were critical of the arms procurement process to testify about documents that they had not written, or events to which they were not personally witness.*

26.7. *Seventh, it obstructed and impeded a full ventilation of the issues by persons who were critical of the arms procurement process, by refusing to make relevant documents available to them, and by limiting the questions which they could put to witnesses.*

27. *I submit that the Commission's making of its Report constitutes administrative action. This review is brought in terms of the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'), and under the principle of legality.*

28. *In what follows, I give examples of the failures of the Commission which I have identified above. I submit that both separately and cumulatively, these examples demonstrate that the Commission failed to carry out its mandate, and failed to do what it was required by law to do. Its Report accordingly falls to be set aside.*

Although I cannot claim that I have done the same intensive analysis of the record or the proceedings of the Arms Procurement Commission as was done by Ms Govindsamy I can affirmatively state that upon my broad

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reading of the record I am in respectful agreement with the views expressed by Ms Govindsamy.

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120.

I shall ensure that a copy of these application papers are placed before this Honourable Court and I ask this Honourable Court to take into account these allegations as if they have been specifically incorporated in these papers. I will endeavour to place this matter down for hearing on the same day as the Corruption Watch Application (case number 81368/16) as there is a great deal of commonality between our respective applications.

121.

I respectfully submit that the entire process in relation to the Arms Procurement Commission was tainted right from the beginning. The First Respondent should have disclosed his conflict of interest which effectively would have precluded him from setting up a Commission of Inquiry and appointing Commissioners thereto. The findings of the Commission of Inquiry, therefore cannot stand and fall to be set aside. In any event it is very clear from the Corruption Watch application, that there are huge question marks as to the appropriateness of the manner in which the enquiry was conducted and the investigative processes associated therewith, as well as difficulty in accessing documents and various other matters.

122.

I have endeavoured to place before this Honourable Court as full a picture as possible of relevant events most of which are already in the public

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domain. The cumulative impacts of events described in this affidavit discloses a serious conflict of interest on the part of the First Respondent thereby destroying the credibility of the Commission and its findings.

123.

In the premises I respectfully submit that the findings of the Commission of Enquiry cannot stand and that a basis has been set out for the relief which I seek in the Notice of Motion.

M. Soohul

DEPONENT

CERTIFICATE

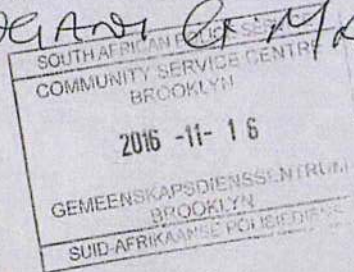
I CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was SIGNED and SWORN TO at *BROOKLYN* BEFORE ME this *16th* day of November 2016 the regulations contained in Government Notices Nos. R1258 of the 21st July, 1972 and R1648 of the 16th August, 1977, as amended, having been complied with.

[Signature]

COMMISSIONER OF OATHS

FULL NAME *HELEN ANNE DE VRIES*

BUSINESS ADDRESS



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The 'generally corrupt' are back
Some years ago, the phrase "generally corrupt relationship" generated heated debates. The SCA has used it again in the John Block judgment, writes Mpumelelo Mkhabela.

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City Press

The National Prosecuting Authority (NPA) has received new evidence to bolster its corruption case against former president Jacob Zuma and French arms company Thales.

An affidavit signed by Thales' South African lawyer, Ajay Sooklal, deposed on July 7, contains further details around the alleged €1m donation Thales paid the ANC in exchange for dropping the charges against it in October 2004, leaving Zuma's former financial adviser Schabir Shaik to face the rap alone.

Sooklal also alleges former justice minister Penuell Maduna asked for "compensation" for his "services" in getting the charges dropped against the company, and was paid €50 000.

Sooklal is expected to testify in the corruption case for which Zuma and Thales will appear in the Pietermaritzburg High Court on Friday. The case was postponed on June 8 to allow the state time to respond to Thales' representations seeking to convince the prosecutors to withdraw charges.

In the affidavit handed to the Hawks' lead investigator, Colonel Johan du Plooy, Sooklal alleges the company made a "thank you" payment to the ANC in April or May 2006 "for the withdrawal of the charges".

"[Thales' international head Jean-Paul] Perrier instructed [Thales South Africa's boss Pierre] Moynot to facilitate a €1 000 000 donation to the African National Congress. This donation was made by cheque from a Dubai Bank, through the account of a 'friend' of the Thales Group," the affidavit states.

"The cheque was made payable to a trust registered in South Africa, nominated by Mr [Mendi] Msimang, the then treasurer-general of the ANC, as the recipient of the donation."

"Msimang, in my presence, received the cheque at his home in Pretoria," Sooklal states.

Sooklal alleges that Maduna received €50 000 from the arms company in a London hotel in 2005, when he was no longer justice minister but a lawyer in private practice.

Sooklal alleges that in 2004, Maduna convinced the then national director of public prosecutions, Bulelani Ngcuka, to drop the charges against Thint – the name by which Thales' South African business used to be known – and withdraw the arrest warrants against two of its bosses.

"Maduna requested me to convey to Moynot that he wished to be compensated for his services, as he was now a practising attorney, in a private practice. In September 2005 and in my presence, Moynot paid Maduna €50 000 in cash at the Radisson Hampshire hotel in London," Sooklal claims.



Former president Jacob Zuma. (Felix Dlangamanda)

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Sooklal alleges that after Maduna received the cash payment, "Perrier arrived at the hotel and we all then proceeded to a conference room within the hotel, where Perrier thanked Maduna for his assistance".

Maduna denied all Sooklal's allegations, saying "as far as I'm concerned, this is yet another instance of a man who says a lot that has no basis in fact".

"The question really is why it took him so long to make such a startling claim," he said.

In the 17-page affidavit, Sooklal also alleges that he "interacted" a "great deal" with Zuma. He has previously alleged that he arranged for Thales to pay for Zuma's air travel, fancy clothes, legal fees and hotels in Europe. Zuma has consistently denied these claims.

In the affidavit, Sooklal also claims that he tried to secure Moynot a meeting with Maduna and then defence minister Mosioua Lekota while former president Thabo Mbeki and a large delegation of ministers were on an official visit to India in 2003.

"Moynot urged me to facilitate a meeting between him and Maduna ... I made contact with Maduna, who invited me over to his room," he said, adding that they discussed the charges Shaik and Thint were facing.

Moynot was concerned about the possibility that the company could be prosecuted in the US in terms of its Foreign Corrupt Practices Act.

Maduna's reaction to Moynot's request to meet with him "was that he was not prepared to meet 'that rogue'", the affidavit reads. But when Sooklal told Maduna and Lekota that Moynot "had two bottles of Blue Label whisky" – better than the Black Label they were enjoying – and offered to fetch them from Moynot, "both ministers ... readily acceded thereto".

"We subsequently went to the dining room for dinner. Moynot advised me that evening that he intended to go to the table where the minister of justice and minister of public enterprises were seated to greet the ministers, which he did," he said.

In March 2004, Sooklal claims, he discussed the arms deal with Maduna, who suggested Thales' lawyers write a letter requesting a meeting, which was "convened to discuss the withdrawal of charges" against the company and the withdrawal of arrest warrants against Perrier and Moynot's predecessor, Alain Thetard.

"Minister Maduna said that the Thint/Thales companies were regarded by the South African government as making a useful contribution to the development and improvement of the South African economy and in furthering the government's policy of black economic empowerment," the affidavit states, adding that Maduna agreed that bad publicity from the Shaik trial would impact negatively on the company and he was prepared to recommend to Ngcuka that the charges and the arrest warrants be withdrawn.

Ngcuka then allegedly agreed, but only on condition that Thetard depose an affidavit confirming that he wrote the so-called encrypted fax – which contained details of Zuma's attempt to secure a bribe from Thales.

Maduna said this week that Sooklal had previously "made many other statements ... including a suggestion that I was even bribed with liquor in a hotel room in Mumbai, India, but has, to my knowledge, never before alluded to any cash payment made to me by any person".

"I have absolutely no knowledge of any money that was allegedly paid, or donation made, to the ANC," he said.

"I further deny that I ever asked anyone, and in particular Mr Sooklal, to help me get any compensation for any services for, in truth, I had rendered no services such as might have entitled me to any compensation whatsoever.


"I was never asked by any person to enquire from any person or official if Thint or any of its companies would be charged together with Mr Jacob Zuma in particular. Feel free to enquire from the NPA if I ever made any enquiries about the relevant matter in particular or, for that matter, any criminal matter under the sun."

Thales group head of legal Christine Guerrier, who is representing the company in court, could not be reached for comment.

Pule Mabe, ANC spokesperson, did not respond to questions.




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