

LAWYERS FOR HUMAN RIGHTS

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15 August 2014

Dear Commissioners and Adv Mdumbe:

RE: EVIDENCE OF FEINSTEIN, HOLDEN & VAN VUUREN

1. The Commission wishes to determine dates on which our clients will give evidence to the Commission. The purpose of this letter is to set out matters which need to be resolved before that can be dealt with. They are:
 - 1.1. The evidence to be given by our clients; and
 - 1.2. Documents required by our clients in order to be able to give evidence.

The evidence to be given by our clients

2. As the Commission knows, our clients were not party to or involved in the process of arms procurement. They have conducted extensive research into this matter, and have published much of the product of their work. This must have been known to the Commission when our clients were issued with subpoenas to give evidence.
3. As the Commission also knows from our clients' submission and draft witness statements, they are not the authors of the documents on which they rely in their research and analysis.
4. The Chairperson has ruled (for example during the evidence of Mr David Maynier on 11 and 12 August 2014) that a witness will not be permitted to rely on a document of which he is not the author.
5. We respectfully disagree with this approach. We submit that where a document is placed before the Commission which on its face appears to contain information which is relevant to the enquiry which the Commission is mandated to undertake, it is the function of the Commission to investigate the matter, including through making enquiry of the apparent author or owner of the original document. A witness ought to be encouraged to make available and refer to all such

evidence of which he or she is aware, in order to enable the Commission to undertake its task. The Commission may in due course, after it has made further inquiry (including by exercising its power of subpoena), make a finding on the weight to be placed on such document.

6. We point out that the original subpoenas issued to our clients stated that they would be given access to documents in the Commission's possession relevant to their testimony. This obviously refers to documents of which our clients are not the authors. It is difficult to understand what the purpose would be of giving our clients access to such documents, if they are prohibited from referring to and relying on them.
7. If the Commission refuses to permit our clients to refer to documents of which they are not the author, or of which the author has not yet been called, then we cannot see what purpose would be served by our clients giving evidence.
8. This is obviously a matter which has to be resolved before any arrangements are made for our clients to give evidence.
9. Would you therefore please advise urgently whether the Commission will allow our clients to rely in their evidence on documents which they have not written, and which are referred to in their joint submission and below.
10. We respectfully request a formal response to this request by 26 August 2014. Our clients' future conduct will be guided by your response.

Documents required by our clients in order to be able to give evidence

11. The subpoenas of 16 January 2013 gave our clients the right to 'inspect documents that the Commission has which may be relevant to your testimony'. On 25 June 2014 we requested you to state whether that undertaking had been withdrawn. As you have not stated that the undertaking has been withdrawn, and having regard to your letter of 10 July 2014, we understand that the undertaking stands.
12. A document which is consistent with the evidence which our clients will give is obviously relevant to their testimony, in that it confirms the correctness of their evidence. A document which contradicts the conclusions which our clients have reached is similarly relevant to whether their evidence should be accepted, and our clients need to be given the opportunity to deal with it.
13. We again ask the Commission to confirm that our clients will be given access to documents in its possession which either confirm or contradict their evidence.
14. This too has to be addressed before our clients give evidence. No purpose would be served by giving them access after they have given their evidence.
15. At our recent meetings with the evidence leaders, we discussed our clients' access to the following specific documents which fall into this category, their declassification to the extent necessary, and confirmation that our clients may rely on them during their evidence:
 - 15.1. The Debevoise & Plimpton Report.
 - 15.2. The documents referred to in the February 2013 joint submission of Mr Feinstein and Mr Holden. We have submitted a list of these documents. We record our understanding that the secretariat is attending to the declassification of those documents that have not

already been declassified, for use by our clients during their evidence.

- 15.3. We understand from the evidence leaders that there may be up to four versions of the Draft Auditor General's report. We understand that the secretariat is verifying this in order that same will be made available to us.
 - 15.4. We have submitted a list of the documents referred to in a draft version of the AG's report, on which our clients rely. We understand that the secretariat will contact the AG's office to obtain those documents, and will seek declassification to the extent necessary.
 - 15.5. All of the transcripts of the hearings before JIT. We understand that these will be made available to us.
 - 15.6. All of the annexures and or documents relied on and referred to in the JIT report on which it based its findings. We understand that these will be made available to us.
 - 15.7. The minutes of the COD meeting of 8 August 1997 (notwithstanding that its cover page may be missing). The evidence leaders have offered to show us their copy, and we request sight of this, and clarity regarding its use during our clients' testimony.
 - 15.8. Correspondence between employees of BAE Systems, consisting of at least 5 encrypted faxes (the date of one being 4 September 1998), implicating Mr Allan McDonald as BAE's 'fixer' in South Africa, that BAE agreed to employ Ms Stella Sigcau's daughter in London and ancillary payments and expenses, that Mr Fana Hlongwana ordered that records of assistance to Ms Sigcau's daughter be destroyed; and the sworn statement submitted by BAE staff member submitted to the Commission. We undertook to provide further detail to enable the secretariat to establish what the Commission has in its possession. These documents have been referred to in a Sunday Times article, which can be viewed here: <http://www.timeslive.co.za/specialreports/stinvestigations/2013/05/30/proof-arms-firm-bribed-minister>
16. In addition to the documents referred to above, our clients still seek access to relevant documents collected by the Hawks. In order to facilitate this, we re-iterate the request in our letter of 23 July 2014, that provision of an index to the documents in the Commission's possession will assist our clients in establishing which of those documents will be relevant to their evidence.
 17. Again, we respectfully request your response by 26 August 2014. We point out in this regard that we have not yet received any response to our letter of 23 July 2014.

Yours sincerely,

LAWYERS FOR HUMAN RIGHTS

Per:



DAVID COTE