

LAWYERS FOR HUMAN RIGHTS

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Mr Justice W Seriti
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Arms Procurement Commission
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28 August 2014

For your urgent attention

Dear Commissioners and Adv Mdumbe:

EVIDENCE OF MR FEINSTEIN, MR HOLDEN & MR VAN VUUREN

1. We refer to our letters dated 23 July and 15 August 2014, and to your response of 27 August 2013.
2. Our clients have requested relevant documents since January 2013, when they delivered their written submission to you, and in numerous letters which were sent to the Commission. These documents are relevant to our clients' evidence. In the subpoenas issued in January 2013, the Commission undertook to make available for inspection, documents in your possession which are relevant to our clients' evidence.
3. From your response to the concerns raised in our letters, it is clear that our clients will not be given access to the documents from Parliament, the Hawks and other organs of state which are in your possession or to which you have access.
4. The Commission has unilaterally repudiated the undertaking which it gave in the subpoenas of January 2013.
5. The Commission continues to refuse to undertake to give our clients access to the documents referred to in other writings listed at paragraphs 15.5 – 15.8 of our letter of 15 August 2014. This undermines our clients' ability to participate meaningfully at the Commission.
6. As you know, our clients did not participate in the negotiation or conclusion or implementation of the contracts. The effect of the previous rulings of the Commission is that our clients will be prevented from giving the evidence which you are aware they wish to give, namely the results of their research into and analysis of documents relating to the Arms Procurement, and other investigations which they have conducted. In your most recent letter the Commission refuses yet again to undertake that our clients will be permitted to do so.

7. The Commission ruled, notably during our attempted cross-examination of Phase I witnesses, that our clients and their legal team may not refer to documents of which our clients are not the author. Applications for the provisional admission of documents for cross-examination were also refused. There was a lack of timely access to witness statements and document bundles. Short timelines were imposed to prepare for cross-examination. We are of the view that cumulatively, these factors severely compromised our clients' ability to cross-examine witnesses.
8. In summary, the following appears from the treatment of other 'critics', and your response to the concerns raised in our letters:
 - 8.1. The Commission refuses to confirm that our clients will be permitted to give evidence based on their research into and analysis of the Arms Procurement process. The Commission's previous rulings indicate the contrary.
 - 8.2. The Commission refuses to give our clients access to documents in its possession or to which it has access, which are relevant to their evidence.
 - 8.3. The Commission refuses to state that our clients will be permitted to refer in their testimony to documents written by other people, such as those listed in paragraphs 15.1 to 15.4 of our letter of 15 August 2014, and used by them in their research and writing.
 - 8.4. There is no basis on which our clients can have any expectation that they will be permitted to give evidence on matters not within their personal knowledge, and rely on documents of which they are not the author. The Commission's rulings thus far in respect of other 'critic' witnesses, and the Commission's rulings thus far in respect of our cross-examination of other witnesses, clearly indicate the contrary. The Commission has not undertaken that it will now reverse its previous approach. (If it did so, procedural fairness would require the recall of a number of witnesses).
9. Our clients have concluded that they will not receive a fair public hearing before the Commission in that:
 - 9.1. They will be unable to give the evidence which they seek to give, justifying the criticism which they have made of the Arms Procurement process;
 - 9.2. They will be unable to refer to documents which are the basis of their testimony, and the conclusions they have reached as a result of their research and analysis; and
 - 9.3. They will be subject to cross-examination without access to the documents necessary to prove their version of events and properly defend themselves against undue attack.
10. In light of this severely prejudicial situation, our clients have elected not to participate any further in the Commission. They will therefore not give evidence before the Commission, and have instructed us to withdraw from any further participation on their behalf in these proceedings.
11. Our clients have not arrived at this decision lightly. Over an extended period, they have interacted in good faith with the Commission, in the hope that a proper investigation of the allegations of irrationality, unlawful conduct and corruption which have dogged the Arms Deal since 1999 would properly be investigated. In light of the above, it is our clients' view that the Commission will not be able to fulfil its mandate in this regard.

12. We would like to thank the Secretariat for their cooperation and assistance during our participation.

Yours sincerely,

LAWYERS FOR HUMAN RIGHTS

Per:

DAVID COTE