



THE DONEN COMMISSION

OF INQUIRY INTO THE OIL FOR FOOD PROGRAMME IN IRAQ
FIRST FLOOR, 1166 BEELDPAK BUILDING, SCHOEMAN STREET, HATFIELD, PRETORIA

TEL: 012 - 430 3510

FAX: 012 - 430 3509

EMAIL: donen@law.co.za

17 May 2006

The Reverend Frank Chikane
Director-General: Office of the President
of the Republic of South Africa
Tuynhuis
CAPE TOWN

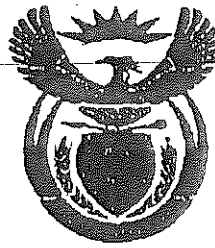
Dear Reverend Chikane

INTERIM REPORT ON PROGRESS OF DONEN COMMISSION PURSUANT TO TERM OF REFERENCE NUMBERED 4

Enclosed herewith please find a report by the Donen Commission addressed to the President.
Could you kindly forward the document to in accordance with our previous discussion.

Yours sincerely

MICHAEL DONEN, SC
CHAIRPERSON



THE DONEN COMMISSION

OF INQUIRY INTO THE OIL FOR FOOD PROGRAMME IN IRAQ

FIRST FLOOR, 1166 BEELDPARK BUILDING, SCHOEMAN STREET, HATFIELD, PRETORIA

TEL: 012 – 430 3510

FAX: 012 – 430 3509

EMAIL: donen@law.co.za

17 May 2006

The Reverend Frank Chikane
Director-General: Office of the President
of the Republic of South Africa
Tuynhuis
CAPE TOWN

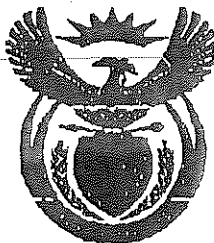
Dear Reverend Chikane

INTERIM REPORT ON PROGRESS OF DONEN COMMISSION PURSUANT TO TERM OF REFERENCE NUMBERED 4

Enclosed herewith please find a report by the Donen Commission addressed to the President.
Could you kindly forward the document to in accordance with our previous discussion.

Yours sincerely

**MICHAEL DONEN, SC
CHAIRPERSON**



THE DONEN COMMISSION

OF INQUIRY INTO THE OIL FOR FOOD PROGRAMME IN IRAQ

FIRST FLOOR, 1166 BEELDPARK BUILDING, SCHOEMAN STREET, HATFIELD, PRETORIA

TEL: 012 – 430 3610

FAX: 012 – 430 3509

EMAIL: donen@law.co.za

18 May 2006

The Honourable Mr T Mbeki
President of the Republic of South Africa
Union Buildings
PRETORIA

INTERIM REPORT ON PROGRESS OF DONEN COMMISSION PURSUANT TO TERM OF REFERENCE NUMBERED 4

1. This is an abridged interim report indicating a pattern of evidence that has emerged by the end of the three month reporting period required by the Commission's term of reference numbered 2. Conclusions are based on oral and documentary hearsay in relation to the activities of only four companies and two individuals identified in the annexure to the terms of reference ("the annexure"). The companies listed are Falcon Trading Group Limited ("Falcon Trading"), which was alleged by the Independent Inquiry Committee ("the IIC") to have paid humanitarian kickbacks, as well as Omni Oil, Montega Trading (Pty) Ltd ("Montega") and Imvume Management (Pty) Ltd ("Imvume"), which are listed in connection with the payment of oil surcharges. The individuals listed are Mr Sandi Majali ("Majali") and Mr Shaker Al Khafaji ("Al Khafaji").

2. At this stage every conclusion relies entirely on hearsay and has not been tested by oral testimony.

FALCON TRADING AND OMNI OIL

3. The Commission has established that Falcon Trading, represented by Rodney Hemphill, was constrained to sign two agreements amending the sale prices of humanitarian goods that Falcon Trading had sold to government departments in Iraq. The reduced price, according to the one signed amendment, represented the so-called "after sales service" originally demanded by the Iraqis. The IIC found that this "after sales service" amounted to a kickback which suppliers paid directly to the regime. The inference to be drawn is that these kickbacks had been agreed upon in side agreements to the official contracts.
4. Falcon Trading appears to have been a front for Al Khafaji, who was an Iraqi American with connections in the Saddam Hussein regime. The front was represented in South Africa by Hemphill at an address in Parkmore, Johannesburg. Hemphill, this address and contact details there, were also used by Al Khafaji in purporting to be a company trading as Omni Oil. It appears that neither Falcon Trading nor Omni Oil were companies that had been registered in South Africa at the time when the Permanent Mission of South Africa to the UN was relied on by these entities to establish their South African nationality with the UN. Montega was a joint venture between Al Khafaji, Hemphill and Majali. Its letterhead reflected Hemphill and Majali as directors and its address as being the aforementioned one at Parkmore, Johannesburg.

MONTEGA

5. Documentation passing between the Executive Director of the State Oil Marketing Organisation of Iraq ("SOMO") and the Oil Ministry on 25 December 2000 makes it clear that the Iraqis contracted to sell 2 million barrels of Basra light crude oil to Montega (represented by Majali who purported to be an adviser to the President of the Republic of South Africa), and furthermore that an oil surcharge amount had to be paid during the month after delivery. This oil surcharge, amounting to approximately US \$464, 632 (i.e US \$ 0.25 per barrel), on the just over 1.85 million barrels lifted on Montega's contract, was never paid. Other documentation suggests that Majali conspired to pay this surcharge to the Iraqis and that he may have attempted to pay an amount of \$60 000 in order to precipitate delivery in terms of another contract which he had concluded, on behalf of Invume, i.e after the Iraqis had become reluctant to deliver because of his/Montega's existing indebtedness.

LEAKS IN THE SANCTIONS REGIME

6. As a matter of South African domestic law the payment of a surcharge or kickback by a company or individual under the Oil for Food Programme ("OFFP") does not attract criminal liability for that individual. This leak in domestic enforcement of sanctions will have to be resolved by the legislature so that South Africa can meet its obligations under Security Council resolutions such as 661 (1990). This resolution bound all states to prevent their nationals and persons within their territory from making any funds or resources available to the government of Iraq.
7. The OFFP was developed in terms of resolution 986 so as to prevent the Iraqi government from receiving financial assistance from member states and their nationals.

A member state of the UN could attract liability under international law if it contributed to the frustration of this purpose. In order to prevent frustration the procedure relied on by the OFFP included a requirement that applications by individuals and companies had to be processed through the diplomatic mission of which they were nationals. For present purposes this was the Permanent Mission of South Africa to the UN ("the Mission"). This process involved an implied warranty that the member state in question would take charge of its own nationals and persons within its territory who participated in the programme. Inadequate assessment of "South African" applicants by the Mission apparently created a leak in the sanctions regime and allowed certain applicants to compromise South Africa.

EXPLOITATION OF LEAKS

8. It appears that the usual international oil traders (such as Glencore International AG which financed Montega and Imvume) and opportunistic business persons (such as Al Khafaji) benefited from the exploitation of leaks.
9. Al Khafaji identified individuals in South Africa, such as Hemphill, who were able to enter the OFFP via the South African Mission. Hemphill created the impression that the true applicants and beneficiaries were South African. Apparently, Hemphill falsely represented to the Mission that both Falcon Trading and Omni Oil were South African companies, when in fact they do not appear to have been companies registered here. Though the Mission expressed concern that humanitarian goods being sold did not emanate from South Africa, it apparently failed to appreciate the identity of the real participants in the OFFP. The Commission will have to address this inadequacy by making recommendations in a final report, if it is permitted to do so.

10. Glencore, an experienced international oil trader based in Switzerland, continued to trade under the OFFP, but at arms length. In South Africa it operated through a wholly owned subsidiary, SOPAK SA, which entered into a number of contradictory contractual relationships with Montega and Imvume. These companies were able to secure allocations from Iraq based upon their South African nationality. The companies entered into direct contracts with SOMO. This exposed them to the payment of surcharges demanded by Iraq and the risk of the variable market prices at different oil destinations. (The official oil contracts they concluded regulated sale price according to the official destination agreed between SOMO and the contractor.). Glencore financed, shipped, insured and determined the ultimate market for the allocations. In varying the official destination of the Montega/SOMO oil contract Glencore not only precipitated breaches of the OFFP procedure (which seriously concerned the "661 Committee" established to control the sanctions regime), but also precipitated a breach of Montega's obligations in its official contract with SOMO and an increase of US \$8 million in the purchase price for which SOMO held Montega liable.

POSSIBLE FRAUD BY MAJALI

11. The documentation suggests that the (reduced) profits made by Montega were directed to offshore accounts by Majali. He then parted ways with Hemphill and Al Khafaji. He sought to sell oil to the Strategic Fuel Fund ("SFF") which was his proposed ultimate purchaser of oil allocations to Imvume. These steps should have increased his own profits and would have reduced the risk of loss precipitated by Glencore's propensity for changing the ultimate destinations of oil allocations. Majali also sought to use Imvume's share of the proceeds of these multiple oil transactions to pay surcharges already owed by Montega. In this way he may have exposed a state funded institution the SFF (and therefore the South African State) to the prejudice of attracting liability under international law for association in the payment of oil surcharges.

12. At this stage the Commission is unaware of whether or not Majali disclosed to the SFF that he had made the written undertakings which appear at pp111 and 113 of the IIC report: namely, that Invume would pay SOMO the amount of oil surcharges owed by Montega from the proposed SOMO/Invume/SOPAK/Glencore/SFF transactions which he was orchestrating. To the extent that he did not do so, he may have perpetrated a fraud on the SFF and/or the State.

THE NEED TO QUESTION WITNESSES

13. Before the Commission can reach any firm conclusion as to whether or not Majali offered to pay surcharges (which the Commission is enjoined to do by paragraph 1(i)(a) of its terms of reference), it should conduct interviews with Majali as well as with other witnesses who are neither implicated by the report of the IIC nor referred to in the annexure. These include Hemphill, the broker for SOPAK/Glencore one Ivor Ichikowitz, George Poole, the attorney who represented Majali and Hemphill in concluding commercial contracts, and Rihaaz Jawodeen, a former employee of the SFF. Save for Hemphill all of these witnesses are willing to assist the Commission. So in fact is Majali.
14. The Secretary-General of the ANC, Mr Kgalema Motlanthe, who is referred to in a letter (in the IIC report) proposing the above-mentioned payment of surcharges in instalments need not testify orally at this stage. Oral information provided by the US Attorney for the Southern District of New York (under terms of strict confidentiality) suggests that Hemphill will say that the Secretary-General was shocked by the Iraqis' request for surcharges and that Hemphill then assisted him to send a letter via the Ambassador of Iraq in South Africa to Mr Tariq Aziz (the Deputy Prime Minister of Iraq). A waiver of surcharge payments was requested in the Secretary-General's letter.

15. Similarly the Director-General of the Department of Minerals and Energy need not testify orally at this stage. During September 2001, in a letter to the Minister and Deputy Minister, he justified an official technical trip to Iraq by Minerals and Energy officials in order to address the question of surcharges, which were being imposed by the Iraqis on oil allocations. Apparently this made it difficult for South Africa BEE groups to break into the market. Majali was a member of this group. At this stage it would be sufficient if the Director-General could provide direct evidence on affidavit to the Commission in this regard.
16. Both of the above witnesses (and Jawodeen) apparently travelled to Iraq with Majali and should be able to provide evidence on affidavit in regard to the attitude of the Iraqis and the position of Majali, insofar as these questions were discussed in their presence. (Jawodeen will be able to testify orally in this regard.). Summonses were issued to these witnesses before information and documentation, which had previously been requested, was forthcoming from the United States Attorney, the Department of Foreign Affairs (i.e the Mission files in respect of the OFFP) and from the Department of Minerals and Energy.

NO PRESENT FINDINGS REGARDING FOUR LISTED COMPANIES AND ONE INDIVIDUAL

17. The Mission documents also enabled the Commission to identify the true actors in the alleged activities of three companies listed in the annexure to the Commission's terms of reference viz. Ape Pumps (Pty) Ltd, Glaxo Wellcome South Africa (SA) (Pty) Ltd and Reyrolle Limited. The Commission was unaware of their identities before it received the documents. At this stage the Commission is unable to comment at all on allegations made by the IIC against the last-mentioned companies. Certain oral information and

documentation was provided to the Commission by the IIC in support of its allegations. This "evidence" could not be analysed in the time available without reference to the persons identified in the Mission's documentation. The Commission intends to interview the persons identified (either under summons or otherwise) and will have to do so before the conclusions required by its terms of reference can be reached.

18. In the case of Moch Services SA (Pty) Ltd ("Moch") the allegations made by the IIC (to the effect that this company paid certain surcharges identified in the Commission's terms of reference), still have to be tested against the oral evidence of Tokyo Sexwale. Sexwale was apparently a director of Moch, together with a British national, one Michael Hacking. The last-mentioned is listed in the annexure and allegedly paid the surcharge amounts into an account at Jordan National Bank. Sexwale is not listed in the annexure. SOMO documentation suggests that he received an allocation. An eyewitness interviewed by the IIC allegedly saw Sexwale visit the offices of SOMO. Sexwale was summonsed to testify before the Commission, but the Commission's rights in terms of the Commissions Act, 8 of 1947, were waived after a court application was brought by Hemphill. In passing it may be apposite to note that Hemphill possibly committed perjury in deposing to the founding affidavit, because he denied any knowledge of the company Falcon Trading Group. Previously he had represented to the Mission (above his signature) that he represented "Falcon Trading Group", a South African company.

PROGRAMME MANIPULATION

19. At this stage it appears that the IIC report, which suggested an extraordinary "exploitation of the symbiotic relationship between a country's closely aligned business and political figures and the government of Iraq" (with reference to Montega and Imvume), was both

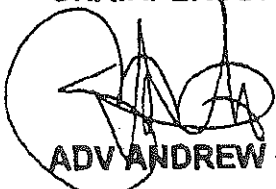
speculative and unfair, to the extent that it suggested foul play on the part of government and political figures in South Africa. It appears from the documentation that the actors behind these companies may in fact have perpetrated a fraud on the government.

20. South Africa, as a sovereign state, was at liberty to take diplomatic measures to help alleviate the human rights crisis which was visited upon the civilian population of Iraq by a decade of sanctions. The resolutions founding the OFFP and procedure established by the UN acknowledged the sovereign right of Iraq to sell oil to South Africa as well as the right of Iraq's civilian population to humanitarian assistance. The hearsay evidence at the Commission's disposal indicates that this situation was exploited by the opportunism of individuals and companies in a manner described above.
21. However, the Commission can neither motivate nor properly assess its *prima facie* views above without further investigation and the interviews which are necessary to translate existing oral and documentary hearsay into more direct evidence.

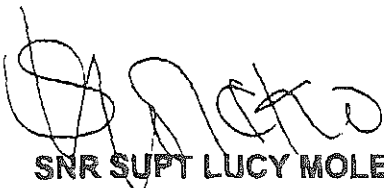
.. DATED AT PRETORIA ON THIS 16TH DAY OF MAY 2006.



MICHAEL DONEN, SC
CHAIRPERSON



ADV ANDREW CHAUKE
MEMBER



SNR SUPT LUCY MOLEKO
MEMBER