

Joint Standing Committee on Defence

27 November 2001

Joint Investigation Report into Strategic Defence Procurement Packages

Chairperson: Mr Mashimbye (ANC)

Relevant Document

[Joint Investigation Report into the Strategic Defence Procurement Packages](#)

Minister's Letter – Appendix A

1. Summary

The Minister of Defence sent a letter to the Committee saying that Department of Defence and Armscor would not come before the Committee at this stage. The DP was unhappy with this and a long debate followed. The DP members were allowed to consult with their leaders. The DP asked the Committee to draft a letter to the Minister informing him that he is acting unconstitutionally. The Committee rejected the request and the DP members walked out. The meeting continued without the DP. Chapter 10 was concluded and inroads were made into Chapter 11. The Committee had a press conference at 15h00 so that it could make a joint statement on the DP walk-out.

2. Minutes

- 2.1 Mr Mashimbye (ANC) informed the Committee that they had not meet the previous day because there were various ANC study groups plus the investigating agencies could not attend this week. The Auditor General was out of the country and the Public Protector could not personally attend. On 4 December 2001 a plenary session will be held with the agencies. All the Committees will attend. The meeting will be organised to extract as much information as possible. Each Committee will be allocated a time slot to ask questions. There will also be a general time slot for everyone to ask questions.
- 2.2 He suggested that after the remaining chapters are completed, the Committee will begin drafting a report because there will be little time after next week's meeting which could go on until 6 December 2001.
- 2.3 Adv Schmidt (DP) replied that he had no problem with drawing up a report but said that it would be difficult without the agencies giving the Committee a proper understanding of the Report. Much of what the Committee's report will contain is determined by what the agencies are going to say. He suggested that the report be drafted after hearing from the agencies.
- 2.4 Mr Mashimbye said that the suggestion was in order and said that the report will be drafted after the plenary.

- 2.5 Mr Ndlovu (IFP) noted that Department of Defence and Armscor had been invited to attend this meeting and wanted to know whether they were coming. Adv Schmidt also asked if the DoD was coming and if not why not.
- 2.6 Mr Mashimbye replied that the Minister of Defence had addressed a letter to himself and Ms Modise which stated that the DoD and Armscor had placed all the information they had before the Joint Investigating Team (JIT) and that the JIT would be the ones who could best clarify any issues. A reason given was that JIT had access to all the information from all the various Departments and from outside government that DoD and Armscor had not seen. The Minister in his letter said that Cabinet has accepted the recommendations and will implement them as soon as possible. The Minister indicated that DoD and Armscor would make themselves available to attend at a latter date when the information around the implementation of the recommendations is available.
- 2.7 Adv Schmidt replied that the Committee must study the Report and write its own report thereafter. **Now the Department - a key figure in the Report - is saying that they cannot inform the Committee. He asked how the Committee could give an opinion on the actions of a department that did not want to come and account to the Committee. He questioned how the Committee could properly account to the public.**
- 2.8 Mr Mohlala (ANC) said that the JIT is in a position to respond to a report prepared by themselves and this is not unreasonable.
- 2.9 Mr Oosthuizen (ANC) said that it was not the time to debate the integrity of the Report. After listening to the letter he understood the reasoning and concurred with Mr Mohlala.
- 2.10 **Mr Ngculu (ANC) added that the correct procedure would be to add to the recommendations.**
- 2.11 Adv Schmidt pointed out that the Department of Trade and Industry had appeared before its relevant Committee. At the beginning, the DoD and Armscor had been put on the programme and the Committee had implicitly agreed that it was necessary for them to come before the Committee. **Now the Minister had decided on behalf of DoD and Armscor that they are not going to attend. To him, this added to the allegations of an alleged cover up.** He asked what was wrong with them coming. The Committee is not accusing them of anything but they need to assist the Committee. He indicated that the DP would have to reconsider its position in participating in the drafting or adopting a committee report. It is not acceptable that the department involved in the process, through the Minister, says that it is not coming.
- 2.12 Mr Ndlovu replied that the body of the report and the findings were made by the agencies. The DoD and Armscor were suppose to clarify the body. If they say that they have done everything then the Committee cannot debate this. They cannot be dragged here by their bootstraps. The Committee could just agree that it was supposed to meet with them but that they did not want to come. The Committee would then just have to make its own findings.
- 2.13 Ms Modise (ANC) said that Adv Schmidt is correct that the Committee had **agreed that it was necessary to have the DoD and Armscor clarify certain issues. The Report had been tabled and unpleasant things have been uncovered.** The Committee must deal with the Report and express an opinion. There was never a condition that the DoD had to come for the Committee to perform its job. She said to Mr Schmidt that, as a Committee, stronger recommendations can be made. The DoD not coming does not mean that the Committee cannot raise issues. She appealed that

the Committee not disintegrate but should rather work together. She said that the DoD non-appearance does not add to the story of a cover up and does not make the process less accountable and transparent. The Report is public and nobody has tried to cover up anything. How the Committee handles the Report is what is at issue. The Committee can raise issues to ensure that the same thing does not happen again.

- 2.14 Adv Schmidt said that to his understanding the report that the Committee must table is a final report. So whatever the Committee says without hearing the Minister, Armscor or DoD cannot be altered at a later date. The DP is not happy with this as all that is being done is that many issues are being flagged without any explanation. He indicated that the DP would leave the meeting and discuss the matter with its leadership. The DP would not participate in a process that purports to be accountable and transparent but is not.
- 2.15 Mr Mashimbye said that there is nothing that obliges the Committee to table a final report. **The report is continuous and the interaction with the Report is continuous.**
- 2.16 Ms Modise said that the Committee had been given three weeks to complete its report. There is no way that all the issues can be covered in this time. **Nothing stops the Committee from tabling a report and stating that there are certain outstanding issues.** The interim report should aim to do this. This is the best that the Committee can do. The outstanding issues can be dealt with next year.
- 2.17 Mr Ndlovu asked for definitions of a final and an ongoing report because he was confused.
- 2.18 Mr Mabeta (UDM) commented that the UDM is familiar with all the issues and believed that at the end of the process there would be an overview of all the flagged issues.
- 2.19 Ms Modise stated that she was trying to clear the air with the DP because it would be unfortunate and sad to go ahead without the main opposition. It was therefore important to discuss this issue. However neither she nor the Committee could stop such a departure.
- 2.20 Adv Schmidt asked for a copy of the Minister's letter as his statements were based on the letter. He would take the letter to his leaders and then return to indicate to the Committee what the DP position is.
- 2.21 The Chair gave the DP time to have their caucus. The meeting was adjourned at 11h00. It would be reconvened at 11h30 to see what the DP position would be. At 11h30 the DP had not yet returned and the Chair said that the Committee would wait until 12h00.
- 2.22 At 12h00 Adv Schmidt, Mr Theron and Mr Jankielsohn returned. Adv Schmidt said that the matter had been discussed and he would present a considered view. He pointed out 10.2.4.5 and 6 state the following:

"10.2.4.5 The entire process pertaining to the abovementioned instances, from soliciting through to adjudication of the relevant tenders can be criticised. The facts and circumstances show that the project teams and senior personnel in the employ of Armscor and DoD played a significant role in these instances of the selection of subcontractors, apparently because of technical and strategic considerations. Complaints were lodged by the competitors against the process followed for the selection of these subcontractors. Another such instance, the selection of the

subcontractors for the supply of the SMS and NDSS, is discussed separately in chapter 11 of this Report.

- 2.23 10.2.4.6 Strategic considerations in some cases also led to Programme Managers having to accept technical values that were lower than the parameters set in the user specifications and which carried higher risks. For example, the Turbomeca engine posed more risks and was more expensive than the engine proposed by another bidder. Armscor and DoD, however, considered it strategically more important for Denel Aviation that Turbomeca should get the contract."
- 2.24 Adv Schmidt said such paragraphs show that DoD and Armscor can explain things that were under their control and that only they can explain. The Minister's argument that DoD and Armscor cannot clarify anything further, holds no water. There are many such examples in the Report where only the DoD and Armscor have the answers.
- 2.25 He continued that Section 56 of the Constitution states that the National Assembly can summon any person to give evidence or provide information. Section 92 of the Constitution states that Cabinet members are accountable to Parliament and must provide Parliament with full and regular reports concerning matters under their control. He said that it was not the prerogative of the executive to decide whether they want to account to Parliament or not.
- 2.26 Adv Schmidt said that he had now shown how DoD and Armscor can explain their own dealings and actions. If DoD and Armscor do not come to the Committee to explain, then it would amount to a disregard of the Constitution or close to that. All that he requests now is that the Committee draft a letter to the Minister informing him of the constitutional obligation to attend.
- 2.27 Mr Ngculu said that the DP is trying to find a way to stall and discredit the process and that the Committee should not fall into that trap. The Committee has a duty and a right to follow up on the issues and where people need to be summoned they will be. Nowhere in the process has the Minister, DoD or Armscor flouted the provisions of the Constitution. The view of the DP is not bona fide.
- 2.28 Mr Ndlovu asked if the DP is willing to work with the Committee on the remaining three chapters and thereafter take a decision on its continued involvement in the process.
- 2.29 Mr Mashimbye said that there is nothing that suggested that the DoD, Armscor or the Minister acted unconstitutionally. He suggested that the three chapters be completed and that the politics be discussed at the next meeting.
- 2.30 Adv Schmidt said that it was not a political question but a constitutional one and he would want an answer to his request first.
- 2.31 Mr Ndlovu said that if a response is given now then the three chapters would not be dealt with now and the Committee would be jumping the gun.
- 2.32 Adv Schmidt replied that they were not jumping the gun. Clearly the DoD and Armscor is not coming. The Committee knows the DP position. If the answer is "yes" then it is fine, if it is "no" that would still be fine. He said that the ANC position to the letter was clear.

- 2.33 Mr Mabeta replied that this was not an ANC meeting. The writing of the letter depends on the Committee. He said that the chapters should be completed and thereafter a decision should be taken whether the Minister should attend.
- 2.34 Mr Mashimbye again suggested that the discussion on the letter be deferred until after the three chapters are concluded.
- 2.35 Mr Jonkielsohn (DP) said that the executive is accountable to the legislature not the other way around. The Minister of Defence says that the arms deal must now be laid to rest and the Minister of Justice says that the agencies are independent which is correct but he does not go further and say that the agencies are accountable to Parliament. The Executive has already pre-judged the Report. He said that he objected to the accusation that the DP was using spoiling tactics. He asked if the letter were not written today, when would the Minister respond and report to Parliament.
- 2.36 Ms Kota said that the Committee was not there to discuss DP press briefings and suggested that the meeting continue.
- 2.37 Adv Schmidt said that if the Committee decides to defer the decision on the letter, the DP will wait for a reply and will have to defer participation until the issue is resolved.
- 2.38 Mr Mashimbye ruled that the letter would not be dealt with now.
- 2.39 Adv Schmidt indicated that the DP would leave. Adv Schmidt, Mr Theron and Mr Jankielsohn then walked out.
- 2.40 Mr Ndlovu said that it was unacceptable that the Committee had debated the process. The process had already been agreed to. Now a party that agreed to the process leaves. He said that as a member of the IFP and a member of the Committee he found this strange. He said that he wanted the Chair to note that in the future if there is a process, it must be followed to the letter.
- 2.41 Mr Mabeta did not think it was procedurally acceptable that the Chairs allowed so much time to discuss this issue and delay the Committee. The meeting had been turned into a political cartoon session. The DP was allowed to raise issues that gave dignity to their departure from the Committee.
- 2.42 Ms Modise replied that the political cartooning was necessary. The DP was given an opportunity to put their case forward. She had tried as much as possible to prevent a break-up of the Committee. The Minister's response was not unconstitutional. The Committee cannot begin to understand everything in the Report within three weeks. It is not the duty of the Committee to start a new investigation. Parliament does not have the resources nor the capacity for this. If people already have opinions before they have read the Report, it is problematic. But the Committee must be lenient to accommodate a party that represents a constituency. The Committee had been accommodating and now it can go back to work and complete the process.
- 2.43 **Chapter 10 – Report on the Selection of Subcontractors and Conflict of Interest**
- 2.44 Mr Ndlovu pointed to 10.2.1.5 and said that it seems as if Armscor had a relationship with the subcontractors. He wanted to flag this because it was contrary to the principle that Armscor did not have any relationship with the subcontractors.

- 2.45 Mr Mohlala said that 10.2.2.1 must be read with 10.2.1.5 to highlight the point Mr Ndlovu made. In sub (a) it is stated that bidders were required to submit a list of the subcontractors they proposed to use to Armscor for approval.
- 2.46 Ms Kota asked that 10.2.4.2 be flagged. It states that Armscor did not expressly impose a requirement of fair, open and competitive procurement process on the main suppliers to ensure that there was fair competition between subcontractors.
- 2.47 Mr Ndlovu and Mabeta raised 10.2.4.5 and more specifically the many references to decisions made because of technical and strategic reasons. They did not know what this meant. They wanted to know the real reasons for decisions because using such vague language is typical of a cover up.
- 2.48 Ms Modise flagged 10.2.4.3 because she was concerned about the main contractors teaming up with local industry.
- 2.49 Mr Mashimbye flagged all the incompatible functions of Mr Shaik in 10.4.1.2.
- 2.50 Mr Ngcula commented that he was worried about the comment from Admiral Simpson Anderson who said that Mr Shaik properly recused himself when there is evidence to the contrary.
- 2.51 10.4.2.3 deals with the % shareholding in various companies and the sale of shares. Ms Modise said that it was necessary for an expert to come and explain the technicalities.
- 2.52 Mr Ndlovu suggested that the Committee not discuss the conflict of interest because this was sub judice. He suggested that the Committee move to the findings and recommendations.
- 2.53 *Afternoon Session*
- 2.54 Mr Ndlovu said that the Committee should make a statement on what had happened in the meeting. Mr Mashimbye said that when an incident occurs in a meeting the Committee must and will pronounce on it.
- 2.55 Mr Mabeta said that he will issue a statement on behalf of his party. He will state that the Committee agreed that issues would be flagged and the findings and recommendations noted. Thereafter if necessary the Department would be called to explain the issues flagged. The initiative of the chairs asking DoD to avail themselves is appreciated and the Ministers response is noted. He said that the UDM differs from the DP and he would advise his party that the UDM's position remains consistent with the agreement.
- 2.56 Mr Mashimbye asked Mr Mohlala to draft a statement so that the Committee could agree to it.
- 2.57 Findings & Recommendations**
- 2.58 Mr Ndlovu wanted to know what was meant in 10.5.3 where it is stated that DoD and Armscor nominated subcontractors. He also wanted to flag 10.5.4 where it is stated that Mt Shaik did not recluse himself properly.

- 2.59 Mr Mabeta flagged 10.5.2 where it is stated that fair and competitive procurement procedures were not followed.
- 2.60 Mr Ngculu flagged 10.5.5. Mr Shaik had no security clearance. The member wanted the DoD to check if this only applied to one individual or if more persons were not cleared.
- 2.61 Ms Kota referring to 10.6.1 said that DoD must review the guidelines contained in the Defence Review. The guidelines relate to the selection and appointment of subcontractors.
- 2.62 Mr Bloem (ANC) said that the DoD must give a time frame for the audit on the security clearance.
- 2.63 Mr Ndlovu asked how many people involved in the process did not have security clearance.
- 2.64 **Chapter 11 – Report on the Allegations / Complaints by C²I² Systems (Pty) Ltd**
- 2.65 Ms Kota referred to 11.1.1.2. Cabinet approved the Defence Review in 1997. 4 Corvettes and 6 helicopters were to be acquired. She said that now the 6 helicopters referred to are not being bought. She said this was a deviation and wanted it flagged. 11.1.1.3 makes mention that the combat suites were not sourced locally. She wanted to flag this because it was agreed that the combat suites would be sourced locally.
- 2.66 Mr Ndlovu picked up on the above point and said that there was a certain policy so why was it changed and who changed it.
- 2.67 Mr Ngcula said that in 11.5.1 (d)&(e) it is stated that no minutes of the Joint Project Team (JPT) can be found. He wanted to know why people dealing with billions of rands cannot keep minutes.
- 2.68 He continued and said that the Project Control Board (PCB) just ratified the decisions of the JPT. The JPT played a crucial role and this needs to be flagged. In 11.5.1.1 (j) the JPT states that it is clear that DoD and Armscor is incorrect in alleging that they had nothing to do with the choice of the subcontractors. The member wanted to flag this as well.
- 2.69 Ms Kota flagged the conflict of interest relating to Mr Shaik's role in the selection of the combat suites because his brother had a direct interest as a director of ADS and Thomson.
- 2.70 Ms Modise commented that Mr Shaik did not disclose all his interests. He just disclosed the facts relating to ADS not Thomson and Nkobi.
- 2.71 Mr Oosthuizen referred to 11.5.1.1 (i) and wanted to know what the parameters of the JPT mandate was. He also referred to 11.5.2.8 & 11.5.2.10 and said that what is raised here seems like insider trading. He wanted to flag this. In sub (8) ADS put in a high bid and a competitive quote was only obtained from C²I², who was not nominated, to reduce the high tender.
- 2.72 Ms Modise said that what was outlined in 11.5.2.8 is despicable. She continued and asked who were the JPT members referred to in 11.5.1.1 (i) and why they played two roles when dealing with the subcontractors.
- 2.73 Mr Ngcula pointed to 11.5.2.5 and 11.5.3.9 and said that no records can be found, tender processes and procurement policies are not followed. This type of deviation is coming up all the time.

- 2.74 Mr Smit agreed with Mr Ngcula and pointed out 11.5.2.4 as another example and said that all such deviations found in the Report should be flagged and the Committee must get answers.
- 2.75 Ms Modise commented that there is a deliberate non record keeping. She said that it was the same as in the old days. No evidence must be left behind. It is probably the same people that use to procure for the old government. It seems that the old state of mind took over during the process.
- 2.76 Mr Ndlovu said that this was a new dispensation but a notion still exists that law breakers will not be caught.
- 2.77 Mr Ntuli (ANC) pointed out that in 11.5.3.6 it states that GFC administered the tendering process of subcontractors. He wanted to know how the government ensures that the previously disadvantaged are considered since a foreign company administers the process. He added that he did not agree with 11.5.3.10 where witnesses state that the Navy and Armscor do not have the experience of a major acquisition process. He said this statement was incompatible with the levels of skill in these institutions.
- 2.78 11.5.3.15 states that the Navy and Armscor had a lack of effective control over the tendering process. It goes further and states that that the acquisition of the combat suite was conducted outside the Armscor's and the Navy's normal tender provisions. It is unclear who authorized this. Mr Ngcula said this was a serious statement that needed to be flagged.
- 2.79 Mr Oosthuizen commented that all the deviations in the appointment of subcontractors had to be flagged because this was a golden thread running throughout the Report.
- 2.80 The media arrived for the press conference and the chair adjourned the meeting.

Appendix A

Minister's Letter on Appearance of ARMSCOR and Department of Defence

Ministry of Defence

South Africa

26 November 2001

The Chairpersons
Joint Standing and Portfolio Committees on Defence

Dear Mr Mashimbye and Ms Modise

APPEARANCE OF ARMSCOR AND DoD BEFORE DEFENCE COMMITTEES

Thank you for your letter of 22 November.

In relation to the Joint Investigation Report into the Defence Procurement Packages, the Department of Defence put all the evidence it had before the investigating agencies. The agencies also heard evidence from other Government Department as well as from individuals outside of government. On that basis, the agencies made their findings. The agencies had access to information and documentation from the other Department and individuals the Department of Defence is not privy to. We are therefore not in a position to clarify the report since we have not seen all the evidence. It is therefore our humble submission that clarification should be sought from the agencies who drew up the report.

With regard to the issues of conflict of interest, we draw attention to the fact that the Director of Public Prosecutions has already acted against certain individuals but has also informed the country that he is pursuing further investigations with regard to certain individuals. We are therefore unable to shed light on this area of investigation and would appeal that the matter awaits the finalisation of the investigation of the Director of Public Prosecutions.

In relation to the recommendations made by the agencies Cabinet has informed the country that it has accepted recommendations in full and will proceed to implement them as soon as possible. At present, no plan of implementation has been draw up. The Ministry, Department and Armscor therefore would not be able to provide informative input at this stage.

We will however, be willing and will make ourselves available to appear before the Committees once the information is available

Yours sincerely,

(M.P.LEKOTA)
MINISTER

cc Mr. MJ Mahlangu, MP (Chairperson of Committees)
Deputy President Leader of Government Business