

Public Accounts Standing Committee; Defence Joint Standing Committee; Defence, Trade & Industry, Justice & Constitutional Affairs, Public Service & Administration, Finance Portfolio Committees: Joint Meeting

4 December 2001

Joint Investigation Report into Strategic Defence Procurement Packages: Questions to the Joint Investigation Team

Chairperson: M Mahlangu (ANC) [Chairperson of Committees]

Deputy Chairperson: F Cassim (IFP)

Relevant documents:

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

1. Summary

The committees continued with discussions on the report with the three investigating authorities. Questions raised were mostly from the DP. The Auditor General remarked that many of the questions asked were policy related and he expressed his reluctance to comment on them. The involvement of Mr Chippy Shaik in the various phases of the process was time and time again questioned. It became apparent from the responses of the Auditor General that the investigation had not found any evidence to substantiate the allegations of his involvement.

2. Minutes

- 2.1 Mr Bulelani Nguka: National Director of Public Prosecutions was unable to attend the meeting.
- 2.2 Chapters 3-7 (Procurement Process)
- 2.3 The DP objected to the chapters being dealt with as a whole. It was suggested that that discussion should proceed chapter by chapter.
- 2.4 The committees decided to proceed with the chapters as a whole.
- 2.5 Discussion
- 2.6 Adv Schmidt (DP) referred to a table on page 355 of the report and asked why the performance guarantees for Corvettes were 10% of the foreign content whereas those of submarines, LUH, LIFTS and ALFAs were 10% of the contract price. Why the discrepancy?

- 2.7 The Auditor General, Mr Shauket Fakie stated that the Corvette program had both local and foreign content. The rest of the programs had only foreign content.
- 2.8 Ms T Modise (ANC) asked if the Auditor General's office had done a background check into the financial and shareholding activities of Thomsons CSF.
- 2.9 Mr Fakie pointed out that no background check had been conducted during the public and forensic phase of their investigation. The National Director of Public Prosecutions is currently conducting such a background check.
- 2.10 Mr Ndlovu (IFP) said that certain portions of the acquisition cost had not been forwarded to Cabinet. He asked what explanations had been given in this regard?
- 2.11 Mr Fakie said that all acquisition costs should have been forwarded to Cabinet.
- 2.12 Ms R Taljaard (DP) stated that it is clear from the recommendation at the end of Chapter 3 that there is a lack of a proper procurement policy for South Africa. Too much emphasis is placed on a package approach. She asked for comment.
- 2.13 Ms Taljaard also added that it would seem that Mr Chippy Shaik was involved in various phases of the arms deal. What was the role of Mr Shaik?
- 2.14 Mr S Baqwa, Public Protector stated that the recommendation at the end of Chapter 3 is what the report is all about. The acquisition policy ACQ/1/98 is a single policy and not a multi faceted policy. The policy is a result of an investigation into the fact that South Africa lacked an acquisition policy. However at the time when acquisitions were to be made the policy had as yet not been completed. He felt it the task of Parliament to decide on the adequacy of the policy. The policy is by no means perfect and Mr Baqwa felt that there is room for improvement.
- 2.15 On the question of Mr Shaik's role, the Auditor General stated that Chapter 14 does make mention that Mr Shaik had incompatible duties. It also notes that he also sat on various committees. The investigation did however not find that he specifically influenced the process.
- 2.16 Mr M Mabeta (UDM) asked if members of the Executive had knowledge of Mr Shaik's conflict of interest.
- 2.17 Mr Baqwa stated that the Department of Defence and Armscor should develop guidelines to prevent circumstances of conflict of interest from arising. Persons should also not be tasked with functions that are incompatible.
- 2.18 Mr P Gerber (ANC) asked if it is acceptable that the board of Armscor acts as a tender board as well.
- 2.19 Mr Fakie stated that the board of Armscor has in the past done well to act as a tender board. They have a great deal of technical knowledge on the needs of the Department of Defence.
- 2.20 Mr G Koornhof (UDM) referred to page 50 and asked why recommendations had not been made that it was not normal procedure for SOFCOM to steer the acquisitions process. He also referred to page 52, which states that it is not the policy of Armscor to interfere in the selection of

subcontractors. Why had recommendations not been made in this regard? Mr Koornhof also asked what the role of Mr Shaik had been in the selection of contracts.

- 2.21 Mr Fakie stated that SOFCOM is not a decision making body. It is purely a co-ordinating body. On page 61 it states that SOFCOM function is to consolidate evaluation results. It however does have the ability to make recommendations. He noted that the report does make mention that Armscor and the Department of Defence played a role in looking at some of the subcontractors and making recommendations to the primary contractors. He personally believed Mr Shaik to have played a part in making these recommendations.
- 2.22 Mr Theron (DP) referred to various parts of the report where it is stated that there are deviations from standard policy; page 62 para 3.3.9; page 111 para 4.1.2.1 and para 4.1.2.2 and page 223 para 7.7.2 and para 7.7.3. He asked what the reasons are for the deviations.
- 2.23 Mr Fakie referred to para 3.3.9 and stated that there have been deviations in staff targets even though it is mandatory. He also referred to para 4.1.2.2 and stated that they have indicated changes in the value system. The report seems very clear on the areas where deviations have taken place. Standard policies are in place to ensure sound governance. Mr Fakie pointed out that the reasons for the deviations are lack of oversight, lack of internal control and lack of internal audit procedures. The extent of the deviations do, however, vary.
- 2.24 Ms T Modise (ANC) felt that a background check into the finances of Thomsons CFS should have been done. It is after all public funds that are being spent. Did the lack of documentation at the disposal of the investigators affected the investigation adversely. Was the lack of documentation deliberate? If so has action been taken against the guilty parties?
- 2.25 Is Mr Shaik was the only person under investigation for conflict of interest. If there are other persons being investigated, what are their names?
- 2.26 Mr Fakie stated that the National Director of Prosecutions is doing a background check on Thomsons CFS. The discrepancies as far as documentation is concerned was not considered to be material. No evidence has been found to support the idea that the efforts of the investigators have been deliberately thwarted. It was not up to him to decide on how persons involved in thwarting the efforts of the investigators should be punished.
- 2.27 Mr Fakie did not wish to comment on the issue of Mr Shaik.
- 2.28 Mr R Jonkielson (DP) asked for clarity on para 10.2.2 on page 269 and para 14.1.4 on page 373. There seems to be a contradiction between the relevant recommendations.
- 2.29 Mr Baqwa reiterated that the acquisitions policy ACQ/1/98 is by no means a final document. Various acquisitions policies that had been used in the past gave rise to its formulation. There is therefore no contradiction between the relevant recommendations. He referred to page 57, which sets out the policies that gave rise to ACQ/1/98.
- 2.30 Mr B Kannemeyer (ANC) stated that the acquisitions policy ACQ/1/98 had been signed by the Minister of Defence in 1996 but asked why the Secretary of Defence only signed it in 1999. What was the reason for the delay in the process?

- 2.31 Mr Baqwa conceded that there had been a delay in the process. In the end the process was completed and formalised.
- 2.32 Ms Taljaard referred to para 6 of the 14th report by SCOPA and stated that it would seem that there was confusion over the procurement process. Too many procurement policies were used at the same time ie Modac 1, 2 3 and VB1000. In the report SCOPA apparently calls for a post mortem to be held on the process. Which agency conducted the post mortem?
- 2.33 Ms Taljaard was convinced that given the overlap between the procurement policies, Mr Shaik would easily be able to influence the process. She asked for comment on the required post mortem.
- 2.34 Mr Fakie noted that the three investigating agencies had taken the 14th report of SCOPA seriously. The whole of Chapter 3 emanated from the contents of the 14th report. SCOPA required the review to be compared with international benchmarks, which has consequently been done. The Auditor General disagreed that the various procurement policies had run concurrently. They did however all contribute to the development of policy ACQ/1/98.
- 2.35 Mr Z Madasa (ACDP) said that evidence has shown that the Executive had knowledge of Mr Shaik's conflict of interest. Mr Shaik made crucial recommendations that must have influenced the process. How can it be said that he did not influence the process?
- 2.36 Mr Fakie stated that no evidence had been found to prove that Mr Shaik had influenced the process. Having a gut feeling that he influenced the process is not good enough. Hard evidence is required.
- 2.37 Adv Schmidt said that given the irregularities, from a legal point of view the result of the tender process should have been set aside. Who is to decide on the fairness of the process, Parliament or the investigating agencies?
- 2.38 Mr Shaik preferred it that Parliament decides on the matter.
- 2.39 Mr Diale (ANC) referred to para 6.8.5 on page 192 and asked why those tendering were allowed to advance to the next round in the process if they did not meet the requirements of the first round. Mr Shaik and Mr Esterhuyse gave their approval to this, so how can it be said that no person influenced the process?
- 2.40 Mr Fakie stated that it might not have been correct to allow those tendering to advance to the next stage of the process but if it was not allowed there would not have been competitive bidding.
- 2.41 Mr Ndlovu (IFP) asked why the performance guarantees of the defence packages had been changed. For the purchase of Corvettes it had previously been 5% over 100% now it is 5% over 25%.
- 2.42 Mr Fakie stated that the Corvette proposal programme had four platforms. This was the basis of the calculation.
- 2.43 Mr Koornhof referred to page 96 of the report and noted that the Italian aircraft had been preferred on cost but that the British Hawk had been preferred as a non-costed option. He also referred to par 4.1.1.5 on page 69, which stated that the Department of Defence and the SANDF of the

reasons had advised the President why the British proposal had been unacceptable. However subsequent to this it was decided to choose the British option. What were the reasons for the change in decision? Were there irregularities, such as kickbacks?

- 2.44 Mr Fakie pointed out that the National Director of Prosecutions is investigating the matter. The possibilities of kickbacks are being investigated.
- 2.45 Ms Taljaard asked what was the strategic decision to consider the non-costed option based on? Did the privatisation of Denel play a role in the decision?
- 2.46 The Auditor General referred to para 4.6.8 on page 99 for the reasons behind the decision. The privatisation of Denel did not influence the decision.
- 2.47 He remarked that many of the questions posed to him has been on policy related issues. He pointed out that it was not his job to give an opinion on policy related issues.
- 2.48 Mr Theron (DP) noted that on page 62 para 3.3.8 the Auditor General does in fact comment on policy. He said that the report is riddled with examples of where deviations from the ACQ/1/98 policy had taken place. How could this have been allowed?
- 2.49 Mr Fakie reacted that he has commented on the effects of policy but not on the policy itself. He emphasised that the ACQ/1/98 policy had evolved had only been finalised after the acquisition process. MODAC 1, 2, 3 and VB1000 had been used to draft it.
- 2.50 Mr Schmidt (DP) referred to the second table on page 68 in which it is noted that the HAWK did not meet operational requirements in 1997. Was an investigation into the failure of meeting operational requirements undertaken given the fact that the Hawk was later accepted?
- 2.51 Mr Fakie stated that there is a lot of confusion and misunderstanding on the reasons as to why the Hawk was later accepted. The main consideration was that South Africa changed from a two-tier system to a three-tier system. Furthermore, from an operational point of view the Hawk was far superior to the other options but the problem lied in their huge cost.
- 2.52 Mr B Kannemeyer (ANC) also noted that there are numerous examples of deviations from the procurement policy yet no qualifications are given in the report's findings that they have not influenced the awarding of prime contracts. He made the following references of possible deviations: Chapter 4 page 110 para 4.12.1, Chapter 5 page 147 para 5.7.3 and 5.7.4, and Chapter 6 page 191 para 6.8.1 and page 192 para 6.8.8.
- 2.53 The Auditor General said that Chapter 7 does shed light on the matter.
- 2.54 Ms Sono (ANC) asked for a breakdown on the total cost of the LIFT and ALPHA procurements. Why has the figure not been submitted to cabinet?
- 2.55 Mr Fakie said that the total cost is R1.169 million. The figure has not been submitted to Cabinet. It relates to certain functionalities being excluded.
- 2.56 Mr Koornhof made mention that the 14th report of SCOPA suggests that there has been a change in the evaluation system. Has the evaluation system changed between early 1998 to the end of 1998?

- 2.57 Mr Fakie stated that the reasons for the change are to be found on page 99 of the report. It was felt that the costed option approach should not be the only approach. Agreement was reached to include a non-costed approach as well.
- 2.58 Mr D Gumede (ANC) referred to para 7.7.1 on page 223 and stated that the paragraph gives the impression that Bazan is the preferred bidder. He asked for the Auditor General to elaborate. He also referred to para 7.8.1 and asked whether it refers to the present or the future.
- 2.59 Mr Fakie stated that the understanding is not that Bazan should be seen as the preferred bidder. All the bidders had not fulfilled all the criteria including Bazan. They were all however allowed to continue to the next stage of the process notwithstanding this.
- 2.60 Mr Jonkielson (DP) remarked that given the huge cost of the arms deal, could the government not negotiate a better deal.
- 2.61 Mr Fakie preferred not to pass comment on the statement.
- 2.62 Ms Taljaard (DP) said that the Auditor General gives the impression that SOFCOM was not a decision-maker, yet it seems that they were a critical player. What was their role in the LIFTS and ALPHA deals? She also asked if the NIP proposals by British Aerospace were of a sound quality.
- 2.63 Mr Fakie agreed to answer the first question later. At operational level the NIP proposals of British Aerospace were found to be lacking but later they did submit better projects.
- 2.64 Mr Jonkielson (DP) pointed out that there seems to be breaches in the evaluation system. Have problems been identified and actions been taken. Were persons involved identified?
- 2.65 Mr Fakie stated that they did not find any evidence of any type of manipulations. Consequently no actions had been taken against individuals who might have been involved.
- 2.66 Ms Taljaard (DP) said that Mr White had sent a memo on the cost implications of purchasing the Hawk and Gripen fighter planes to the Minister of Finance and to Cabinet. She asked for comment.
- 2.67 Mr Fakie stated that Mr White himself had made a statement that his concerns in this regard had been addressed.
- 2.68 Mr Koornhof (DP) referred to page 110 para 4.12.6 and asked why there had been such great deviations in price of the aircraft.
- 2.69 He also asked if there is evidence to prove that Mr Shaik influenced the process in such a manner that would not allow the prime contractors to meet the requirements. In this way forcing contracts to be given to sub contractors.
- 2.70 Mr Fakie stated that the prices of the Hawk aircraft were not compared with the other aircraft. South Africa compared the quoted prices with that which other countries had paid for the Hawk. He emphasised that no evidence had been found in this regard.

2.71 Chapter 10 - 12

- 2.72 The deputy chair opened the floor to questions on chapters 10 – 12.
- 2.73 Adv Schmidt (DP) indicated that he had a problem with the members of the Joint Standing Committee on Defence not being present. He was unsure in which meeting he should be. The chapters 10 – 12 were referred to that committee and they are not present.
- 2.74 Mr Landers (ANC) asked if everyone is forced to be here.
- 2.75 Mr Theron (DP) answered yes.
- 2.76 Mr Landers commented that the member must be mad if he is saying yes.
- 2.77 An ANC member suggested that the meeting proceed.
- 2.78 The deputy chair said that the chapters cut across several committees and that the meeting should go ahead while someone goes and looks for the Defence members. He requested that members ask their questions.
- 2.79 Ms De Lille (PAC) referred to 10.1.2 that indicates SCOPA's response to the Special Review of the Strategic Defence Packages (SDP) on the finding by the AG that government had no influence in the appointment of subcontractors. She referred to 10.2.1.3 where it is found that Armscor was not precluded from contracting subcontractors directly. Lastly she referred to 10.2.2 that deals with Armscor's requirements imposed on the main contractors. The member asked if the JIT found any evidence that government was involved in appointing subcontractors. She asked how the JIT distinguishes between Armscor and government when the Board of Armscor reports to the Minister of Defence. She asked if Armscor is autonomous and to whom they were accountable. She asked for clarity on the role of government in the appointment of subcontractors.
- 2.80 Mr Waters (DP) referred to 10.4.5.3 where Mr Irwin testified that Mr Shaik was asked to recuse himself. In 10.4.5.5 it is stated that nonetheless Mr Shaik still participated in the PCB meetings and disobeyed the instruction of two Ministers and the President. The member asked the Public Protector (PP) why Mr Irwin was not questioned if the recusal was enforced and if he was not aware that Mr Shaik was still participating in the meetings.
- 2.81 He referred to 10.5.5 that finds that Mr Shaik never had the necessary military security clearance. The member commented that surely the Minister of Defence should have ascertained this. He said that there is no accountability and the executive is not being held responsible. He asked if the AG was going to investigate this further.
- 2.82 Dr Koornhof (UDM) said that Mr Shaik had many conflict of interests. He asked if this resulted in contracts being awarded where they should not have. The member submitted that Mr Shaik continued to play an important role on the PCB and continued to take part in the process and also signed the minutes. The member asked what effect this had on the awarding of contracts.
- 2.83 Mr Smith (ANC) referred to the finding in 10.5.2 that translates into the recommendation in 10.6.1 that states the need for the guidelines in the Defence Review that relate to the selection of subcontractors must be followed to ensure that a open and fair process is adhered to. He asked if this recommendation was for the future or if the selection of subcontractors should be revisited.

- 2.84 In response to Ms De Lille the AG said that 10.2.1.3 must be read with 10.2.1.5. The general condition in the main contract is that the subcontractor is responsible for the performance of the subcontractor. DoD and Armscor did recommend certain subcontractors but the main contractor had the prime responsibility of the appointment of subcontractors.
- 2.85 Armscor has its own board, is a separate legal entity and is the procurement arm of DoD. The relationship between Armscor and DoD is contractual and DoD expects a certain level of service from Armscor in the procurement process.
- 2.86 The JIT agrees that government had nothing to do with the appointment of the subcontractors. There were a few examples where Armscor did advise the contractor on the appointment of the subcontractor. This was more a monitoring role. An example of Armscor involvement is where they advised the contractor that there was too little competition for a particular contract. There was never a unilateral decision where the contractor had to select a subcontractor so that they would get the contract.
- 2.87 In response to Mr Waters Mr Fakie said that he was uncomfortable with the way the question was posed. The minister was questioned to find out if he knew about the conflict of interest. Mr Shaik was a high-ranking official who declared his interest so to expect the minister to police the recusal is unreasonable. Mr Shaik having been instructed to recuse himself was responsible from removing himself from the process. The PP referred the member to 14.1.17 that indicates what was done by the JIT rather than focussing on what was not done.
- 2.88 The AG commented on the question on security clearance said that if parliament thinks the executive is responsible then parliament must take it up. The AG said it might be the department itself which is responsible but he has no strong view. The JIT has made its findings and Parliament can take it further.
- 2.89 In response to Dr Koornhof the AG said that no evidence was uncovered that indicates a contract should rather have been awarded to another company. The question of conflict of interest does however go beyond this and the JIT investigated whether information was given to companies to put them in an advantageous position and become the preferred bidder. The JIT could not prove this. There are elements of this and it is being investigated by the National Director of Public Prosecutions.
- 2.90 In response to Mr Smith the AG replied that the recommendation is for the future.
- 2.91 Dr Koornhof said that the report provides a list of companies that Mr Shaik or his family had interests in. He asked if the JIT found any evidence that information was passed to these companies.
- 2.92 The AG replied that the investigation uncovered no such evidence but the companies are still being investigated and evidence might come up.
- 2.93 Mr Mashimbye (ANC) wanted clarity on why the Navy did not use the R20 million retention product.
- 2.94 The AG replied that the finding in 11.11.12.1 explains that although the SANDF did not use the final product they still owned it.

- 2.95 Mr Kannemeyer (ANC) said that the combat suite had to have 60% local content and a 40% foreign content. In 7.2.1.4 it is stated that the preferred bidder entered a teaming arrangement to provide the combat suite. In 11.11.3.5 it is found that ADS became part of GFC that resulted in a situation where the main contractor for the combat suites was also a subcontractor. He asked if the teaming up was based on shareholding or if the procurement process required it. He also wanted to know if ADS is not regarded as a locally based company if GFC complied with the 60/40 ration.
- 2.96 Mr Theron (DP) referred to many paragraphs in chapter 11 that make it clear that there were no policies in place.
- 2.97 Mr Oosthuizen referred to 10.4.5.7 and said that it appears that there could have been a possibility of money laundering and insider trading. He asked if the JIT considered this possibility and if they did not if it would be considered. If it should appear that insider trading or money laundering did take place he wanted to know what effect it would have on the acquisition process.
- 2.98 The PP further replied to Mr Mashimbye's question and said that it would have been logical for the Defence Force to use the technology but there could have been other factors present that would make the technology less desirable. The State had to avoid a situation where it would be impossible to sue the primary contractor. There was this issue of contractual liability and a problem with the compatibility with the user specifications. The technology is not however lost because the SANDF still owns it.
- 2.99 The AG said that ADS coming together with GFC had nothing to do with shareholding. The main issue here is that ADS was playing two roles. The subcontractors were supplying the information to ADS but ADS itself was also a bidder. This conflict of interest situation had nothing to do with Mr Shaik.
- 2.100 In response to Mr Theron the AG said that the raises a lot of policy questions but either there is a problem of understanding or members are just going through the motion of asking questions. The common thread in the report is that there were deviations and this has been debated extensively already.
- 2.101 Responding to Mr Oosthuizen the AG said that insider trading was not investigated because it fell under the purview of the FSB. The JIT did not look at share prices. No evidence was found to indicate there was money-laundering activity taking place but it is part of the overall investigation of the Director of Public Prosecutions.
- 2.102 The PP commented that if what Mr Theron is whether all the deficiencies must be taken up by Parliament then the answer is yes. On money laundering the PP said that he is aware that the possibility was investigated.
- 2.103 Ms Taljaard referred to the fact the Mr Shaik was the Chief of Acquisition as well as a chair of SOFCOM and commented that it was possible that decisions could be made by one person.
- 2.104 The PP said that the JIT saw this possibility but the department and individuals must be given some integrity not to be brow beaten by one individual. There is no evidence that suggests that one person made the decision.

- 2.105 The deputy chair requested that members not repeat themselves because the same issues are raised repeatedly. He said that some issues that are being raised would come up when individual committees continue with their oversight role and meet with the departments and the executive.
- 2.106 Ms Taljaard asked how the evidence was tested and what mechanisms were used to go through all the evidence that enabled the JIT to meet the evidentiary burden and make certain conclusions beyond a reasonable doubt especially since the body of the report points to the possibility of corruption.
- 2.107 The PP replied that the whole investigation was a testing process. At one stage it was found that Simpson Anderson allowed Mr Shaik to stay in the meetings. The Admiral was asked why this was allowed. When Mr Shaik was asked to explain his presence the one answer confirmed the other. Mr Shaik was there to convey a communication from MINCOM. His only role was one of liaison. In this the credibility of witnesses were tested. Many examples like this can be given. It can be debated whether the evidentiary burden was discharged but it is submitted that it was discharged. No stone was left unturned.
- 2.108 The AG gave his assurance that in terms of normal forensic standards everything was done to get the evidence. Invitations were submitted to unsuccessful bidders and lengthy cross-examinations were held especially of Mr Shaik. 40 pages of questions were submitted to Mr Shaik and himself and his legal counsel gave detailed answers. The investigation was carried out in a thorough way and if anyone believes that the matter can be taken further they are welcome to do so.
- 2.109 Adv Schmidt referred to the last line of 10.2.2.2 which states, 'depending on the extent and nature of any acquisition programme, Armscor reserved the right to require that a predetermined % of the contract value be subcontracted to enterprises owned and staffed by designated groups.' He said that it leaves little scope but to conclude that DoD, Armscor and the Cabinet are aware of subcontractors. He asked if the JIT would agree that the responsibility of DoD also lies with Cabinet.
- 2.110 Mr Jonkielsohn (DP) referred to 10.2.4.6 that states that certain decisions were made for strategic reasons. He asked if the JIT found out what is meant by strategically more important. The paragraph states that the Turbomeca engine posed more risks than those proposed by other bidders but that it was strategically more important for Denel Aviation that Turbomeca get the contract. The member also wanted to know how the risks were weighted.
- 2.111 Dr Koornhof gave his understanding of recusal as meaning non-participation at a meeting. He asked if any evidence was found that shows that Mr Shaik campaigned on behalf of Thomson and ADS.
- 2.112 Secondly, were there other persons besides Mr Shaik who did not have security clearance?
- 2.113 Thirdly there is no recommendations in Chapter 11 so the member wanted to know what this meant.
- 2.114 Ms Taljaard referred to 10.4.5.8 that states no investigation took place during the public and forensic phases into the allegation into the involvement of the former Minister of Defence in a company that was to benefit from the SDP procurement. She wanted to know what this paragraph meant.

- 2.115 The member also wanted clarity on when the risk categories A, B and C were decided upon.
- 2.116 Secondly she wanted to know to what extent the JIT investigated other subcontracts or did the investigation only focus on the complaints by C²I². She asked why all the subcontracts were not looked at.
- 2.117 The PP said that Adv Schmidt's answer lies in 10.2.1.5. The contract is clear where liability stops. It ends with the prime contractor.
- 2.118 Adv Schmidt replied Armscor reports to DoD and DoD is headed by the Minister who is part of the cabinet. He said that this thread runs throughout the report.
- 2.119 The PP said that what we are dealing with is where the buck stops legally and in this regard the contract is specific. It stops with the prime contractor. There is a clear division between category A, B & C contracts and liability does not end up with the state.
- 2.120 The AG in response to Mr Jonkielsohn said that the strategic importance related to the support and maintenance of existing military equipment that Turbomeca could do. The AG replied that a risk analysis was done.
- 2.121 In the response to Dr Koornhof's questions the AG said that no evidence was found to suggest that Mr Shaik campaigned on behalf of companies. The JIT also testes whether there was any intimidation because of his no recusal but nobody was intimidated by his presence.
- 2.122 In respect of security clearance, other people were also checked out.
- 2.123 There are no recommendations to chapter 11 because it was a difficult chapter to deal with. Lots of money was spent to investigate the allegations in this chapter. In the other chapters recommendations related to DoD and Armscor but the investigation in chapter 11 was unique and it was difficult to make recommendations.
- 2.124 Responding to Ms Taljaard who wanted clarity on 10.4.5.8 the AG said that this matter was referred specifically to the Director of Public Prosecutions but was included in the report as not to create the assumption that it has been swept under the carpet.
- 2.125 The AG confirmed that various subcontracts were looked at but that it was practically impossible to look at all of them. The JIT relied heavily on the allegations and focussed on that.
- 2.126 The AG said that the decision on risk category A, B and C was taken at a meeting on 19 August. There is a concern that the meeting was not properly constituted but this was difficult to establish. If the meeting did take place it was probably not properly constituted because many members were not there.
- 2.127 The chair asked if it could be agreed that these chapters were now finalised.
- 2.128 Chapter 14 – Findings
- 2.129 Ms Taljaard questioned the inter-relationship between the components of the JIT and asked which members were assigned to draft the findings. She asked why there was a disjuncture between the

substance and the findings. She provided an answer by saying that the findings are not carried through because it mainly relates to the future.

- 2.130 Ms De Lille said that a distinction is drawn in 14.1.1 between government and officials. She asked if the JIT agrees that government cannot be censored for the wrongdoing of officials. She asked who should be held responsible. She asked if the JIT saw it as their mandate to exonerate government. She referred to Section 92 of the Constitution that states that Parliament holds government collectively and individually responsible. She asked if there was not an overlap of roles. She referred to a statement made by the deputy Minister of Defence that indicated that now government will start an investigation into the motives of the whistle blowers. The member asked for the JIT view on this and asked if they were approached to conduct such an investigation.
- 2.131 The AG responded to Ms Taljaard by saying that the findings were a joint effort and who wrote the report was irrelevant. At various stages different people contributed.
- 2.132 Around the substantive issues not coming through the AG said that the JIT deliberated on this and it was the view that where the issues picked up were not substantial it would not be taken through to the findings and recommendations. The major recommendations are the major ones and this was explained before. If anyone believes more recommendations are needed they are welcome to take it further.
- 2.133 The PP in replying to Ms De Lille said that when defining government the legislature the judiciary and the executive are referred to. The whole process started with the legislature with the white paper and the Defence review. He said what the member was referring to was vicarious liability. If one person does something wrong then everyone is liable. To make a sweeping statement that government is corrupt cannot be done unless there are facts to back it up. At present there are corrupt officials but it cannot be said that government is corrupt.
- 2.134 He continued and said that the Ministers signed the contracts. **All the misdemeanors took place at lower levels** where the contracts were not signed. **If an official on the PCB does not recuse himself it cannot be said that the Minister is responsible when the Minister did say that the official must recuse himself. This is the basis upon which the distinction is made between government and the officials.**
- 2.135 Still answering Ms De Lille, the PP said that he agrees that the government cannot be blamed on this vicarious basis. **The persons that must be held responsible are the officials.** He repeated the finding that the contract position is not flawed.
- 2.136 **The AG commented that it was not pragmatic and practical to hold government responsible if the officials do something wrong especially if there are policies and procedures in place.**
- 2.137 On the whistle blowing issue the AG said that he has not been approached to investigate their motives and he has never heard any comments to this effect. As a Chapter 9 institution allegations and complaints are received that are at times ridiculous and time is spent to see if they have any substance. So as an agency there are allegations with other agendas and without substance.
- 2.138 **The PP commented that 14.1.1 does not exonerate government.** All that it says is that no evidence was found to indicate that the contract position is flawed. All that is being talked about here is the contracting position. The investigation would have been flawed if a finding on this issue

were not made. It could be said that it exonerates government but what is being dealt with is the contract position.

- 2.139 Adv Schmidt asked how far could one go in questioning the JIT without questioning the integrity and independence of the Chapter 9 institutions.
- 2.140 The deputy chair replied that the JIT could not answer that question and it would be up to the person asking the questions to decide he was violating the spirit of the constitution. He asked Adv Schmidt to consider his statement and gave him an opportunity to rephrase.
- 2.141 Mr Mashimbye commented that what the member was asking was if the JIT can be trusted.
- 2.142 Ms Taljaard said that the three agencies are subject to the Constitution and had to account to Parliament and there was no room for ambiguity in this principle.
- 2.143 The deputy chair repeated that he did give Adv Schmidt an opportunity to rephrase.
- 2.144 Ms Taljaard said that she had difficulty with the different legal mandates of the three agencies because the findings are concluded along value judgments and therefore it is difficult to judge.
- 2.145 The PP said that he was surprised that this is being raised now because the member already raised it at the beginning of the investigation. The PP said that the member is actually pointing out a strength of the JIT. The three agencies compliment each other. He said that the AG can make value judgments but lacks the power to take issues forward. This is where the NDPP came in who had the power to search and seize just to use one example. If the member is saying that the AG overstepped his mandate, this is not so because the agencies supplemented each other.
- 2.146 The different abilities of the agencies ensured that no stone was left unturned. The report is a foundation document and the JIT does not want to usurp the role of parliament. The legislature must take further action if it wants to hold the executive accountable. If the JIT thought that ministers should be followed up it would have said so as to point the legislature in the right direction.
- 2.147 It is the prerogative of Parliament to take the report forward but the JIT has said its say.
- 2.148 Mr Nair (ANC) wanted to clarify that the statement did not refer to whistle-blowers but to those who spread rumours about government's involvement.
- 2.149 Mr Jonkielsohn referred to the PP statement that government consists of three branches and said that the officials are responsible to the executive and those who to a large degree form part of the executive. Many officials and members of the legislature are being investigated and perhaps the wording of certain findings and recommendations are incorrect.
- 2.150 The deputy chair replied that the report is in the public domain and people can receive it as they please. One must accept the bona fide of the JIT in writing the report. It cannot be expected that the JIT must now say that they could have phrased things differently. It is outside the scope of this inquiry, it is an unfair question and should not be permitted.
- 2.151 Ms Taljaard pointed out that recommendation 14.2.5 is not included in chapter 12. She asked if additional recommendations are made in this chapter.

- 2.152 The AG said the recommendation comes from 4.5.5.5.
- 2.153 Ms Taljaard said that 4.5.5.5 is not a recommendation.
- 2.154 The AG conferred with a colleague and said that 14.2.5 emanate from finding 4.5.5.5 and recommendation 4.13.6 that is carried through to the final chapter.
- 2.155 He explained that the final chapter was drafted in the following way. The team went through the report and identified key findings and recommendations. To make the report more user friendly to those who do not want to read the whole document and just want a quick synopsis. For the work of members of parliament the final chapter cannot be separated from the rest of the report.
- 2.156 Ms Taljaard had the same concern with 14.2.9 in that it seemed it was from a recommendation contained in the body of the report.
- 2.157 Adv Schmidt commented that what Mr Jonkielsohn was saying could be likened to a judge having to look at his own judgment and deciding if another court could possibly come up with a different conclusion when leave to appeal is applied for.
- 2.158 The deputy chair said that it is up to the committees to take the report further and that parliament is the highest judge of the report. It is the best report that the JIT could produce.
- 2.159 Ms Taljaard referred to an earlier comment from the JIT that the executive made input on the format of the report. She asked if the executive had any suggestions on the key findings and recommendations.
- 2.160 The AG responded to the member's first question, saying that 14.2.9 comes from recommendation 8.13.3.
- 2.161 To the second question he said that the executive made no input in respect of the key findings and recommendations.
- 2.162 The chair asked if everyone could agree that chapter 14 is concluded.
- 2.163 As agreed earlier the deputy allowed a few minutes for chapters 8 and 9 to be revisited to give members a chance to ask further questions.
- 2.164 The deputy chair responded to the accusations in the media that the Ms Taljaard was not given an opportunity to ask their questions by saying that Ms Taljaard was given more time than any other member was to ask her questions. She had indicated that she had 100 questions and she asked 100 questions.
- 2.165 The meeting was adjourned.