

REPORT BY NPA TO SCOPA ON ARMS DEAL INVESTIGATIONS

23 January 2009

1. This report is compiled in response to a letter from the Chairperson of the Standing Committee on Public Accounts (SCOPA) dated 1 December 2008.
2. The NPA wishes to apologise for the delay in submitting the report. Although the committee made the decision to request the report in October 2008, it was only received by the NPA on 1 December 2008 with a request that it be submitted within 14 days. A draft report was prepared by the existing team within this period, but it became clear that there were many facts that had to be obtained or verified with those who had been involved in the investigations previously. The festive period during which many persons were on leave unfortunately made it impossible to complete an accurate report timeously.
3. The report will attempt to summarise the status of the various legs of the criminal investigation instituted by the Directorate of Special Operations (DSO) arising out of the report of the Joint Investigation Team (JIT) which examined various aspects of the armaments acquisition for the Department of Defence (the arms deal).
4. It must be appreciated that the investigation spans a period of almost 8 years and has covered a wide field of suspected offences. Some of these have yielded credible evidence and others not. The report will concentrate on those areas of the investigation that are either current, or have resulted in the institution of criminal proceedings.
5. The broader DSO arms deal investigation between 2000 and 2003 was conducted under the direction of a senior Deputy Director of Public Prosecutions. She left the DSO in 2003 and so have many of the other key personnel involved in the various legs.
6. It should be noted that the DSO arms deal investigation occasionally uncovered evidence of unrelated offences that lead to further investigations. This report will not deal with such matters except where there continues to be an overlap with the arms deal.
7. During the course of the arms deal investigation the DSO has looked at a number of individuals involved in or associated with the arms deal process. Many of these persons have been excluded from *the* investigation. Others have not been excluded as persons of interest to the investigation, but insufficient evidence has been obtained to charge them with any offences.
8. This report will accordingly not deal with names of individuals where their matters have not been before court or otherwise became a matter of public record, such as being mentioned in the JIT report. Individuals may be severely prejudiced by the disclosure of their names, especially in cases where little or no evidence was found to substantiate allegations that may have been made.
9. Furthermore, due to the turnover of staff at the DSO, the details of some of the older investigations, especially those that did not progress very far, may be limited, since the persons seized with those investigations have now left and these details had to be gleaned from records.

DECLARED INVESTIGATIONS

10. The JIT commenced its investigations in November 2000. As part of this investigation, on 6 November 2000 the Director of the then Investigating Directorate: Serious Economic Offences ("IDSEO") instituted a preparatory investigation in terms of section 28(13) of the NPA Act. Section 28(13) empowers the Investigating Director to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1)(a) of the Act.
11. The preparatory investigation, in summary, related to allegations of corruption and/or fraud in connection with the acquisition of armaments at the Department of Defence ("DoD") in respect of negotiations and or contracts concluded with regard to the purchase of corvettes,

submarines, light utility helicopters, maritime helicopters, lead-in fighter trainers and advanced light fighter aircraft.

12. The JIT subsequently published its findings in a report in November 2001 (the JIT report). It was agreed that the DSO investigations would continue into aspects of the arms deal in which the possible commission of criminal offences was suspected. These DSO investigations included both the preparatory investigation and investigations proper that were subsequently authorised in terms of section 28(1)(a) of the Act into certain aspects of the process. Such investigations were authorised both before and after the JIT report.

13. As part of its mandate in the MT investigation the DSO appointed teams to look at each of the programmes in the arms acquisition process. In certain of these programmes, however, no evidence was found to warrant conversion into a full investigation.

14. Certain aspects of the investigation did progress further, however. Listed below are the various legs of the arms deal investigation where evidence was found to warrant further investigation:

14.1. The Corvette Suite Leg;

14.2. The GFC Leg;

14.3. The BAe Leg;

14.4. The Conlog Leg; and

14.5. TheDASA Leg

15. The report will now discuss the progress of these investigations in more detail.

THE CORVETTE SUITE INVIESTIGATION

I. History

16. . This matter had its origins in the allegations during the JIT investigation of the conflict of interest of the former Chief of Acquisitions in the DoD, Mr Shamin "Chippy" Shaik in relation to the involvement the Nkobi companies owned by his brother, Mr Schabir Shaik in tendering for the combat suite sub-contract of the corvette contract.

17. Searches conducted in this matter led to the discovery of the so-called "encrypted fax" which purported to deal with a meeting brokered by Mr Schabir Shaik. The fax stated that at the meeting Mr Zuma agreed to accept a bribe of R500 000 pa. from Thomson CSF (Thint) in return for his protection and future support. Further investigation uncovered evidence of payments by Mr Schabir Shaik and his companies to Mr Zuma over a number of years and corresponding assistance offered by Mr Zuma in certain of Mr Schabir Shaik's business dealings.

II. Charges investigated

18. On 24 August 2001 and arising out of the preliminary investigation described in paragraph 11 above, the Investigating Director instituted an investigation in terms of section 28(1)(a) of the NPA Act.

19. The terms of the investigation included the suspected commission of offences of fraud and/or corruption in contravention of the Corruption Act, 1992 arising out of the arms deal involving the prime bidders/contractors in terms of which certain contracts and/or sub-contractors for the supply of armaments were concluded and more specifically in respect of the following contracts and sub-contracts:

19.1. the German Frigate Consortium (between African Defence Systems (Pty) Ltd, Thyssen Rheinstahl Technik GmbH, Blohm & Voss GmbH, Howaldtswerke Deutsche Weft AC and Thomson-CSF NCS France) as prime bidder/contractor for the supply of corvettes for the Corvette programme; and

19.2. African Defence Systems (Pty) Ltd as sub-contractor for the German Frigate Consortium for the supply of the corvette combat suite for the Corvette Programme, including the undue payment to Futuristic Business Solutions (Pty) Ltd for the supply of Integrated Logistic Support Services and/or the solicitation/payment/agreement of undue

payments involving entities directly or indirectly linked to African Defence Systems (Pty) Ltd, Futuristic Business Solutions (Pty) Ltd and/or Thomson-CSF.

20. On 22 October 2002 the investigation was extended to include the suspected commission of fraud and/or corruption in contravention of the Corruption Act 1992 arising out of payments to or on behalf of or for the benefit of Mr Zuma by Mr Schabir Shaik and/or the Nkobi group of companies and/or the Thomson/Thales group of companies, the protection of, and/or wielding of influence for, and/or using public office to unduly benefit the private business interests of Mr Schabir Shaik and/or the Nkobi group of companies and/or the Thomson/Thales (Thint) group of companies by Mr Zuma and other suspected offences by Mr Schabir Shaik and/or the Nkobi group of companies relating to the theft of company funds, tax evasion, the making false entries in the books and records of the Nkobi group of companies and/or failing to keep proper books and records in respect of the Nkobi group of companies, and fraud against the shareholders of the Nkobi group of companies.

21. On 8 August 2005, the investigation was further extended to include an investigation into offences of fraud and the contraventions of the Income Tax Act pertaining to alleged non-disclosure of benefits by Mr Zuma.

22. On 1 December 2006 the investigation was further extended to include racketeering and money laundering in contravention of the Prevention of Organised Crime Act, 1998. committed by Mr Zuma, the Thint companies and persons associated with Nkobi.

III. Persons under investigation

23. The persons and entities that are or have been under investigation in this matter include Mr Schabir Shaik, various companies related to his Nkobi Group, Mr Zuma and the two Thint companies.

24. Certain other investigations arose out of evidence uncovered during the course of this investigation, but since they are unrelated to the arms deal, it is not necessary to discuss them further in this report.

IV. Progress of investigation

25. This investigation has progressed the furthest to date and has resulted in criminal prosecution and conviction of Mr Schabir Shaik and various of his companies on various offences including corruption, fraud and money laundering.

26. Subsequent to this, Mr Zuma and the two Thint companies were indicted on similar charges. A host of pre-trial litigation has ensued and at the time of writing the matter is expected to be before court again shortly. It is hoped that the remaining pre-trial issues can be disposed of expeditiously and the matter set down for trial.

27. Much of this is a matter of public record and hence will therefore not be dealt with extensively in this report. However, should the SCOPA require a more in-depth report on the details of this investigation the NPA would be happy to oblige.

THE GERMAN FRIGATE CONSORTIUM (GFC) INVESTIGATION

History

28. Although this matter was originally part of the declaration mentioned in paragraph 18 above, little evidence was discovered to progress the investigation. However, attention was re-focused on this leg through newspaper reports to the effect that German prosecutors were investigating a case of corruption against executive of Thyssen Rheinstahl (Thyssen) involving the alleged payment of bribes in relation to their bid as part of the GFC for the Corvette contract. It is unclear whether this also related to the submarine contract.

29. Amongst other things, it was reported that German investigators had recovered records of a meeting at which a certain DoD official [Chippy Shaik] is alleged to have demanded a bribe of US\$3 million from a Thyssen executive, which was then subsequently paid into the account of an offshore company set up for this purpose. Although the name of the official is

mentioned in the article, it is not deemed appropriate to name him on the strength only of media reports.

30. It was further reported that the German authorities had directed a request for mutual legal assistance to the Department of Justice and Constitutional Development (the DoJ), the South African Central Authority, but that this had been returned unexecuted with certain queries.

31. Since the reports suggested that the matter under investigation by the German authorities fell squarely within the terms of the declared investigation described in paragraph 18, the NDPP approached the DoJ for a copy of this request, but this has not been received to date.

II Charges investigated

32. As stated above, this investigation falls squarely within the charges to be investigated in terms of the investigations declared on 24 August 2001 in paragraph 18 above and no separate declaration is necessary.

III. Persons under investigation

33. At this stage it is impossible to determine with any certainty who the suspects are.

IV. Progress of Investigation

34. There can be no meaningful progress with the investigation until the information in the possession of the German authorities is obtained, so the evidence we require is located mainly overseas.

35. If the requested information from the DoJ is not forthcoming then a request for mutual legal assistance will have to be directed to the German authorities.

THE BRITISH AEROSPACE INVESTIGATION

1. History

36. This investigation arose out of allegations of irregularities in the lead-in fighter trainers and advanced light fighter aircraft (the fighter aircraft) programmes of the arms deal, specifically that the value system was manipulated to favour the Hawk/Gripen package offered by the BA/SAAB consortium.

37. The initial investigation was hampered by the fact that, while the deviations from the normal tender processes were suspicious, in the absence of any clear evidence of the payment of bribes, it proved difficult to progress the investigation.

38. However, in 2006 it was reported that the UK Serious Fraud Office (SFO) had launched its own investigation into BAe's activities in a number of arms deals, including, the SA arms deal. This was followed by a request for mutual legal assistance submitted to the SA Central Authority. The request was returned with queries, but a team from the SFO was invited by the DoJ to come to South Africa to conduct informal inquiries. During the course of the visit, the SFO team met with members of the DSO team and it became apparent that the SFO was investigating the same phenomenon from the other end.

39. With the permission of their Director, the SFO then provided the DSO with details of its investigation. In a nutshell, it revealed that BAe had paid huge commissions to its agents based both in South Africa and elsewhere to assist in securing the above contracts. A large portion of these commissions was paid through a series of overseas registered entities in a manner designed to obscure the origin and reasons for the payments. BAe was unable to provide the SFO with satisfactory details of the work done in return for these huge payments.

40. A second request by the SFO for a joint investigation into the matter was referred to the DSO in March 2008 by the DOJ. Since then, the DSO and SFO have been cooperating on the matter.

41. Further information was subsequently spontaneously forwarded to the DSO which revealed that investigations of money laundering were being pursued relating to the payment of monies by BAe to its agents in connection with the fighter aircraft contracts.

42. When viewed against the new information provided by the SFO and certain other jurisdictions, the evidence already in the possession of the DSO relating to the irregularities in the fighter aircraft contract took on a more suspicious light.

II Charges investigated

43 The investigation of these new allegations fell squarely within the preliminary investigation declared in November 2000 described in paragraph 11 above. However, in light of the new information, it was considered that there was sufficient suspicion of the commission of the offences of at least corruption and money laundering to declare, a full investigation.

44. In the result, an investigation was declared in terms of section 28(1)(a) on 14 February 2008.

45. The investigation also encompasses allegations of irregularities in the counter-trade process relating to this contract which were raised in the JIT report.

III. Persons under Investigation

46. At present this investigation is ongoing and at too early a stage to say whether there are persons who are suspects. It is also not appropriate to provide details of the persons whose may be of interest to the investigation.

IV. Progress of investigation

47. The investigation is progressing satisfactorily. In November, the DSO applied for and was issued search warrants in terms of section 29 of the *NPA Act*. Searches were conducted on a number of premises on 26 November 2008.

48. Furthermore, on application *by* the DSO, letters of request have been issued to the certain foreign jurisdiction to obtain evidence relevant to the investigation.

THE CONLOG LEG

I. History

49. This investigation arose from allegations during the JIT investigation that Minister Modise and certain other officials involved in the arms acquisition process held interests in Conlog, a company which benefited from arms deal contracts.

50. It appears that lack of staff at the time, and possibly the passing of Minister Modise, contributed to the fact that little meaningful progress was made in this investigation.

II. Charges investigated

51. No separate investigation was declared. The charges investigated are as listed in the preparatory investigation referred to in paragraph 11 above.

III. Persons under investigation

52. For the reasons stated in the introduction to this report, it is inappropriate to mention the names of the persons investigated.

IV. Progress of investigation

53. There has been little progress on this leg, although it has not been closed.

THE DASA LEG

I. History

54. This investigation formed part of the broader arms deal preparatory investigation of November 2000 and the declaration of 24 August 2001 referred to in paragraphs 11 and 18 above. Allegations that certain high ranking politicians and officials linked to the arms deal had received large discounts on the purchase of luxury motor vehicles from Daimler-chrysler were pursued. This company is alleged to have links to EADS, a company which benefited from the arms deal

II. Charges investigated

55. The declaration of 24 August 2001 referred to in paragraph 18 above included this aspect of the investigation.

III. Persons under investigation

56. Mr Yengeni was investigated and prosecuted. For the reasons stated in the introduction to this report, it is inappropriate to mention the names of the persons investigated.

IV. Progress of investigation

57. This Investigation is complete.

58. The prosecution of Mr Yengeni has been finalised. He was convicted on a charge of fraud against Parliament and the corruption charges were withdrawn.

59. A decision was taken not prosecute certain other persons suspected of receiving such discounts due to insufficient evidence.

CONCLUSION

60. I trust that this report will be of use to SCOPA.

61. Should any further particulars be required, the NPA will endeavour to provide SCOPA with the same within the constraints of operational demands.