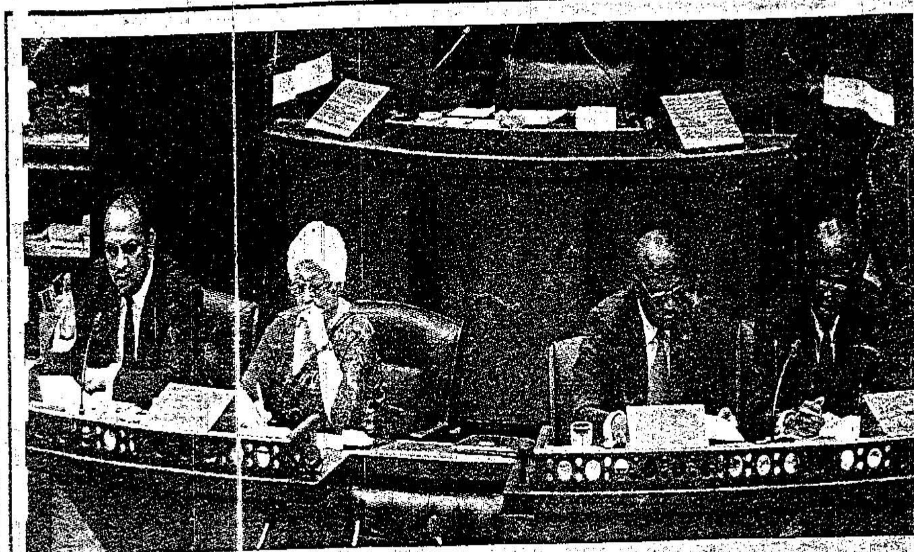
Appendix A

Sowetan Friday November 16, 2001



Auditor-general Shauket Fakie, on the left of the Speaker of the National Assembly Frene Ginwala (second left), presents the joint investigative report into the controversial multibillion rand arms deal to Members of Parliament in Cape Town yesterday. National director of public prosecutions Bulelani Ngcuka (second right) and public protector Selby Baqwa (right), part of the investigative team, listen. The report cleared the Government of improper and unlawful conduct but opposition parties slammed it as a whitewash. PHOTO: AFP

Charges will follow arms probe

By Waghied Misbach
Political Correspondent

THE probe into allegations of corruption in South Africa's multi-billion rand arms deal has cleared President Thabo Mbeki and his Cabinet of any wrongdoing, but questions remain about people who benefitted illegally from the deal and about flawed tender procedures that were followed in awarding contracts to international bidders.

These are among the findings in the 400-page report released in Parliament yesterday by the joint investigating team led by Auditor-General Mr Shauket Fakie.

Other members of the team were Public Protector Mr Selby Bawqa and National Director of Public Prosecutions Mr Bulelani Ngcuka.

Ngcuka said action would follow "in the next 24 hours" against officials suspected of corruption.

Those who could face prosecution include the head of the defence department's acquisition section, Mr Chippy Shaik, whose brother's company benefitted from the deal.

The report found there was a conflict of interest in the role played by Shaik because of his brother's interest in two bidding companies, the Thomson Group and African Defence Systems.

"Mr Shaik, in his capacity as chief of acquisitions, declared this conflict of interest in December 1998 to the project control board but continued to participate in the process that led ultimately to the awarding of the contracts. He did not recuse himself properly," the report said.

The report also found there were problems regarding the award of the prime contracts for the fighter trainers, the advanced light fighter aircraft, the submarines and the corvettes.

Among these was that proper needs assessments were not carried out to determine the costs and specifications of the equipment.

There were also errors in calculating the benefit of the offset programme, the report said.

When the deal was first announced, the Government said there would be offsets, or benefits, to both defence and non-defence industries worth R110 billion and that 65 000 new jobs would be created.

The report found that proper calculations had not been made of the benefits to non-defence industries, particularly in the case of the aircraft purchases.

It also found that the international offers negotiation team led by Mr Jayendra Naidoo had failed to document the procurement process properly, which would have ensured there was a proper audit trail.

Naidoo's team had not had an approved negotiation strategy and terms of reference in place before it started negotiations, it said.

The report recommended the Department of Defence take steps to ensure that good procurement practices are adhered to and that compliance with prescribed tender procedures is strictly controlled.

It said fair and competitive procurement procedures for subcontractors had not been followed in all cases where strategic considerations played a role.

The report cleared former Defence Minister Mr Joe Modise of wrongdoing, but said the Government should look at the possibility of a restraint of trade period once public officials resigned.

"The Minister was actively involved in the procurement process before his retirement.

"Although no evidence of impropriety was found, such a situation seems extremely undesirable as it creates the impression of negative or unlawful conduct by the Government," the report said.

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'I was to blame' says PSL boss Page 2
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World crown?

Arms: MPs clash

Political Reporter

The much-awaited report on the multibillion rand arms deal released in Parliament yesterday has sparked another row between the Government and opposition parties.

The joint investigating team (JIT) headed by public protector Selby Baqwa, national prosecutions director Bulelani Ngcuka and auditor-general Shauket Fakie released the report to the National Assembly after a call by Speaker Frene Ginwala that it should first be released in the Assembly before being presented to the various parliamentary committees.

The report has cleared the Government of any impropriety in handling the deal, saying irregularities and improprieties that investigators found related to the conduct only of "certain officials of the Government departments involved. There are therefore no grounds to suggest the Government's contracting position is flawed".

Pan Africanist Congress MP Patricia de Lille questioned the report's clearing of the Government.

"Why is the Government not taking responsibility for the deeds of its own employees, advisers, technocrats and functionaries on whose recommendations, assessments and proposals Cabinet decided to endorse the deal?"

The Democratic Party MPs walked out of the session claiming it was "a glorified press conference. Instead of a full debate on a matter of public importance that has engaged Parliament's key committee, the Scopa, for over a year, or dealing with this matter through a well-informed engagement with the JIT by MPs, they will learn of the detail of the report in a briefing of this nature a day before Parliament rises and will have to engage with investigators in committee without having had the opportunity to fully study the contents of the report".

And the United Democratic Movement called it "a stage-managed public relations exercise".

Government officials, on the other hand, have welcomed the report.

Briefing the media, Defence Minister Mosiuoa Lekota said the report revealed that "while there may be certain individuals and department officials who used their position to derive some form of benefit from the acquisition process – which might render them criminally liable – the integrity of our Government and its institutions is unquestionable".

● See page 2

Sowetan 19/11/2001

Arms deal inquiry no cover-up, says Ngcuka

NATIONAL director of public prosecutions Mr Bulelani Ngcuka yesterday defended the integrity of the joint investigation team's report on the probe into the arms deal, saying much of the criticism was misplaced.

Ngcuka denied allegations that the report was a "whitewash" or a "cover-up".

People who claimed this had done so about half an hour after receiving the report of more than 300 pages, he said.

"They must have decided on their negative response beforehand," said Ngcuka.

Ngcuka said the investigation by his directorate, auditor-general Mr Shauket Fakie, and public protector Mr Selby Baqwa had looked into all the allegations. Some proved unfounded, while action was taken in other instances.

However, the investigations into allegations of irregularities, such as kickbacks, were still being pursued to see whether any fraud or corruption had been committed.

Further arrests – other than Friday's arrest of Schabir Shaik, one of the bidders in the arms deal – would depend on the outcome of these investigations, Ngcuka said.

Shaik, brother of defence force acquisitions chief Chippy Shaik, was arrested in Durban and charged with being in possession of classified government documents.

Ngcuka said the investigating team had not yet subpoenaed Schabir Shaik but intended to when the opportunity arose.

The team had no idea where Shaik obtained the documents, and there was no evidence as yet to suggest that it had been obtained from his brother Chippy.

"One could not just make assumptions," he said.

Regarding Schabir Shaik's claim in the media that he was a "scapegoat", Ngcuka said it was up to him to explain why this was so.

Ngcuka said he hoped to wrap up the whole investigation into the multi-billion rand arms deal "as soon as possible". – *Sapa*

Arms deal: Shaik faces suspension

By Waghied Misbach
Polititical Correspondent

THE head of the Government's arms acquisition department, Mr Shamin "Chippy" Shaik, is expected to be suspended by the Department of Defence today.

He is facing suspension for his role in allegedly passing on classified information to his brother Shabir, who had an interest in companies bidding for arms tenders.

Defence department officials were not available to comment on Chippy's fate yesterday, but a reliable source said that it was likely that he would be suspended by Defence Minister Mosiuoa Lekota pending an investigation.

However, he will not be arrested "just yet" by the Scorpions, according to Mr Sipho Ngwema, spokesman for the crime fighting unit.

Ngwema refused to comment on the state of the investigation against Chippy, but said that the Scorpions were currently investigating "conflicts of interest" in the arms deal.

This comes in the wake of a 400-page report that revealed a number of tender irregularities and other problems in the way the multibillion rand deal was assessed, negotiated and finalised.

"No, he will not be arrested this week," Ngwema said. "There will be no arrests this week."

Chippy's brother Shabir was arrested by the Scorpions last week for being in possession of highly classified documents, including Cabinet minutes of meetings where the arms purchase had been discussed.

It is alleged that Chippy passed on this information to Shabir to give him an unfair advantage in bidding for part of the arms deal tenders.

Shabir held stakes in two companies, African Defence Systems and the Thomson Group, that benefited from the deal.

He held the stakes through his company Nkobi Holdings.

Meanwhile, it is expected that a number of Parliamentary committees will meet in Parliament tomorrow to discuss the way forward in studying the contents of the report and taking further action.

Among possible actions to be taken by parliamentarians is to look at "restraint of trade" legislation that will prevent government employees from winning government tenders for a set period after they leave office.

Even Springer couldn't stop her

By Eddie Mokoena

NIGERIA'S tall and dark Agbani Darego (right) impressed the judges and the audience to win the Miss World beauty pageant at Sun City on Friday.

She remained calm throughout the questioning process conducted by the evening's anchor, US talk-show host Jerry Springer.

Unfortunately, the event was lacklustre for those who attended it as there was not much in terms of entertainment. It seemed to pander to its television audience.

Firstly, the 93 contestants were hastily introduced and only spent a short while in view before the audience was

Child rape 'rooted deep in SA'

THE recent spate of child rapes were not isolated events but were rooted deep in the country's culture of violence, the non-governmental organisation for Community Information, Empowerment and Transparency (CIET) has said.

According to CIET researcher Professor Neil Andersson, who conducted a social audit of sexual violence in southern Johannesburg, one in every three girls aged 15 to 18 suffered sexual harassment at school.

The audit, which involved more than 27 000 youths, found that one in every 20 school girls aged 15 to 18 years had been

Conflicts of interest

Individuals named in the report on the investigation of corruption in arms deal contracts face charges and internal inquiries, writes Political Editor **Ido Lekota**

The Government may have been cleared of corruption allegations arising from its multibillion rand arms deal but questions remains over the fate of officials fingered by the probe.

The investigation done by the Joint Investigating Team comprising the auditor-general, public protector and national director of public prosecutions highlights potential wrongdoing by certain Government officials, including former defence minister Joe Modise and Department of Defence chief of acquisitions Chippy Shaik.

Shaik has been suspended, apparently for releasing sensitive Government information without authorisation.

Defence Minister Mosiuoa Lekota has said Shaik's suspension has nothing to do with the arms deal.

The report confirms that there was a conflict of interest in respect of the position Shaik held and the role he played in the arms deal.

This relates to the fact that his brother Shabir Shaik – who has been arrested and charged with being in possession of secret Cabinet documents – has interests in the Thomson Group and African Defence Systems (ADS) which he holds through subcontractor Nkobi Holdings.

Chippy Shaik, in his capacity as chief of acquisitions, declared this conflict of interest but continued to participate in the process, that led ultimately to the awarding of contracts to his brother's companies.

The report revealed that Shaik did not recuse himself properly.

ADS won a multimillion rand deal to provide systems engineering and software products to arms suppliers such as Agusta, the company that won an approximately R3 billion contract to supply 30 light utility helicopters to the South Africa National Defence Force.

The report also highlighted that there could be a conflict of interest in the case of Modise, who was allegedly involved in a company that stood to benefit from the arms deal.

As minister, Modise was actively involved in the procurement process before his retirement in 1999.

There is also the case of Department of Trade and Industry official Vanan Pillay, who allegedly accepted a 29 percent discount on a Mercedes-Benz from the same company that sold former African National Congress chief whip Tony Yengeni his luxury 4x4 vehicle at a 47 percent discount.

Pillay was part of Government chief negotiator Jayendra Naidoo's international offers negotiating team which negotiated the contracts with bidders.

He received a Mercedes-Benz 250 TD through European Aeronautic Defence and

Former minister of defence Joe Modise acquired interests after his retirement.

Space Company (EADS), one of the bidding companies to which he paid R141 000 for the car.

EADS had paid associate company Daimler-Chrysler SA R174 000 for the car, selling it to Pillay at a loss of R33 000. This gave Pillay a discount of 29 percent or R57 000 off the retail price of R198 000.

Following these disclosures an internal investigation was instituted.

Pillay handed in his resignation ahead of a disciplinary hearing, but it was not accepted and the department has indicated that his fate is still to be decided.

Opposition parties have said that the report is a "whitewash" and called for the Government to act against the individuals mentioned.

For its part the Government has indicated that it is committed to taking action against those who could have used their positions to unduly influence the process.

According to Government Communication and Information System chief executive officer Joel Netshitenzhe "there are matters of conflict of interest, allegations of share ownership and the issue of gifts that are still being investigated against individuals. The law must take its course".

The question is what can legally be done to Modise, Chippy Shaik and Pillay, who allegedly acted improperly to influence the process?

Parliament was told this week that there is little prospect of Shaik or Modise being charged for their actions in terms of existing laws.

The investigators' report showed that Modise was part of a company that benefited from the multibillion rand deal.

Although he became part of the company after his resignation, it may be inferred that he could have used information to which he had access as defence minister to his advantage.

However, there is no law that prohibits Modise from doing what he is alleged to have done – he could not be charged with using information ~~acquired while holding public office to~~ enrich himself through the arms procurement deal.

Hence the proposal from the Joint Investigating Team that Parliament should consider legislation to prevent state employees from taking up Government contracts when they resign from the public service.

In terms of this proposal there could be a window period of three years during which a former Government official would be prohibited from involvement with private companies bidding for Government contracts relating to a previous sphere of operation.

Theoretically, Chippy Shaik can be prosecuted under the existing anti-corruption laws.

However, in terms of the Corruption Act of 1992 conflict of interest is not a criminal offence.

This means that Shaik could be disciplined by the department if there is a case against him.

But he cannot face criminal charges like, for example, Yengeni, who is facing charges of corruption, fraud and perjury.

Pillay's case is also being investigated by the Scorpions.

The possible charge is corruption, as he could possibly have acquired the discount after promising EADS that he would help them win one of the arms procurement contracts.

Appendix B

National

How Modise wangled jet deal

The award of a R10-billion contract for fighter trainers may be contested in court

Paul Kirk

One of the largest contracts awarded in South Africa's R60-billion arms deal may be challenged in court by an Italian aeronautics company that lost out to a British contender — after then-defence minister Joe Modise intervened to change the tender evaluation criteria in mid-course.

Henk Viljoen, local attorney for the Italian air giant Aermacchi, confirmed this week that consultations had been held with a view to legal action. This is the first indication that one of the main contracts in the controversial arms deal — in this case the R10-billion contract for fighter trainers — may go to court.

Aermacchi's MB339FB jet originally [illegible] highest when offers from international aeronautics companies were considered by the South African Air Force in 1998. But Modise and others [illegible] the tender criteria be amended so that a "non-costed" option could be considered. In the end the significantly more expensive Hawk 100, produced by British multinational BAe Systems, won the tender.

consider

con tested

The unusual change of tender procedure, among other aspects of the arms deal, have enjoyed the scrutiny of the auditor general, the Scorpions and Parliament's Standing Committee on Public Accounts (Scopa).

Viljoen said: "At this stage I can confirm that we have had consultations with Aermacchi with a view to litigation. However at this stage we are adopting a wait and see attitude — waiting to see what comes out of the joint investigations into the arms deal."

The wait may take a while still. The auditor general's office told the *Mail & Guardian* that its long-awaited final report on the arms deal may not be complete by the time Parliament goes into recess over Christmas. Although Scorpions spokesperson Sipho Ngwema could not be reached, sources told the *M&G* their report too may also not be ready before the parliamentary recess.

Gavin Woods, the Inkatha Freedom Party MP who chairs Scopa and is a fierce critic of alleged irregularities in the procurement process, this week commented: "If the current investigation into the arms deal transactions is unable to offer a justifiable explanation as to why the tender criteria were so dramatically changed, then I would think grounds would exist for a bidder who was [illegible] prejudiced to take a strong [illegible]."

When Auditor [illegible] Shauket Fakie reported [illegible] on his preliminary [illegible] into the arms-package [illegible] last year, he already expressed concern over the way BAe was awarded the tender: "The fact that a non-costed option was used to determine the successful bidder is, in my opinion, a material deviation from the originally adopted value system. This ultimately had the effect that a different bidder ... at a significantly higher cost, was eventually chosen on the overall evaluation."

Fakie also stated that the explanations the Department of Defence gave were "unsatisfactory". He stopped short, however, of addressing Modise's role in the affair. Documents in possession of the *M&G* shed more light.

Minutes of a meeting of the Air Force Command Council dated June 29 1998 record that Modise asked for "a separate recommendation [on preferred bidder] where cost is not taken into account". The minutes, marked "secret", show the Air Force top brass complied.

They compiled two lists of preferred bidders — an "A" list where military value was balanced against cost factors, and a "B" list where cost [illegible] taken into account. Interest[illegible] that stage the Aermacchi jet topped both lists. The British [illegible]ed third highest on the "A" but came in second on the "B" list [illegible] was disregarded.

[illegible] set of "confidential" minutes [illegible] this time recording a meeting of the top-level Armaments Acquisition Council (AAC) and Armaments Acquisition Steering Board (AASB) — reflect that Modise personally sang the same tune: that cost is not an issue. The meeting, attended also by then-deputy defence minister Ronnie Kasrils, then-Defence Force chief General Georg Meiring and controversial arms procurement head Chippy Shaikh, was held on April 30 1998 to consider the shortlist of contenders.

metaphor

The minutes state: "The project team presented the meeting with an affordability analysis of the [fighter trainer] contenders. Without cost considerations, the selection process is biased towards the higher performance category of aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. Thus, unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognisance of budgetary constraints."

Modise weighed in: "The minister of defence cautioned the meeting that a visionary approach should not be excluded, as the decision ... would impact on the RSA defence industry's chances to be part of the global defence market through partnership with major international defence companies ... With this vision the most inexpensive option may not necessarily be the best option. The minister requested that the ... acquisition staff should bear this vision in mind."

It is unclear how the Hawk overtook Aermacchi's MB339FB even when the Aermacchi jet still topped both the costed and non-costed lists in the June 1998 Air Force evaluation. But the price difference is significant. Buying 12 Hawks will cost the country an estimated minimum of US$1-billion (almost R10-billion at current exchange rates).

Sources claim the Aermacchi jets were offered to South Africa at US$260-million — almost a quarter the price of the Hawks. The Italians offered a discount since they had lost out on an Australian contract and were keen to keep their production lines going. The Aermacchi is used by a number of air forces around the world, including in New Zealand, Argentina, Chile, Brazil and Italy.

A little more than a month before the meeting where Modise weighed in, BAe donated R5-million to the Umkhonto weSizwe Veterans' Association — a donation earlier exposed by the *M&G*.

Woods commented: "Given the failure of the government to offer convincing reasons for having broke its own rules by buying the more expensive Hawk, any suspicion [illegible] the BAe donation made [illegible] the previous minister to the MK Veterans' Association is difficult to dismiss. My sense of proportions does however suggest that this 'donation' by itself would not have been sufficient to have influenced [the] decision."

Linden Birns, spokesperson for BAe Systems commented: "Throughout the entire Strategic Defence Procurement process, BAe Systems found the conduct of all officials with whom we interacted to be of the highest levels of professionalism. The procurement process was handled, in our view, in a sophisticated and competent manner."

The defence department failed to respond to faxed queries by late Thursday. Modise could not be reached through his lawyers.

Former defence minister Joe Modise amended tender criteria for one of the main contracts in the arms deal

The Aermacchi jets were offered to South Africa at $260-million — almost a quarter the price of the British Hawks

Nkobi family distances itself from arms firm

Mungo Soggot

The family of African National Congress stalwart Thomas Nkobi has implicated ANC heavyweight Joe Modise in an allegedly fraudulent ploy by a businessman embroiled in the arms scandal to use Nkobi's name in bids for defence contracts.

Shabir Shaik, whose Nkobi Holdings company was raided last month by the Scorpions as part of the arms deal investigation, has long claimed that the Nkobi Family Trust is a shareholder in Nkobi Holdings, apparently justifying the use of the name.

When the *Mail & Guardian* first published on Nkobi Holdings in February, the Nkobi family lawyers [illegible]ed the newspaper to say they had [illegible] they were shareholders in the [illegible] company or that such a trust [illegible]ed. The family subsequently

But this week the family berated both Shaik and ANC luminaries, saying they had approached the party and President Thabo Mbeki himself in an attempt to reach some form of settlement with Shaik, but had got nowhere.

In a letter from its lawyers, the family directly implicates former defence minister Joe Modise in Shaik's allegedly dishonest use of the Nkobi name.

The letter, from the Johannesburg law firm Jordaan & Wolberg, says: "When our client [Nkobi's widow] first became aware of such unlawful use, she immediately complained, which resulted in Shabir Shaik and Joe Modise presenting her with a Trust Deed, presumably as a gesture of compensation for using her name. The Trust Deed was blank in critical places and was unacceptable."

Modise's involvement with Shaik over Nkobi Holdings raises fresh questions about the former defence minister's role in the arms deal, and whether he has an inappropriately close relationship with winning contractors.

There has been speculation, but no proof, that elements in the ANC benefited financially from the R60-billion package through companies — particularly empowerment companies — involved in winning bids. Until now, there was no evidence that Nkobi Holdings was anything other than an attempt by Shaik to cash in on the Nkobi name.

This week's letter suggests the ties between Shaik and sections of the ANC are stronger than previously believed. Shaik, who is close to Deputy President Jacob Zuma, is the brother of the army's chief of acquisition, Chippy Shaik.

Shaik has made much of his association with leading members of the ANC, in particular Nkobi, who was the ANC treasurer general. The Nkobi family says in the letter that neither Nkobi, nor his widow "consented to Shaik using their family name in the naming of his company, including numerous companies within the group". Shaik's empire, which focuses on getting government contracts, includes several companies bearing the Nkobi name.

The letter says Nkobi's widow "persisted with her objections, through attorneys, the ANC and the president himself. Letters were written, meetings were held, but no agreement was reached and accordingly our client has still not consented to her family name being used."

Bheki Khumalo, spokesperson for the president's office, this week said: "I could not confirm that the president was approached by the Nkobi family."

The letter adds: "Shabir Shaik and the companies are therefore representing that they are using the Nkobi family name with the consent and approval of the Nkobi family, and that the Nkobi family is benefiting therefrom by virtue of being shareholders.

"We are instructed to record that the Nkobi family disassociates itself completely and unconditionally from Shabir Shaik and the Nkobi group of companies, and disapproves of the manner in which they conduct business."

Nkobi Holdings' Durban premises were searched in a surprise hit by the Scorpions last month, with simultaneous raids undertaken in Mauritius and France. One of the companies targeted in the raids was Thales International, in whose local arm, Thomson-CSF, Nkobi Holdings has a stake.

Steven Friedland, lawyer of Modise, said the *M&G* should contact Modise directly for comment. All attempts to reach Modise were unsuccessful.

Additional reporting by Nawaal Deane

Lydia Kadebe

National

Mail&Guardian

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Rest of world, surface mail: R500 (six months); R1 000 (one year); R2 000 (two years).

HIV/AIDS barometer

Estimated worldwide HIV infections: Thursday November 8 11.08am: 44 076 222

Flying High 1: The Treatment Action Campaign is this year's recipient of the MTV Free Your Mind award. The award is given to organisations that oppose intolerance and prejudice. Previous winners include Amnesty International.

Flying High 2: Basketball star Magic Johnson, 10 years after revealing he is HIV-positive, says he's having the time of his life.

Lost learning: The South African Democratic Teachers' Union said that 1 011 teachers died in the year to May at an average age of 39. This compared to 701 during the same period in the previous year. The report also found that more women than men were dying in five provinces.

Punishment: In the United States the sentence of an HIV-positive paedophile had been extended although he had not had sex with his intended victim. The court decided that he intended to expose a child to HIV, risking permanent bodily injury or death. In South Africa the United Democratic Movement has called for HIV-positive rapists to be treated as murderers. In Zambia the government has proposed automatic imprisonment for anyone knowingly

The British Aerospace Hawk originally came third in the tender evaluation

Report could expose state to litigation

(XP

Paul Kirk

The long-awaited report on South Africa's R60-billion arms package, due out next week, is expected to blast officials for conflicts of interest, recommend a shake-up of tender procedures and criticise several of the weapons deals.

Compiled by the Scorpions, the public protector and the auditor general, the report will update Parliament on the progress of the marathon probe, while investigations continue into possible crimes linked to the arms deal.

Although the report is being kept under wraps, the *Mail & Guardian* has pieced together its salient features. Sources in the Office of the Auditor General said this week that several deals come in for close scrutiny and criticism.

The purchase of British Aerospace Hawk trainers was mentioned as a case that receives attention in the report. The minutes of official meetings where this acquisition was discussed are stamped "secret", but a copy in the possession of the *M&G* shows how former defence minister Joe Modise led a campaign to disregard tender procedures in order to award the contract for fighter trainer jets to British Aerospace.

Sources say the report will also broach the controversial purchase of defence equipment from Schabir Shaik — the brother of the army's acquisition chief, Chippy Shaik.

Local company C²I² was given capital by the state to develop combat [illegible] navy ships. However, when [illegible] for the corvettes' combat [illegible] p C²I² was overlooked in [illegible] reign company linked to [illegible]

[illegible] minutes obtained by the *M&G* suggest that Chippy Shaik did not recuse himself from meetings where his brother's company was discussed.

The report's discussion of conflicts of interest and flouting of tender procedures could expose the state to litigation by those who lost out in the deal.

Bidders have not, until now, been able to use or obtain confidential documentation relating to the arms acquisition programme. However, the report may give those who lost out on contracts the necessary ammunition to mount lawsuits.

The report has attracted controversy before even reaching Parliament. The Office of the President — and the ministers of defence, finance, and trade and industry — saw a copy last month.

The chair of Parliament's standing committee on public accounts, Gavin Woods, said he was "certain" suspicions existed that the report may have been rewritten since then.

Woods said he found it strange that when Auditor General Shauket [illegible] appeared before his committee on October 16 he did not mention the fact that the report had already been shown to the executive.

While the *M&G* could not contact the auditor general, his staff defended the report, saying it had not been tampered with or censored by the executive, but had to be shown to them for comment.

Should the committee feel the report needs clarification or explanation it could call in the various agencies that contributed to it to question them or demand further particulars.

It could also summon the ministers responsible for the arms deal to account for themselves — and call for any documents it feels necessary for it to understand the report — regardless of the security classification of the documents.

Overlooked bidders wait eagerly

referen

Paul Kirk

Companies that lost out in the R60-billion arms deal are limbering up to sue the government after the long-awaited report into the arms deal, which could provide crucial information to mount lawsuits.

The *Mail & Guardian* reported last week that Italian airplane manufacturer Aermacchi was considering litigation after tender procedures were changed to overlook their product in favour of the British Aerospace Hawk — a plane that originally came third in the tender evaluation.

This week the local representative of Swiss gearbox manufacturer Maag said it too was considering litigation. Maag was originally chosen to supply the giant gearboxes for the Navy corvettes. After being chosen by the German Frigate Consortium and the [illegible] use a gearbox made by Renk.

Maag was deemed by naval experts assigned to the armaments acquisition committee to make a less complex gearbox with a better noise signature. The noise signature is of vital importance to naval vessels as the more noise a gearbox makes the easier it is for a submarine — or homing torpedo — to locate the vessel and destroy it.

Tienie van Staden, director of Joesten Marketing, the agents for Maag, said his principals may yet litigate. "It has always been our intention to litigate providing we are not on our own. If other companies are prepared to take the battle to court then we will join in."

Maag originally did not offer trade offsets as attractive as Renk's and it was ostensibly for this reason they were deselected after being selected. However, they later increased their offsets — but were still pipped by Renk.

Richard Young, managing director [illegible] study the report before deciding what course of action to take. "I am waiting for the report with glee. Once I have studied it I will decide on a plan of action early in the new year."

The deal also faces a legal challenge from a group called Economists Allied for Arms Reduction, which wants to take the government to the Constitutional Court, if necessary, to overturn the loan agreements that finance the arms deal.

The group's South African head, anti-arms campaigner Terry Crawford-Browne, intends to argue that the loan agreements signed to finance the arms deal cannot be justified constitutionally or legally and that they should be set aside. If the order is granted it will see the arms acquisition programme collapse with no money being available to supply the arms dealers.

Crawford-Browne will be using [illegible]

Good riddance to Nats, says Suzman

Mungo Soggot

The doyenne of South African liberalism, Helen Suzman, this week said "good riddance" to the New National Party after its split from the Democratic Alliance.

Suzman, who opposed from the start the merger last year of the Democratic Party and the NNP to form the DA, says the brief marriage will have damaged the liberal cause in South Africa in the short term. But, she says, in the long term "the need for a strong opposition will repair the damage that has been done".

The veteran politician says she opposed the merger because it could only "lead to conflict".

She said: "The NNP brought lots of baggage from apartheid days that harmed the DP. Unfortunately a lot of what I predicted has happened."

Suzman expressed her amazement at the African National Congress's moves now to strike its own "unholy alliance" with the NNP, but said it was unlikely such uneasy bedfellows would last long together. "I wish them a merry Christmas, which should be their first and last [together]."

She added: "What is most amazing is the thought of the ANC tying up with the NNP and all its baggage. What short memories they must have of the [National Party's] laws that so grievously affected their basic support."

She said that, although the ANC leadership might have short memories, "I doubt that this is the case among the masses who so hopefully voted for them in 1994 and to whom delivery of services has been so palpably lacking. I never thought the ANC could so easily abandon its principles."

Suzman does not believe DA leader Tony Leon faces any challenge to his leadership of the party following the recent turmoil, saying he is the right man for the job. "At present he is useful, despite his unpopularity."

She says Leon is undoubtedly "confrontational, but maybe that is exactly what is needed these days".

She says that, despite her fears about the DP's merger with the NNP, the party has not sacrificed any of its policies, which she believes are "excellent".

Suzman says the NNP tie-up was a mistake, among other reasons, because it "jeopardised their [the DA's] chances of attracting voters who are not white".

Suzman endorses floor-crossing by elected public representatives "in normal circumstances, but certainly not as a matter of expediency in the most shameless way". The current limited floor-crossing proposal to allow "the unholy alliance between the ANC and the NNP" is unacceptable, she added.

Suzman believes the DP should refrain from getting into any other alliances for the time being to give it time to "lick its wounds".

She fears the expediency and "absolute abandonment" of principle that has characterised the extraordinary manoeuvrings in opposi-

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HIV/AIDS barometer

Estimated worldwide HIV infections: 1.39pm Thursday November 15: 441 78 522

Badge of honour: Badges costing R5 will be sold at Absa branches to raise money for children affected by HIV/Aids. The proceeds from the badges will go to the Nelson Mandela Children's Fund.

More a cock-up than a conspiracy

Opposition parties cry "cover-up" and storm out of the National Assembly as the long-awaited report exonerates the government

Mungo Soggot and **Barry Streek**

The one-year forensic probe by law enforcement agencies into the arms package has cleared the government of any wrongdoing but uncovered a string of procedural irregularities in several parts of the deal.

Before the report was even tabled in Parliament on Thursday, it was being slated as a cover-up. The United Democratic Movement described the report as a "celebrated palace verdict", while the Democratic Party criticised the presentation to Parliament as a "glorified press conference". Both parties walked out of Parliament in protest as the auditor general, the director of public prosecutions and the public protector prepared to present their findings.

The New National Party's media director, Francois Beukman, said the report raised more questions than answers and his party was "not satisfied with the final product", while the Pan Africanist Congress's Patricia de Lille, who first spotlighted the problems in the arms deal, said the final report had been "sanitised".

However, although the report exonerates the government as a whole, and presents a glib summary of its findings, the main body of the 380-page document is littered with intriguing details about how officials ignored due process and tender procedures.

The investigators also hang Chippy Shaik out to dry. Shaik, the Department of Defence's acquisition chief, has been the focus of many of the investigations by the press that have in many instances set the agenda for the state's probe.

Former defence minister Joé Modise gets a rap on the knuckles for being involved in a company that benefited from the arms deal, the report observing that this was "extremely undesirable". But Modise will likely get away with it as the report found no evidence of impropriety.

The findings by the three investigative agencies will fuel suspicion that they have either not dug deep enough or have sought to shield the government from the damaging controversy. Since the arms saga began at the beginning of last year, officials have faced allegations of corruption, nepotism and twisting tender procedures — many of which are dismissed by the report.

De Lille's reference to the "sanitised report" follows revelations that President Thabo Mbeki and other Cabinet members perused the report beforehand. Mbeki may have invoked apartheid-era legislation designed to protect national security to edit the report.

Although the forensic report has now been finalised, the elite Scorpions investigative unit, which falls under the national director of public prosecutions, will continue pursuing criminal investigations stemming from the deal.

Of the three investigative agencies involved in the probe, the National Director of Public Prosecutions, Bulelani Ngcuka, and his Scorpions unit have demonstrated the most muscular approach. Earlier this week the Scorpions served subpoenas on members of Parliament to explain aspects of the deal. The subpoenas were withdrawn after the Speaker of Parliament said they violated parliamentary privilege, and the MPs are now expected to be interviewed at a later date.

Ngcuka said that some high-ranking officials had received gifts in connection with the arms deal, and that action would be taken against them. The report also lists several other allegations involving serious impropriety that are still being probed as part of the ongoing criminal investigation.

Some of the report's salient findings are:

● Corvettes: The report finds that apart from one bidder, Bazan, all the bidders failed to comply with key criteria affecting, among other things, their financing and technical requirements. Investigators discovered that one of the bidders, the German Frigate Consortium, which eventually won, was allowed to submit important information after the tender had been closed. The report says the consortium "should have been disqualified" for not providing the required guarantee in question. The investigators also say they cannot find evidence for how the selectors decided on key aspects of the bids.

National Director of Public Prosecutions Bulelani Ngcuka and Public Protector Selby Baqwa make preliminary statements at a special sitting to have the arms probe report presented to Parliament.
Photograph: Rodger Bosch

● Fighter aircraft: The report clears the government for intervening in this part of the deal, and allowing the final decision not to be based on cost — a move that resulted in a different bidder being selected. In the end the Cabinet endorsed a package of Hawk and Gripen aircraft from British Aerospace. The report observes that although such an intervention was "unusual", it was "not unlawful nor ...ar. As the ultimate decision- ... Cabinet was entitled to select ...eferred bidder, taking into ...t ... other factors including ...ic considerations."

...report says some information ...he total cost was not submitted ...Cabinet. It says these extra costs ...have to be borne by the defence ...ment.

...report notes that "value systems" ... to evaluate the bids were ...ved after replies had been ...ted. The report says it could find ...idence that South Africa paid ... than the normal price for the ...and Gripen aircraft. It raises seri... questions about the status of ...h Aerospace's industrial offset ...ngs, and the way in which they ...evaluated.

...'I': C'I's Richard Young, who ...d the charge against the state's ...ling of the arms deal, earns him... a special section in the report. ...ection, on his many allegations ...t the selection of systems for the ...ettes, shows it was riddled with ...ical slip ups.

...hard Young, the head of Cape... C'I', the company that lost out to ...npany related to Schabir Shaik, ...er of aquisitions chief Chippy ..., said most of the findings were in ... favour, but that many of the ...tigators' observations were "wishy ...y". Young's chances of a successful ...uit against the government were ... a boost by the findings on Chippy ...k's conflict of interest.

...e report says it appears that ... rival, African Defence ...ems, was given a copy of his pro... It also finds that the selectors ...ed on an extra R42-million risk ...nium to his price, without telling ... beforehand.

...e investigators say there was no ...ence that a proper risk assess... it was made. "It appears that the ...ctors decided to opt for the ...exis [related to African Defence ...ems] product in view of the fact it ... cheaper." The report says it could ... no minutes reflecting the decision ...ive Detexis the contract. "It is there... not clear when and by whom the ...ision was taken not to award the ...tract to C'I'. However, it is clear ...t such a decision was taken and that it was taken, generally speaking, by the State."

● Submarines: The report finds that the German Submarine Consortium, which won, did not make the grade where its defence offsets were concerned, and therefore should have been left out the next round. It says that Armscor's legal division submitted a legal opinion that the Germans had "failed materially to meet the essential requirements of the [defence offsets]". The opinion was not passed on to the relevant selection panel. The investigators say that Shaik and a colleague allowed bidders who did not comply to get their house in order before the next round.

● The cost of the deal: The investigators and their consultants pick holes in the government's affordability study on the deal, which stressed how the final cost would be affected by currency fluctuations. The contracts are long term, exposing the final tally to the vagaries of the rand. The report says the exchange rate forecasts on which the study was based were too optimistic, and that the model did not include all relevant costs.

The key recommendations of the report are:

● Parliament should take "urgent steps" to ensure that high-ranking officials and office bearers, such as minister and deputy ministers "are not allowed to be involved, whether personally or as part of private enterprise, for a reasonable period of time after they leave public office, in contracts that are concluded with the state".

● Effective controls should be evaluated to ensure a fair and regular process to exclude the possibility of manipulation.

● Detailed and accurate information, including all possible costs, should be submitted to the Cabinet and all currency risk implications in international armament acquisitions should be disclosed to the Cabinet.

● Adequate audit trails, with particular emphasis on the visibility of supervision, decision-making and assumption of responsibility, should be in place.

● The Department of Defence and Armscor should develop specific rules and guidelines to address conflict of interest issues.

M&G, November 16 to 22, 2001

Chippy Shaik blasted in arms report

Mungo Soggot and Barry Streek

The Department of Defence's chief of acquisitions, Chippy Shaik, has been blasted by the arms deal probe for his notorious conflict of interest – and for possibly favouring his brother's company over a more eligible bidder.

Presenting the report to Parliament on Thursday, National Director of Public Prosecutions Bulelani Ngcuka signalled that his Scorpions unit is poised to deal with Shaik.

"The area of conflict of interests of government officials is cause for concern and viewed as extremely serious," he said, adding, "We will be taking action in the next 24 hours."

Asked later to elaborate on who or how many people would be targeted, Ngcuka said "my lips are sealed. Let's wait until tomorrow [Friday]."

Shaik is attacked in the report for not recusing himself from meetings where systems for the navy's corvettes were discussed. The winning company was Thompson CSF Detexis, whose local shareholders include a company belonging to Shaik's brother, Schabir.

Shaik has consistently shrugged off allegations of conflict of interest – many made in the *Mail & Guardian* – by saying he recused himself.

Detexis is owned by France's Thompson CSF, whose South African operation has as a shareholder Schabir Shaik's Nkobi Holdings.

Shaik is the only senior official to take a direct hit in the arms report, which could generate suspicion that he has been lined up as a scapegoat. The Shaik family has impressive African National Congress credentials – his brother, Mo, was a leading light in ANC intelligence and is now South African ambassador to Algeria.

> "The area of conflict of interests of government officials is cause for concern and viewed as serious"

The arms investigators nevertheless put together a convincing case against Shaik, concluding: "Mr Shaik, in his capacity as Chief of Acquisitions, declared his conflict of interest in December, but continued to participate in the process that led ultimately to the awarding of contracts to the said companies."

To award Thompson CSF Detexis the contract, Shaik and his colleagues passed over Cape-based company C²I², owned by Richard Young, a businessman who has led the charge against the handling of the arms deal. The report raises the possibility that Shaik swung the decision for his brother: "The regularity or not of the decision to select the IMS of C²I², may also have been affected by the position of Mr Shaik."

The report says that at the first relevant meeting it was recorded that Shaik had recused himself. The report also refers to a letter written in October last year by the chief of the navy, Vice-Admiral RC Simpson-Anderson, stating that the agreement was that he would replace Shaik as chairperson at meetings where the systems were discussed.

But the investigators observed that at a meeting in March 1999 Shaik joined in discussions about the equipment.

"His taking part in discussions is contrary to what Vice-Admiral Simpson-Anderson stated in this regard."

The report concludes: "It is clear that Mr Shaik's 'recusal' ... was no recusal at all."

The report found that Shaik did not get the military security clearances required by law for his position.

M&G Nov 23 - 29, 2001

The controversial arms procurement chief helped shape the initial arms report, favouring his brother

Chippy Shaik meddled in arms probe

Auditor General Shauket Fakie. Photograph: Trevor Samson/ Business Day

Paul Kirk

Chippy Shaik, the suspended Department of Defence procurement chief, was allowed to make significant changes to the September 2000 arms report the auditor general submitted to Parliament.

One alteration — relating to the contract to supply corvette components — clearly served the interests of a contractor in which Shaik's brother was involved. In the arms report last week Chippy Shaik was directly accused of a conflict of interest regarding this contract.

The 2000 audit set the ball rolling for the joint investigation into the R66-billion arms package, and helped set the tone for it. Parliament's standing committee on public accounts (Scopa) recommended the investigation that culminated in last week's joint arms report following the first, preliminary report.

The *Mail & Guardian* revealed last week that the latest report was shown in advance to President Thabo Mbeki and members of his Cabinet in terms of the apartheid-era Special Defence Account Act, which empowered them to censor it for reasons of "national interest". Auditor General Shauket Fakie has denied the executive used this prerogative to make any "substantial changes".

Now it has emerged that the provisions of the Act were enforced by the executive as early as the 2000 audit — and that Shaik managed to convince Fakie at the time to amend a section where Shaik had a conflict of interest.

The *M&G* has seen a September 1999 letter from Minister of Defence Mosiuoa Lekota to Fakie in which he gave a qualified go-ahead for an audit of the arms deal to be done, but put the auditor general on terms. He said Fakie could have access to secret documents, but only if he provided the terms of reference in advance, which would have to be okayed by all affected ministers.

Lekota also wrote: "The Auditor Generals Act [which incorporates provisions of the Special Defence Account Act] requires the auditor general to consult with the president, the minister of finance and the responsible ministers ... when reporting on the Special Defence Account."

The Special Defence Account was created in the apartheid era to handle clandestine arms acquisitions, and is now being used to channel payments for the arms package deal.

Before he released his first report to Parliament, Fakie showed a draft for comment to, among others, Shaik as arms procurement head. One subsequent amendment — relating to the battle between Cape-based CI' and a French company to supply components for the navy's corvettes — is telling: Fakie's draft stated: "The South African navy expressed its preference for the CI' [system]."

In a letter marked secret and dated June 7 2000, Shaik replied that he did not agree with the draft: "The South African navy did not express 'its preference to the CI'' rather 'although the South African navy appreciated the technical potential offered by the CI' this was outweighed by the risk-driven cost ...'"

Indeed, when Fakie tabled the reworked report, it was amended along the lines suggested by Shaik. It read: "Although the South African navy preferred the technical potential offered by the local company, this was outweighed by prohibitive risk-driven cost implications ..."

What makes Shaik's meddling extraordinary is the fact that the issue was of direct interest to his brother, Schabir Shaik. The French company that CI' was competing against — and lost to — was Detexis, a sister company of African Defence Systems, in which Schabir Shaik is a director and shareholder.

Last week's arms report criticised Chippy Shaik for not recusing himself when this conflict of interest arose during the tender adjudications, and he has since been suspended.

CI' managing director Richard

Young this week commented tha[t] Shaik had made the remarks in [his] letter to Fakie under oath, he wo[uld] have "charged him with perju[ry]". Young said he has now asked Faki[e to] provide him with the draft of [last] week's arms report — to enable [him] to judge further amendments. [He] also threatened: "My lawsuit [to c]hallenge the contract] is coming [very] soon."

Fakie's office confirmed that Yo[ung] had lodged a request under the [Pro]motion of Access to Information [Act] but said it was taking legal ad[vice] about how to deal with it.

'The ANC has turned parliamentary scrutiny into farce'

Barry Streek

The processing of the arms deal report in Parliament this week highlighted the ruling African National Congress's determination to get the report out of the way in the shortest possible time and to give it the best possible spin.

Six different parliamentary committees are examining the report, effectively diluting the role of the public accounts committee, which initiated the arms probe.

The public service committee took less than three hours to deal with the chapter on public servants.

In the public accounts committee (Scopa), ANC representatives sought to restrict the hearings to the recommendations in the 380-page report. They also called for the three investigating agencies — the auditor general, the public protector and the national director of public prosecutions — to give evidence next week, Shauket Fakie will be abroad.

They were forced to back down when the Office of the Auditor General said only Fakie could give evidence on its behalf. The two-day hearings involving the investigating team will now be held on December 5 and 6.

The ANC majority did succeed in preventing civil society organisations from giving verbal evidence to the committee. This prompted the Institute for Democracy in South Africa (Idasa) to make a direct protest to parliamentary Speaker Frene Ginwala.

"Given the importance of the arms procurement process, and the fiscal and other budgetary issues it raises of relevance to socio-economic delivery, we believe that the expertise and competence of a number of civil society organisations could meaningfully contribute to the oversight process," Idasa's executive director, Paul Graham, said in the letter.

probe, reflected in a Cabinet statement after its meeting on Wednesday, is that the government and the ANC accepts the findings and recommendations of the investigation.

The Cabinet also said the Department of Defence, assisted by other departments, had been "instructed to make proposals on how the government should act on these recommendations".

But the rush in Parliament, the last-minute release of the inquiry report to the media and the welter of announcements this week about industrial participation projects linked to the arms deal indicate a concerted strategy to market the deal and limit damage.

Freedom Front defence spokesperson Pieter Groenewald said the handling of the report by the joint standing committee on defence was "a farce, a rubber stamp". The Democratic Alliance's Mike Waters said the public service committee spent less than three hours on servants and conflict of interests.

"The ANC has turned parliamentary scrutiny and oversight into a farce," Water said.

In the Scopa meeting this week the ANC representatives, significantly boosted by the presence of John Jeffrey, parliamentary counsellor to Deputy President Jacob Zuma, and ANC whip Andries Nel, went on the attack.

Accusing the opposition parties of politicising the report, they were clearly antagonistic to committee chairperson Gavin Woods, a key figure in Parliament's oversight of the arms deal.

Woods's rulings and approach to the hearing were constantly called into question, in a continuation of an apparent ANC strategy to force his resignation from the chair.

Observers believe the ANC is reluctant to use its majority muscle to vote Woods out, as this will be read as a further move to politicise a formerly non-partisan

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Morgan Tsvangirai on famine, elections and the Zim presidency
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National
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Victory in Kabul: A foretaste of trouble

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Appendix C

Appendix C

Source: Amps 2001BT (Jan-Dec)
Weight: Population
Table - All
Units : 1000's

		Total	Sowetan	Mail & Guardian
Total	*Audience(000)*	29,583	1,927	271
	Resps	29,791	1,486	353
	%Col	100	100	100
	%Row	100	6.5	0.9
	Index	100	100	100
Universal LSM 1	*Audience(000)*	3,006	30	0
	Resps	1,057	13	0
	%Col	10.2	1.5	0
	%Row	100	1	0
	Index	100	15.2	0
Universal LSM 2	*Audience(000)*	4,114	98	0
	Resps	1,764	44	0
	%Col	13.9	5.1	0
	%Row	100	2.4	0
	Index	100	36.6	0
Universal LSM 3	*Audience(000)*	4,160	266	1
	Resps	2,333	132	1
	%Col	14.1	13.8	0.3
	%Row	100	6.4	0
	Index	100	98.1	2
Universal LSM 4	*Audience(000)*	4,135	346	13
	Resps	2,901	217	13
	%Col	14	18	4.8
	%Row	100	8.4	0.3
	Index	100	128.6	34.2
Universal LSM 5	*Audience(000)*	3,660	372	23
	Resps	3,400	289	16
	%Col	12.4	19.3	8.6
	%Row	100	10.2	0.6
	Index	100	156.1	69.8
Universal LSM 6	*Audience(000)*	3,709	470	54
	Resps	4,692	423	56
	%Col	12.5	24.4	19.8
	%Row	100	12.7	1.4
	Index	100	194.6	157.7
Universal LSM 7	*Audience(000)*	1,865	177	33
	Resps	3,068	176	42
	%Col	6.3	9.2	12.4
	%Row	100	9.5	1.8
	Index	100	145.5	196.1
Universal LSM 8	*Audience(000)*	1,729	87	36

	Resps	3,450	91	47
	%Col	5.8	4.5	13.1
	%Row	100	5	2.1
	Index	100	77.1	224.9
Universal LSM 9	*Audience(000)*	1,759	61	55
	Resps	3,783	67	78
	%Col	5.9	3.2	20.4
	%Row	100	3.5	3.1
	Index	100	53.7	343.8
Universal LSM 10	*Audience(000)*	1,445	19	56
	Resps	3,343	34	100
	%Col	4.9	1	20.6
	%Row	100	1.3	3.9
	Index	100	20.5	421

Telmar TNT+
Report Date: 16/09/2005
Notes: * data relatively unstable ** data highly unstable

Appendix D

Sowetan Comment

Poor show below the poverty line

The Human Rights Commission has issued a damning indictment of Government's poverty relief programme. Figures published by the commission show that only three million of the estimated 20 million people living below the poverty line have benefited from official poverty relief projects.

That this is not a consequence of a lack of resources adds to the concern. In fact, Government has for the past five years at least, set aside hundreds of millions of rand for poverty relief.

Very little of this has actually reached the poor.

This is not new to South Africa. In fact targeted poverty relief has a long history of underspending. Of the R598 million budgeted in 1997-98, R430 million was rolled over to the next year. For the budget period 1999-2000, close to R1,5 billion was set aside. However, just over a billion of this was spent.

The reasons for non-expenditure have not always been the same. In some instances, funds allocated for poverty relief have been transferred much too late to respective projects, hence the failure to spend the money.

In cases where the funds have been transferred, departments lacking capacity have been unable to deliver any relief at all. What is evident from this is that the entire Cabinet and delivery departments are to blame. Persistence of the problem suggests not enough is being done to address the reasons for underspending.

Surely, this reality cannot be ignored for much longer. After all, almost half of this country's population currently lives below the poverty line. It demands urgent remedial action.

Wheels of law

A chink in the armour of the police's crime fighting capacity has always been the shortage of vehicles for patrols and reacting to crime calls.

Hence the news this week that Gauteng's Alexandra and Katlehong police stations received 120 vehicles for their crime prevention work is to be welcomed. Service delivery can only but improve in the areas under the jurisdiction of the two police stations with the replacement of their ageing fleet.

For its part, South African Police Service would have to ensure that these vehicles are used for their intended purpose and not for the private errands of some policemen.

For instance, there have been frequent public complaints about police failing to respond timeously to emergency situations because the only vehicle in good condition was out dropping off police at home after their shifts. Abuse of police vehicles at some police stations must be stopped if police are serious about ensuring efficient use of resources.

Conflicts of interest

Individuals named in the report on the investigation of corruption in arms deal contracts face charges and internal inquiries, writes Political Editor Ido Lekota

The Government may have been cleared of corruption allegations arising from its multibillion rand arms deal but questions remains over the fate of officials fingered by the probe.

The investigation done by the Joint Investigating Team comprising the auditor-general, public protector and national director of public prosecutions highlights potential wrongdoing by certain Government officials, including former defence minister Joe Modise and Department of Defence chief of acquisitions Chippy Shaik.

Shaik has been suspended, apparently for releasing sensitive Government information without authorisation.

Defence Minister Mosiuoa Lekota has said Shaik's suspension has nothing to do with the arms deal.

The report confirms that there was a conflict of interest in respect of the position Shaik held and the role he played in the arms deal.

This relates to the fact that his brother Shabir Shaik – who has been arrested and charged with being in possession of secret Cabinet documents – has interests in the Thomson Group and African Defence Systems (ADS) which he holds through subcontractor Nkobi Holdings.

Chippy Shaik, in his capacity as chief of acquisitions, declared this conflict of interest but continued to participate in the process that led ultimately to the awarding of contracts to his brother's companies.

The report revealed that Shaik did not recuse himself properly.

ADS won a multimillion rand deal to provide systems engineering and software products to arms suppliers such as Agusta, the company that won an approximately R3 billion contract to supply 30 light utility helicopters to the South Africa National Defence Force.

The report also highlighted that there could be a conflict of interest in the case of Modise, who was allegedly involved in a company that stood to benefit from the arms deal.

As minister, Modise was actively involved in the procurement process before his retirement in 1999.

There is also the case of Department of Trade and Industry official Vanan Pillay, who allegedly accepted a 29 percent discount on a Mercedes-Benz from the same company that sold former African National Congress chief whip Tony Yengeni his luxury 4x4 vehicle at a 47 percent discount.

Pillay was part of Government chief negotiator Jayendra Naidoo's international offers negotiating team which negotiated the contracts with bidders.

He received a Mercedes-Benz 250 TD through European Aeronautic Defence and Space Company (EADS), one of the bidding companies to which he paid R141 000 for the car.

Former minister of defence Joe Modise acquired interests after his retirement.

EADS had paid associate company Daimler-Chrysler SA R174 000 for the car, selling it to Pillay at a loss of R33 000. This gave Pillay a discount of 29 percent or R57 000 off the retail price of R198 000.

Following these disclosures an internal investigation was instituted.

Pillay handed in his resignation ahead of a disciplinary hearing, but it was not accepted and the department has indicated that his fate is still to be decided.

Opposition parties have said that the report is a "whitewash" and called for the Government to act against the individuals mentioned.

For its part the Government has indicated that it is committed to taking action against those who could have used their positions to unduly influence the process.

According to Government Communication and Information System chief executive officer Joel Netshitenzhe "there are matters of conflict of interest, allegations of share ownership and the issue of gifts that are still being investigated against individuals. The law must take its course".

The question is what can legally be done to Modise, Chippy Shaik and Pillay, who allegedly acted improperly to influence the process?

Parliament was told this week that there is little prospect of Shaik or Modise being charged for their actions in terms of existing laws.

The investigators' report showed that Modise was part of a company that benefited from the multibillion rand deal.

Although he became part of the company after his resignation, it may be inferred that he could have used information to which he had access as defence minister to his advantage.

However, there is no law that prohibits Modise from doing what he is alleged to have done – he could not be charged with using information acquired while holding public office to enrich himself through the arms procurement deal.

Hence the proposal from the Joint Investigating Team that Parliament should consider legislation to prevent state employees from taking up Government contracts when they resign from the public service.

In terms of this proposal there could be a window period of three years during which a former Government official would be prohibited from involvement with private companies bidding for Government contracts relating to a previous sphere of operation.

Theoretically, Chippy Shaik can be prosecuted under the existing anti-corruption laws.

However, in terms of the Corruption Act of 1992 conflict of interest is not a criminal offence.

This means that Shaik could be disciplined by the department if there is a case against him.

But he cannot face criminal charges like, for example, Yengeni, who is facing charges of corruption, fraud and perjury.

Pillay's case is also being investigated by the Scorpions.

The possible charge is corruption, as he could possibly have acquired the discount after promising EADS that he would help them win one of the arms procurement contracts.

National

How Modise wangled jet deal

The award of a R10-billion contract for fighter trainers may be contested in court

Paul Kirk

One of the largest contracts awarded in South Africa's R60-billion arms deal may be challenged in court by an Italian aeronautics company that lost out to a British contender — after then-defence minister Joe Modise intervened to change the tender evaluation criteria in mid-course.

Henk Viljoen, local attorney for the Italian air giant Aermacchi, confirmed this week that consultations had been held with a view to legal action. This is the first indication that one of the main contracts in the controversial arms deal — in this case the R10-billion contract for fighter trainers — may go to court.

Aermacchi's MB339FB jet originally [illegible]ed highest when offers from international aeronautics companies were considered by the South African Air Force in 1998. But Modise and others [illegible]ed the tender criteria be amended so that a "non-costed" option could be considered. In the end the significantly more expensive Hawk 100, produced by British multinational BAe Systems, won the tender.

The unusual change of tender procedure, among other aspects of the arms deal, have enjoyed the scrutiny of the auditor general, the Scorpions and Parliament's Standing Committee on Public Accounts (Scopa).

Viljoen said: "At this stage I can confirm that we have had consultations with Aermacchi with a view to litigation. However at this stage we are adopting a wait and see attitude — waiting to see what comes out of the joint investigations into the arms deal."

The wait may take a while still. The auditor general's office told the *Mail & Guardian* that its long-awaited final report on the arms deal may not be complete by the time Parliament goes into recess over Christmas. Although Scorpions spokesperson Sipho Ngwema could not be reached, sources told the *M&G* their report too may also not be ready before the parliamentary recess.

Gavin Woods, the Inkatha Freedom Party MP who chairs Scopa and is a fierce critic of alleged irregularities in the procurement process, this week commented: "If the current investigation into the arms deal transactions is unable to offer a justifiable explanation as to why the tender criteria were so dramatically changed, then I would think grounds [illegible] exist for a bidder who was [illegible] prejudiced to take a strong [illegible]."

When Auditor [illegible] Shauket Fakie reported [illegible] on his preliminary [illegible] into the arms package [illegible] last year, he already expressed [illegible] over the way BAe was awarded the tender: "The fact that a non-costed option was used to determine the successful bidder is, in my opinion, a material deviation from the originally adopted value system. This ultimately had the effect that a different bidder ... at a significantly higher cost, was eventually chosen on the overall evaluation."

Fakie also stated that the explanations the Department of Defence gave were "unsatisfactory". He stopped short, however, of addressing Modise's role in the affair. Documents in possession of the *M&G* shed more light.

Minutes of a meeting of the Air Force Command Council dated June 29 1998 record that Modise asked for "a separate recommendation [on preferred bidder] where cost is not taken into account". The minutes, marked "secret", show the Air Force top brass complied.

Former defence minister Joe Modise amended tender criteria for one of the main contracts in the arms deal

They compiled two lists of preferred bidders — an "A" list where military value was balanced against cost factors, and a "B" list where cost [illegible] taken into account. Interestingly, [illegible] that stage the Aermacchi jet topped both lists. The British [illegible]ed third highest on the "A" [illegible] in second on the "B" list [illegible] was disregarded.

[illegible] set of "confidential" minutes [illegible] time recording a meeting of the top-level Armaments Acquisition Council (AAC) and Armaments Acquisition Steering Board (AASB) — reflect that Modise personally sang the same tune: that cost is not an issue. The meeting, attended also by then-deputy defence minister Ronnie Kasrils, then-Defence Force chief General Georg Meiring and controversial arms procurement head Chippy Shaikh, was held on April 30 1998 to consider the shortlist of contenders.

metaphor

The minutes state: "The project team presented the meeting with an affordability analysis of the [fighter trainer] contenders. Without cost considerations, the selection process is biased towards the higher performance category of aircraft. These aircraft are, however, also significantly more expensive to acquire, operate and maintain. Thus, unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognisance of budgetary constraints."

The Aermacchi jets were offered to South Africa at $260-million — almost a quarter the price of the British Hawks

Modise weighed in: "The minister of defence cautioned the meeting that a visionary approach should not be excluded, as the decision ... would impact on the RSA defence industry's chances to be part of the global defence market through partnership with major international defence companies ... With this vision the most inexpensive option may not necessarily be the best option. The minister requested that the ... acquisition staff should bear this vision in mind."

It is unclear how the Hawk overtook Aermacchi's MB339FB even when the Aermacchi jet still topped both the costed and non-costed lists in the June 1998 Air Force evaluation. But the price difference is significant. Buying 12 Hawks will cost the country an estimated minimum of US$1-billion (almost R10-billion at current exchange rates).

Sources claim the Aermacchi jets were offered to South Africa at US$260-million — almost a quarter the price of the Hawks. The Italians offered a discount since they had lost out on an Australian contract and were keen to keep their production lines going. The Aermacchi is used by a number of air forces around the world, including in New Zealand, Argentina, Chile, Brazil and Italy.

A little more than a month before the meeting where Modise weighed in, BAe donated R5-million to the Umkhonto weSizwe Veterans' Association — a donation earlier exposed by the *M&G*.

Woods commented: "[illegible] failure of the government [illegible] convincing reasons for hav[illegible] its own rules by buying the [illegible] expensive Hawk, any suspic[illegible] the BAe donation ma[illegible] previous minister to the [illegible] Veterans' Association is difficult to dismiss. My sense of proportions does however suggest that this 'donation' by itself would not have been sufficient to have influenced [the] decision."

Linden Birns, spokesperson for BAe Systems commented: "Throughout the entire Strategic Defence Procurement process, BAe Systems found the conduct of all officials with whom we interacted to be of the highest levels of professionalism. The procurement process was handled, in our view, in a sophisticated and competent manner."

The defence department failed to respond to faxed queries by late Thursday. Modise could not be reached through his lawyers.

Nkobi family distances itself from arms firm

Mungo Soggot

The family of African National Congress stalwart Thomas Nkobi has implicated ANC heavyweight Joe Modise in an allegedly fraudulent ploy by a businessman embroiled in the arms scandal to use Nkobi's name in bids for defence contracts.

Shabir Shaik, whose Nkobi Holdings company was raided last month by the Scorpions as part of the arms deal investigation, has long claimed that the Nkobi Family Trust is a shareholder in Nkobi Holdings, apparently justifying the use of the name.

When the *Mail & Guardian* first published on Nkobi Holdings in February, the Nkobi family lawyers contacted the newspaper to say they had no idea they were shareholders in the holding company or that such a trust even existed. The family subsequently sought to strike a deal with Shaik.

But this week the family berated both Shaik and ANC luminaries, saying they had approached the party and President Thabo Mbeki himself in an attempt to reach some form of settlement with Shaik, but had got nowhere.

In a letter from its lawyers, the family directly implicates former defence minister Joe Modise in Shaik's allegedly dishonest use of the Nkobi name.

The letter, from the Johannesburg law firm Jordaan & Wolberg, says: "When our client [Nkobi's widow] first became aware of such unlawful use, she immediately complained, which resulted in Shabir Shaik and Joe Modise presenting her with a Trust Deed, presumably as a gesture of compensation for using her name. The Trust Deed was blank in critical places and was unacceptable."

Modise's involvement with Shaik over Nkobi Holdings raises fresh questions about the former defence minister's role in the arms deal, and whether he has an inappropriately close relationship with winning contractors.

There has been speculation, but no proof, that elements in the ANC benefited financially from the R60-billion package through companies — particularly empowerment companies — involved in winning bids. Until now, there was no evidence that Nkobi Holdings was anything other than an attempt by Shaik to cash in on the Nkobi name.

This week's letter suggests the ties between Shaik and sections of the ANC are stronger than previously believed. Shaik, who is close to Deputy President Jacob Zuma, is the brother of the army's chief of acquisition, Chippy Shaik.

Shaik has made much of his association with leading members of the ANC, in particular Nkobi, who was the ANC treasurer general. The Nkobi family says in the letter that neither Nkobi, nor his widow "consented to Shaik using their family name in the naming of his company, including numerous companies within the group". Shaik's empire, which focuses on getting government contracts, includes several companies bearing the Nkobi name.

The letter says Nkobi's widow "persisted with her objections, through attorneys, the ANC and the president himself. Letters were written, meetings were held, but no agreement was reached and accordingly our client has still not consented to her family name being used."

Bheki Khumalo, spokesperson for the president's office, this week said: "I could not confirm that the president was approached by the Nkobi family."

The letter adds: "Shabir Shaik and the companies are therefore representing that they are using the Nkobi family name with the consent and approval of the Nkobi family, and that the Nkobi family is benefiting therefrom by virtue of being shareholders.

"We are instructed to record that the Nkobi family disassociates itself completely and unconditionally from Shabir Shaik and the Nkobi group of companies, and disapproves of the manner in which they conduct business."

Nkobi Holdings' Durban premises were searched in a surprise hit by the Scorpions last month, with simultaneous raids undertaken in Mauritius and France. One of the companies targeted in the raids was Thales International, in whose local arm, Thomson-CSF, Nkobi Holdings has a stake.

Steven Friedland, lawyer of Modise, said the *M&G* should contact Modise directly for comment. All attempts to reach Modise were unsuccessful.

Additional reporting by Nawaal Deane