

Joint Standing Committee on Defence

29 November 2001

Joint Investigation Report into Strategic Defence Procurement Packages: Question Formulation

Chairperson: Ms T. Modise (ANC)

Relevant Documents

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

Draft Comments by Mr Ndlovu (IFP) - Appendix 1

ECAAR presentation - Appendix 2

1. Summary

The Committee worked on the questions to be posed to the Joint Investigating Team (JIT). The questions will be properly formulated and given to the Chair of the Chairpersons Committee who will give it to the agencies. It was agreed that after the meeting with the agencies, the Committee will draft an interim report that will state that there are outstanding issues and a programme will be embarked on next year to finalise these issues. The Committee will submit a final report to Parliament once that programme is complete. A document was submitted to the Committee by ECAAR to explain Chapter 12 (DIP & NIP).

2. Minutes

- 2.1 The Chair informed the Committee that Mr Mahlangu, the Chair of the Chairpersons Committee, had advised that the questions that are to be put to the JIT must be given to him by the morning of 30 November 2001. The Chair was comfortable that this deadline would be met by the end of this meeting. She asked for suggestions on the process to be followed after the meeting with the JIT.
- 2.2 Mr Ndlovu (IFP) suggested that the Committee get together after the question and answer session with the JIT and draft an interim report. The report must list the outstanding issues and undertake to get back to Parliament with a final report in the new year.
- 2.3 Mr Mohlala (ANC) was concerned that the suggestion would not enable Parliament to pronounce on the JIT report as a whole. He said that even if the first Committee report is an interim one it should pronounce on the JIT report in its totality and say whether it is a good or a bad report.
- 2.4 The Chair replied that Parliament would not be left in limbo. The report will state that the work could not be completed within three weeks. There were problems and DoD and Armscor still have to appear and answer questions. The report is not final because many issues still need attention.
- 2.5 Mr Ngcula (ANC) said that the Committee is expected to report by the 6 December. He was of the opinion that the Committee had done all the work expected of it by the Speaker. It would be in order to indicate that work still needs to be done around the flagged issues but this related to DoD

and Armscor and had nothing to do with the task set by the Speaker. He felt it unnecessary to state that the Committee would submit another report to Parliament.

- 2.6 Mr Smit (NNP) suggested that in the report to be tabled now, the Committee should say that there might be another report so as to not close the door should another report be needed.
- 2.7 Mr Ndlovu said that the Committee must file a final report as well as the Committee could not pronounce on all the issues by next Wednesday. Since work still needs to be done, a final report is needed so that the Committee can be protected from a political attack.
- 2.8 Mr Oosthuizen (ANC) agreed with Mr Smit's suggestion. He added that if there is going to be a second report it must be clear that it relates to the deliberations with the DoD and not to the JIT Report itself. But by the 6th the Committee must say if it is a good or bad report.
- 2.9 The Chair suggested that in the 2002 Annual Committee Report a section should be dedicated to the final report.
- 2.10 Mr Ndlovu agreed as long as the door was not closed to the Committee tabling another report.
- 2.11 It was agreed that the Committee will report on the 6th stating that another report will be made in the 2002 annual report or if necessary a second report can be tabled before the end of next year.
- 2.12 Mr Smit asked if a press statement could be released to that effect to counter statements that are currently being made in the newspapers.
- 2.13 The Chair asked Mr Ndlovu to explain the document that he had tabled in the meeting.
- 2.14 Mr Ndlovu said that it would be impossible to go back to the JIT report and extract the questions that the Committee wants to pose to the JIT. A process like that would take too long and there is a deadline. He said that he had extracted all the important issues in each of the chapters to enable the Committee to move away from the bulky report.
- 2.15 The process that the meeting followed hereafter was that Mr Ndlovu took the Committee through his document. The other members raised issues that they felt the JIT should be questioned on. Using Mr Ndlovu's draft and other issues raised by members, the Committee came up with areas that the JIT will be questioned on under each chapter.

2.16 Chapter 3 – Post Review of the Arms Procurement Process

- 2.17 The role of Mr Shaik as Chief of Acquisitions and as the Chair of the Armament Acquisition Control Board. The Committee wants to know if this is normal and the impact thereof.

2.18 The role of Armscor in the selection of subcontractors.

2.19 Chapter 4 – Selection of Prime Contractors ALFA and LIFT

- 2.20 Not all the information on the total cost of the Alfa and Lift was presented to Parliament. The Committee wants to know what the JIT is doing about this.

- 2.21 Because the full cost was not presented to Parliament, the SAAF would absorb R176 million of the total cost. The Committee said that it was common knowledge that the SAAF was struggling to make ends meet on their current budget. They wanted to know if this was normal practice and who approved it.
- 2.22 **Chapter 5 – Selection of Prime Contractors: Light Utility Helicopters**
- 2.23 The JIT states that minor discrepancies were found during the investigation. The Committee wants details of these discrepancies. They want to know if this meant that some people lied to Cabinet and if so, who they are. They want to know if these people are being investigated and if they are still employed by government.
- 2.24 The Committee raised the issue of the disappearance of documents and the uncertainty about who attended meetings. They want to know how this impacted on the investigation and if the JIT thinks this is a deliberate cover up.
- 2.25 **Chapter 6 – Selection of Prime Contractors: Submarine**
- 2.26 The Committee will question the JIT on Mr Pillay (DTI). They want to know if he was working alone and whether he had a conflict of interest.
- 2.27 They want to know if other people in the process have conflict of interests.
- 2.28 They will question the JIT on where all the people are now that played key roles in the procurement process. More specifically what they are doing and who they are working for.
- 2.29 The JIT finds that no individuals influenced the selection process. The Committee wants to know how this finding is reached when there are so many deviations and in the light of the other findings in this Chapter.
- 2.30 **Chapter 7 – Selection of Prime Contractors: Corvettes**
- 2.31 [The issue of the performance guarantees will be raised.](#)
- 2.32 The legal opinion ignored by Mr Van Dyk will be brought up. The Committee wants to know what reasons he gave for ignoring it. They want to know if the JIT considers Mr Van Dyk's evidence to be truthful. The Chair indicated that she wanted to be brutal on these issues and question the competency of Mr Van Dyk.
- 2.33 The Committee wants to know why Bazan was not chosen when it fulfilled all the requirements.
- 2.34 **Chapter 10 – The Selection of Subcontractors and Conflict of Interest**
- 2.35 The Committee will ask the JIT about the 60% local content, why it was thrown out of the window and if the JIT considered possibilities of money laundering.
- 2.36 The issue of security clearance and the agencies findings on this will be raised.

- 2.37 The Committee wants to know what the exact policy of Armscor is in connection with subcontractors.
- 2.38 The Committee will focus on conflict of interest issues.
- 2.39 Chapter 11 – Allegations / Complaints by C²I² Systems (Pty) Ltd**
- 2.40 The Committee wants to know what the JIT findings on C²I² are and whether JIT intends to revisit the failure to select C²I² especially since the government spent a huge amount of money on developing C²I².
- 2.41 The Committee raised issues of insider trading. Members said that in paragraphs like 11.5.2.8 where C²I² was used to reduce the tender of ADS made it seem as if there could be insider trading that took place. Certain companies benefited and the Committee wanted to know if the JIT was doing anything about this.
- 2.42 In 11.5.2.4 it is indicated that no records were kept and the tender procedures were not adhered to. The Committee wants to know how this impacted on the investigation.
- 2.43 Questions will be raised on the risk premiums. Why is it found that the risk premium was not unreasonable? Was it implemented to exclude C²I². Explain the formula used to arrive at the risk premium. The Committee will ask if the JIT is justified in arriving at the conclusion that the risk premium is not unreasonable despite the fact that the JIT did not have access to GFC documentation and had to rely on the version of DoD.
- 2.44 Questions on the issues raised above will be fleshed out and drafted fully. The questions will be given to Mr MJ Mahlangu, the Chair of the Chairpersons Committee, who will pass it on to the agencies.

Appendix 1

Draft Comments: IFP

Chapter Three - Post Review of the Arms Procurement Process

1. The acquisition policy should be clear to everybody who deals with these matters. In this Chapter, nobody knew what was going on and the rules of this game were made while playing.
2. The Staff Members were not prepared and equipped to do this deal, therefore there was no capacity by them.
3. When the Cabinet has dealt with the matter, Parliament must be involved in order to fulfil the oversight role of Parliament.
4. Committees and Sub-Committees that are formed during the process must have approval by Cabinet and be known to Committees who deal with oversight of dealings.
5. Armscor must be able to explain itself about its position on various matters, including dealing with Sub-Contractors.

Chapter Four - Selection of Prime Contractors ALFA and LIFT

1. Scores of Companies were changing every now and then. Why? The Company that was supposed to win the contract ended up losing the bid. The Company last on the list ended up being the one who has a contract.
2. The experts who were going to use the product recommended something else, but the former Minister of Defence made them change to something else. Why?
3. Formulas were changed while the process was going on. Who decided these changes and why? At the end better Companies, offering Best Value; Military Value and Industrial Value were rejected and Best Value equally to Military Value plus Industrial Value over Financing Index.
4. The BAE was chosen without NIP while others were not chosen. Why?
5. The role played by the Chief of Acquisition is questionable in the Chapter.
6. Cheetah Fighters had a life span until 2012 - why then the rush to buy Gripens now when we have time to shop around or negotiate more.
7. In the findings the words: Unusual, Unlawful and Irregular are used in one sentence, create confusion.
8. The Evaluators had known things before, which made them biased to decide what to choose

9. Chapter Five - Selection of Prime Contractors – Light Utility Helicopters

1. There were several non-conformances by SOFCOM. SOFCOM gave instruction to continue with indication to those non-conformances.
2. The report to Cabinet about the cost was not perfect. Why was that? Different figures were used in most instances.
3. In which section will the cost of implementing this programme of R176 320 000 appear under SAAF Internal Budget?
4. Agencies are saying there were minor discrepancies during the investigation. Is that implying that to tell the Cabinet wrong figures is a minor discrepancy or what?
5. Some people lied to Cabinet on some issues. Why?

Chapter Six - Selection of Prime Contractors - Submarines

1. The press conference held by the Minister before leaving office was done to drive the process somewhere else.
2. There were errors that appear in this Chapter by Mr V Pillay of DTI. It said there were computation of errors involving several sums of money.

3. Out of these errors DCN Company lost the bid.
4. The calculation of NIP/DIP was different to different companies, and Mr Pillay was sure to give answers to this all the way through.
5. The evaluation process was not the same and in other cases various activities by bidders were excluded from evaluation, at times without any reasons and at times with insufficient reasons.
6. Which Value System was used, because Mr Hoffman said there was no evidence that proved that the Value System has been approved by Higher Authority?
7. The Technical Evaluation was approved by a group of people, although there was no process to be followed for the approval of this or the level of authority at which it should be approved.
8. The legal opinion that was sought was not conveyed or communicated to SOFCOM. Why? Is it because GSC had failed materially to meet the essential requirements of the DIP?
9. Mr V Pillay of DTI has influenced the selection process.

Chapter Seven - Selection of Prime Contractors - Corvettes

1. The PCB was established.
2. No agreement with Spain.
3. Consultation with individuals who were involved in the evaluation process were held. Why?
4. These names appear: Rear Admiral JEG Kamerman; Right Admiral AN Howell and Vice Admiral RC Simpson-Anderson.
5. The Spanish Company Bazan complied with all the minimum technical performance criteria but did not win the bid.
6. Remember Mr van Dyk - Team Leader, Co-ordinator, Mentor for all three evaluation teams.
7. Mr van Dyk and Mr Shaik made GFC win the bid on top of others after the legal opinion was not considered.
8. Mr van Dyk adjusted amounts and Mr Shaik approved that without the bidders knowledge and confirmation.
9. No Value System used and scores were not kept for everybody to see.
10. Different amounts presented to Cabinet for approval. Why?
11. Only one signature found in most documents - Mr van Dyk.

Chapter Ten - The Selection of Subcontractors and Conflict of Interest

1. The clear position of ARMSCOR is not certain.
2. The involvement of senior personnel from ARMSCOR and DOD in selection of sub-contractors.
3. The position of Mr Shaik as Chief of Acquisitions and his involvement. The declaration of interest.
4. The position of Vice Admiral Simpson-Anderson in these matters.
5. Who else did not declare his/her conflict of interest and why?

Chapter Eleven - Allegations / Complaints by C²i² System (Pty) Limited

1. Who is C2 I 2 , where does it receive its funding from?
2. Defence Review position and requirements - did it go together or not?
3. The establishment of Joint Project Team which complicated matters and did not keep records.
4. JPT wear two hats - they were the deciders and pickers and choosers of sub-contractors as they wished. Right Admiral Kamerman was in charge.
5. No tender procedures were applied.
6. C2 I2 was asked to quote why JPT knew that they would not award the tender to them? JPT used C2 I2 to further their aims.
7. Mr Shaik participated in all meetings knowing very well that he had a conflict of interest. Vice Admiral Simpson-Anderson backed him up.
8. Mr Nortje and Rear Admiral Kamerman. Have they been checked on their interest in this matter?
9. ADS was given the opportunity to lower its tender using C2 I2's quotations. Why was that?
10. The effect therefore was that R2,6 billion contracts were awarded without normal ARMSCOR or State Tender Board procedures being applied.
11. Who was the State in this Chapter which decided not to award the contract to C2 12?
12. How can the State spend R22 249 592.42 on developing C2 12 and not award the contract to it?
13. C2 12 was a local company. What was the reason not go give the contract to it?

Chapter Twelve - NIP / DIP

1. DOD and JSCD Committees should get a report from DTI Committee on this Chapter and seek a meeting to discuss these matters together in order for DOD and JSCD Committees to familiarise themselves on these issues.

These Committees will be able to do its work properly after familiarising ourselves on these topics

V.B. Ndlovu MP

28th November 2001

Appendix 2

ECAAR : Economists Allied for Arms Reduction

Joint Investigation Report into the Strategic Defence Procurement Packages Presentation to the Joint Standing Committee on Defence

29 November 2001

1. Chapter 12

The offset programme (Chapter Twelve) is the crux of the arms deal, and the cause of the allegations of corruption that have bedeviled the acquisition programme. In short, expenditure of R29 billion on armaments was meant to be "affordable" through offsets worth R 10 billion to create 64 165 jobs.¹

Offsets are internationally notorious for corruption. Like a pyramid scheme, they are prohibited in civil trade agreements under the General Trade Agreement between the European Union, NAFTA and other countries because they distort market forces and are impossible to monitor.²

Thanks to its political influence in Europe and the United States, the international armaments industry has however been able to negotiate an exemption from this prohibition. Thus, offsets have become a major cause of the proliferation of armaments in "Third World" countries that otherwise could not afford the weapons. Turkey is an illustration of a country now in financial and social collapse because of arms sales and offsets.

Arm Scor promoted its expertise in "counter-trade" during the 1980s as a means to by-pass the international arms embargo against the apartheid government, and other sanctions. Iron ore was traded with China for AK-47s supplied to Renamo and Unita. G5 artillery were traded with Iraq against supplies of oil. Counter-trade was essentially a form of barter: offsets are just more "sophisticated" and complicated.

As a form of barter to by-pass money and foreign exchange markets, there is typically a heavy premium paid on the import side and a heavy discount suffered on the export side. These provide the commissions for the traders, but the economic costs for the countries involved are very substantial.

In 1994/95 the SA Navy and Arm Scor proposed to buy four Spanish corvettes at a cost of R1 .7 billion against offsets worth R4.8 billion which were supposed to result in 23 000 jobs. When challenged, neither the Navy nor Arm Scor could quantify how 23 000 jobs would be created. Roughly half of the counter-trade referred to increased Spanish purchases of South African coal, and half to the fishing industry.

The Spanish proposed to provide 30 fishing trawlers to previously disadvantaged communities and to build two huge fish processing plants on the Cape West Coast to process fish for export to Spain. Analysis by the South African Deep Sea Trawling Industry Association found that for these two plants to be economically viable, they would annually have to process 250 000 tons of hake.³

However, South Africa annually harvests only about 140 000 tons of hake. Consequently instead of creating 23 000 jobs, such over-fishing would have resulted in the collapse of South Africa's fishing industry which employs about 85 000 people. The corvette programme was "suspended" in 1995 because of public opposition.

2. The DIPS and NIPS

Thereafter, Armscor prevailed upon the Department of Trade and Industry to make offsets the basis of all government foreign procurements over US\$10 million. DTI in 1997 made the Industrial Participation Programme the basis of its economic development and industrialisation strategy. Offsets were promoted as a means of leveraging government procurements to "fast-track investment, exports and technology development."⁴

The "benefits" were to be split between DIPS and NIPS. Paragraph 12.2.3.1 confirms that the final split was approximately 14% DIPS and 86% NIPS. The 14% DIPS are essentially sweetheart contracts between BAe Systems/Saab and Denel. Denel is not economically viable, but hopes to piggy-back on BAe Systems to export components and weapons to the international armaments market.

The international armaments industry depends, thanks to its political influence, on heavy government subsidies. The European armaments industry cannot compete with the American armaments industry. The idea promoted by Armscor/Denel that arms exports would be a lucrative earner of foreign exchange and creator of jobs is economic nonsense. The industry is heavily capital intensive rather than labour intensive, and is thus a particularly poor creator of jobs.

Denel amounts, essentially, to subsidised and protected employment for well-educated white males. And the DIP programme is little more than financial spin-doctoring to disguise from taxpayers that Denel is bankrupt. Denel's financial statements are so heavily qualified that they are barely worth the paper that they are written on.

The flagship NIP programme is the proposed Coega deep water harbour and stainless steel plant. Per paragraph 6.1.10, the acquisition of three German submarines at a cost of R4.5 billion was supposed to provide offsets of R19 billion.⁶ The earlier announcement in November 1998 had been even more optimistic, declaring that the submarine acquisitions would result in offsets of R30.3 billion to create 16 251 jobs.⁷

The public was (and is) expressly forbidden details of the offset programmes in terms of "commercial confidentiality" clauses -- thus violating Section 217 of the Constitution. Environmental and financial impact studies confirmed that a stainless steel plant and metallurgical centre at Coega would have disastrous consequences for existing agriculture and tourism in the area, and that about 2 000 people would have to be forcibly removed from their land.⁸

Given the unemployment in the Eastern Cape, it is understandable that job creation opportunities must be promoted. But the modern steel industry is capital intensive, and a high skill industry. It is likely that any employment opportunities would be for imported expatriates from Germany rather unskilled locals. The steel industry has been in economic depression for many years, but continues to wield major political influence in Germany.

Establishment of the stainless steel plant at Coega -- but which now seems unlikely to materialise -- hinged upon heavily subsidised electricity and water supplies. Instead of a US\$1 billion stainless steel plant, Ferrostaal now proposes to establish a condom factory in East London.⁹

3. Economic Experience

As Idasa notes: "if expenditure on armaments is so economically beneficial, why does not every developing country in the world spend its entire budget on arms? The answer seems to lie in the fact that offsets are an internationally-discredited manner of promoting arms transactions."¹⁰

The £20 billion Al Yamamal deal between Britain and Saudi Arabia was supposed to create 75 000 jobs in Saudi Arabia. Now that the contract is complete, analysis shows that only 1600 jobs were created: 1 300 for imported expatriates and 300 for Saudis.¹¹

International experience shows that the only function that offsets perform for recipient countries is to provide political legitimisation for large amounts required on armaments by allowing policy makers to point to apparent, but ultimately non-existent, economic benefits. In short, offsets are a scam by the armaments industry, with connivance of politicians, to fleece the taxpayers of both supplier and recipient countries.

Any costs incurred by arms companies as a result of defence sales and offset conditionalities are simply passed onto the recipient country, and the level of job creation and technology transfer is generally minimal. Offset work placed in recipient countries simply disappears at the conclusion of the offset obligation. Thus, not only do recipient states pay more for their arms imports, they also derive little in the way of long term economic benefits. Suppliers still withhold cutting edge technology. Consequently, recipient states attempting to build up armaments industries remain dependent upon the major exporters for access to key elements of military technology.¹²

Offsets are economically irrational as the basis of South Africa's economic development policies and especially for job creation. To be rational, one would have to compare expenditure on alternatives and to choose the expenditure that achieves the greatest net economic benefit. International experience shows that the "benefits" of offset arrangements go primarily to those already amongst the best off economically and who are politically well connected. Thus, offsets further skew South Africa's income inequalities.

Expenditures on badly needed infrastructure development -- health care, housing, education etc. -- can be carried out in ways that provide development benefits, by taking care of pressing human needs and also for job creation that targets the sectors of the population that are economically disadvantaged.¹³

As an example, the Department of Housing estimates that every R3 billion spent on housing construction creates 45 000 jobs in the building industry and 43 000 jobs in the provisions of building materials.¹⁴

Recommendations

As is evident from the report, public hearings and other sources, the arms deals were government-to-government transactions heavily promoted by the European armaments industry and European governments. Our government may have been inexperienced and naive in swallowing the Armscor! DTI promises of offsets. European governments were complicit and culpable, and in violation of the EU Code of Conduct on Arms Exports which requires consideration of the socio-economic conditions in recipient countries such as South Africa.

1. Cancellation of the arms deal can be achieved without cost to South African taxpayers. Instead, the German, British, Swedish and Italian taxpayers would have to suffer the costs, and might then question why their governments so heavily promote the proliferation of armaments in "Third World" countries.

Contracts tainted by corruption are commercially considered to be null and void. In addition, ECAAR-SA's litigation against the government argues that the foreign loan agreements and guarantees signed by the Minister of Finance are in violation both of legislation and of the Constitution, and should be nullified as unlawful. The purpose of the litigation is to collapse the arms deal.¹⁵

As evident in Chapter Nine, the Cabinet was warned by the Department of Finance in August 1999 that the foreign exchange and other risks of the arms deal were considerable, and that the costs of the procurement would escalate. The Cabinet disregarded that warning, and the South African public and citizenry now face the consequences.¹⁶ The arms deal was costed at It6.25 per US\$1.¹⁷ The exchange rate is already R10 per US\$1, yet we are still only in year two of a twenty year programme.

The government has until January 3, 2002 to decide whether to oppose the ECAAR-SA application. ECAAR-SA has a very strong legal team who believe that the case is watertight. Should the government choose to oppose the application, it will face a public relations disaster that will compound existing public perceptions of a cover-up of corruption.

2. Disbandment of Armscor and Denel, and conversion of their assets to peaceful purposes.

3. Discontinuance and prohibition of the Department of Trade and Industry's Industrial Participation Programme, not only for armaments but also other government procurements such as aircraft for SAA.

Terry Crawford-Browne
November 29, 2001

1. Business Day, Johannesburg, November 19, 1998.

2. Cooper, Neil: "Arms Sales and Nano-Ethics: New Labour in Office," University of Plymouth, September 1999.

3. Kramer, Eckhart, SA Deep Sea Trawling Industry, Association, 1995.

4. The National Industrial Participation Programme of the Republic of South Africa, Department of Trade and Industry, Pretoria, 1997.

5. Joint Investigation Report into the Strategic Defence, Procurement Packages, South African Parliament, Cape Town, November 2001, page 351.

6. Ibid, page 152.

7. Business Day, Johannesburg, November 19, 1998.

8. Allan, Cohn, Public Service Accountability Monitor, Rhodes University, Grahamstown, 2001

9. Business Day, Johannesburg, November 22, 2001.

10. "Democracy and the Arms Deal: an interim report by IDASA," Cape Town, May 15, 2001

11. Mathews, Ron, "Arms Trade, Security and Conflict," University of Middlesex, June 1999.

12. Cooper, Neil, "South African Offsets," University of Plymouth, November 1998.

13. Dumas, Lloyd, "South African Offsets," University of Texas, August 2001.

14. ANC Today, Volume 1, No 20, June 8, 2001.

15. Application 9987/2001 tiled with the High Court of South Africa, Cape of Good Hope Provincial Division, Cape Town, November 21, 2001.

16. "Democracy and the Arms Deal: an interim report by IDASA," Cape Town, May 15, 2001.

17. Joint Investigation Report into the Strategic Defence, Procurement Packages. South African Parliament, Cape Town, November 2001, page 253.