

CHAPTER 1

BACKGROUND

	<i>INDEX</i>	<i>PAGE</i>
1.1	Introduction	2
1.2	The legal mandates, powers and functions of the Public Protector, the Auditor-General and the National Director of Public Prosecutions	13
1.3	The allegations and concerns investigated	19

CHAPTER 1

BACKGROUND

1.1 INTRODUCTION

1.1.1 The Basis for the Submission of the Joint Report

This joint report is submitted to Parliament in terms of sections 182(1)(b) and 188(3) of the Constitution, 1996 (Act No 108 of 1996 – hereinafter referred to as the Constitution), and section 35(2)(b) of the National Prosecuting Authority Act, 1998 (Act No 32 of 1998, as amended). The report relates to the investigation into the Strategic Defence Packages for the acquisition of armaments for the South African National Defence Force, which was conducted jointly by the Offices of the Public Protector, Auditor-General (A-G) and the National Director of Public Prosecutions (hereinafter referred to as the National Director).

1.1.2 The Defence Review: Aim, Logic and Force Design Options

1.1.2.1 Section 200(2) of the Constitution, provides that it is the primary objective of the South African National Defence Force to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force. South Africa also has international commitments, particularly in the African Region, to support operations under the auspices of the United Nations and other similar organizations, which involve military resources. The SANDF has the additional task of protecting the coastline and the marine resources of the Republic.

1.1.2.2 During May 1996 the former Minister of Defence, Mr J Modise presented the White Paper on National Defence for the Republic of South Africa to Parliament.

(White Paper). It has received strong support from all the political parties and was approved by Parliament. A policy framework and the main principles of defence were thereby established.

1.1.2.3 The White Paper also made provision for a Defence Review to include the following:

- (a) Options with regard to the size, roles and the structure of the SANDF.
- (b) Addressing the implications of the core force approach for the size, doctrine, structure, weaponry, equipment and other features of the SANDF.
- (c) Addressing the Strategic and technical implications of the constitutional provision that the SANDF *“shall be primarily defensive in the exercise of its powers and functions”*.

1.1.2.4 The aim of the proposed Defence Review was to elaborate on the policy framework based on the long-term planning of issues such as structure, force design, force levels and armaments.

1.1.2.5 The former Minister of Defence appointed a working group to draft the Defence Review with the Secretary of Defence as coordinator. The working group presented several briefings to the parliamentary Standing Committee on Defence. For the periods September 1994 to January 1999 and February 1999 to 1 June 1999, the committee was chaired by Mr T Y Yengeni and Ms T R Modise, respectively. The current chairperson is Mr J N Mashimbye.

1.1.3 Logic of the Defence Review

1.1.3.1 In determining the appropriate size, structure and force design of the SANDF for the 21st century, the following had to be established by the Defence Review:

- (a) The tasks that the SANDF will and may have to perform in the future.
- (b) The manner in which these tasks should be undertaken.
- (c) The equipment and weaponry required by the SANDF to fulfil these tasks.

1.1.3.2 The identification of the SANDF tasks has been based on the following:

- (a) The constitutional provisions on Defence.
- (b) The policy contained in the White Paper on Defence.
- (c) An analysis of the internal and external security environment.

1.1.3.3 The Defence Review indicated that defence planning can be described as *"needs driven and cost constrained"*.

1.1.4 Force Design Options

1.1.4.1 The Department of Defence developed different force design options. These options reflected the different permutations of the level of defence, defence structure and cost, for public consideration during the consultative conferences on the Defence Review.

1.1.4.2 Cabinet and the Parliamentary Defence Committees were presented with four options, which were discussed in detail. The chosen option relevant to this investigation is set out below and was approved, subject to the availability of finances.

SANDF FORCE DESIGN	
SA Air Force	
Fighters	
Light Fighters	16
Medium Fighters	32
Helicopters	
Combat Support Helicopters	12
Maritime Helicopters	5
Transport Helicopters	96
SA Navy	
Submarines	4
Corvettes	4

1.1.4.3 During the selection process, certain foreign countries approached the DoD, formally and informally with various offers to enter into agreements to procure military equipment. These offers entailed packages consisting of Naval, Air Force and Army equipment. This resulted in the DoD adopting a “package” approach to the acquisition process as opposed to the individual purchasing of equipment types. These offers became known as the Strategic Defence Packages (SDP).

1.1.4.4 The South African Defence Review was approved by Parliament in April 1998.

1.1.5 Special Review of the Auditor-General [RP 161/2000]

1.1.5.1 During November 1998, the Defence Audit Centre of the Office of the Auditor-General identified the procurement of the SDP as a high-risk area from an audit point of view and decided on the need to perform a special review of the procurement process.

1.1.5.2 On 28 September 1999, after various consultations, the Minister of Defence, Mr M P G Lekota, finally approved the audit review into the SDP. The audit process was duly followed and the A-G finalized and signed the Special Review on 15 September 2000.

- 1.1.5.3 The main findings and recommendations of the Special Review by the A-G dealt with the following issues:
- (a) The independence of role players involved with the procurement of the SDP.
 - (b) The technical evaluation of the Lead in Fighter Trainer (LIFT) during the procurement process.
 - (c) The adequacy of the performance guarantees pertaining to the National Industrial Participation programme (NIP).
 - (d) The policy of the Ministry of Defence pertaining to the SDP procurement.
 - (e) The armaments acquisition policy applied during the SDP procurement.
 - (f) The Negotiations in respect of the Frigates (corvettes).
 - (g) The tender procedures followed to award subcontracts.

1.1.6 Subsequent events

- 1.1.6.1 The Special Review was the subject of hearings and deliberations of the Parliamentary Standing Committee on Public Accounts (SCOPA), which culminated in the fourteenth report of the committee. On 2 November 2000 the National Assembly adopted the SCOPA report.
- 1.1.6.2 SCOPA suggested in the report that a meeting be convened with the A-G, the Public Protector, the National Director of Public Prosecutions and the Health Special Investigation Unit (SIU) to discuss the broad framework of an independent and expert forensic investigation into a number of issues, which

were referred to in the Special Review, as well as other information in the possession of SCOPA.

1.1.6.3 The proposed meeting was held on 13 November 2000 and SCOPA was informed of the decisions as set out hereunder:

(a) The Directorate of Special Operations of the National Prosecuting Authority (DSO), the Offices of the A-G and the Public Protector and SIU would conduct a joint investigation in order to combine skills, resources and legal mandates.

(b) The A-G would act as the coordinator of the investigation.

1.1.6.4 On 16 November 2000, the three agencies held a meeting to discuss the approach to the investigation, the responsibilities of the agencies, the sharing of information and the way forward. A further meeting was held on 1 December 2000.

1.1.6.5 Following these meetings, DoD was requested to declassify all the relevant documentation pertaining to the SDP. As this was not possible, they requested DSO to provide them with a summons, which was issued in early January 2001.

1.1.6.6 It should be pointed out that the SIU was not formally instructed by Proclamation by the President, as required by law and hence did not form part of the joint investigation. The President publicly announced the reasons for his decision in this regard.

1.1.6.7 Following these meetings and the President's decision on the SIU, it was agreed as follows:

Strategic Defence Packages

Joint Report

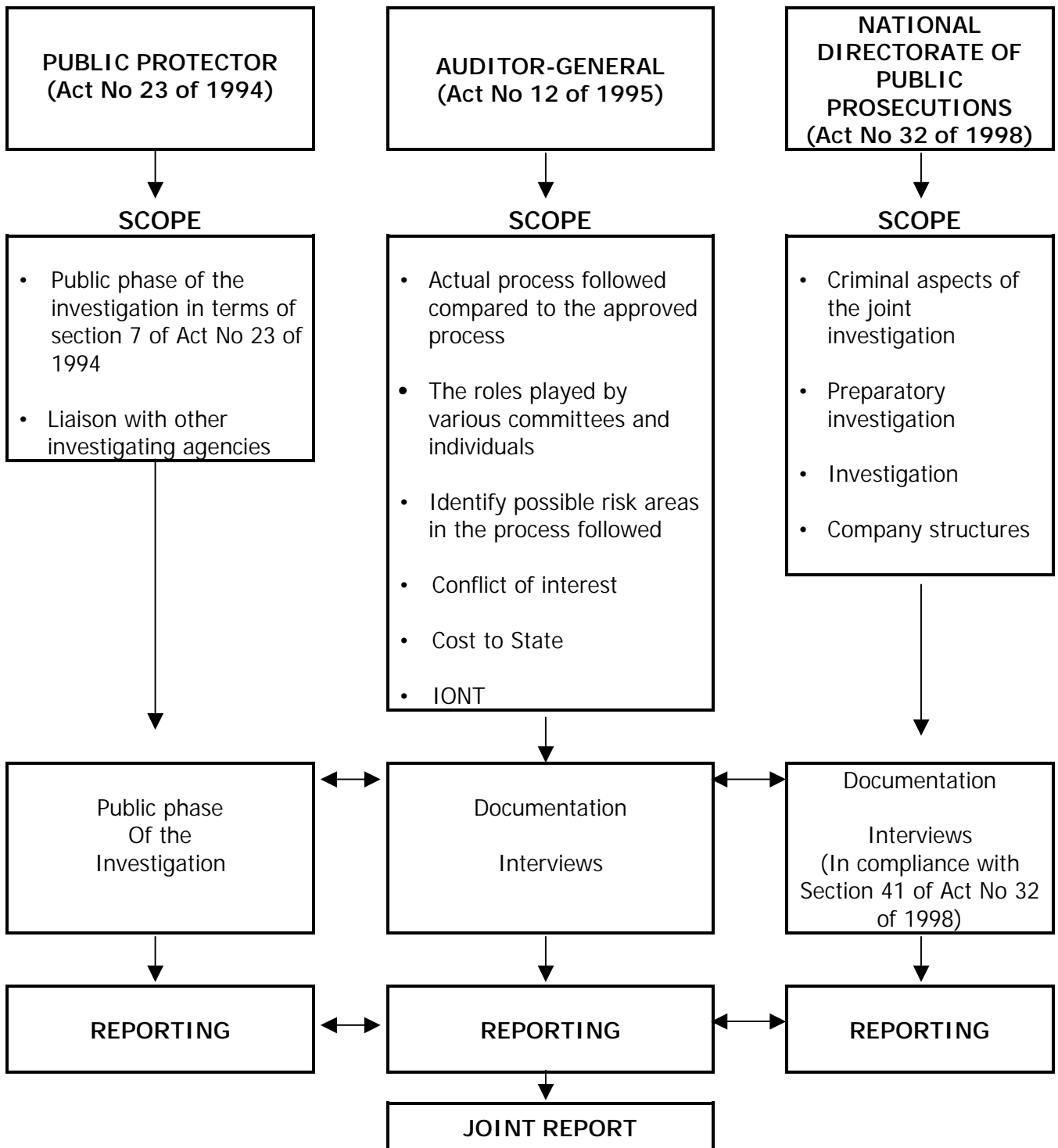


- (a) The DSO would focus on the allegations and suspicions of criminal conduct, whilst the Office of the A-G would conduct an extensive forensic investigation.

- (b) The Public Protector would look into the quality of the SDP contracts and unethical conduct by any of the public officials.

(Refer to the schematic presentation below, which provides an exposition of the areas of responsibilities and the inter- relationship between the three agencies).

AREAS OF RESPONSIBILITY AND INTER-RELATIONSHIP



- 1.1.6.8 On 18 January 2001, the President, the Ministers involved in the approval of the arms procurement, the A-G, the National Director and the Public Protector met to discuss the availability of the documentation. An agreement was reached about the withdrawal of the summonses and the development of alternative measures to allow the investigation teams access to the documentation. This entailed the granting of controlled access to the documents, which was agreed upon by the investigation teams and DoD. In terms of this arrangement, Officials of DoD identified the location of the documents concerned to the investigations.
- 1.1.6.9 On 7 February 2001, the Deputy A-G appeared before SCOPA in a public briefing and provided them with an overview of the nature and scope of the investigation together with a status report and a budget.
- 1.1.6.10 SCOPA held a further hearing on 26 February 2001, where the Ministers of Defence, Finance and Trade and Industry were called to testify and explain the procurement process of the SDP.
- 1.1.6.11 On 2 March 2001, the investigation agencies held a meeting with the Secretary for Defence to finalise arrangements to obtain access to the documentation.
- 1.1.6.12 On 26 March 2001, the three agencies decided that the public phase should commence towards the end of May 2001 under the auspices and legal mandate of the Public Protector.
- 1.1.6.13 The joint investigation was unique in that the three organs of State, for the first time, conducted an investigation into alleged irregularities and criminal conduct simultaneously. The holding of a public phase as part of the investigation can equally be described as unique. This was by no means an easy task as all three agencies had to pioneer their way through uncharted and, at times, difficult territory.

1.1.6.14 All the information and evidence that was obtained to date and the effects thereof have been considered. Due process was also followed in the investigation.

1.1.6.15 The findings of the investigation where considered necessary and appropriate, have been included in this report. Areas of a criminal and sensitive nature, were considered inappropriate to be included in this report.

1.1.7 Practical difficulties and challenges

1.1.7.1 As with any other investigation, practical difficulties and challenges were encountered. Some of these were the following:

- (a) Obtaining the documents according to the controlled access arrangement proved to be cumbersome. The investigation teams also had to accept that the documents, which were found at the identified locations, were all the documents pertaining to the procurement in question. It was therefore not possible to ensure that access was provided to all the documents. There is, however, no indication that any documents has been willfully hidden, destroyed or kept from the agencies.
- (b) One of the many challenges, was to control and manage documents in excess of 700 000 pages, which were obtained from the DoD.
- (c) The agencies recognised the right to legal representation of those persons or institutions affected by the investigation. Therefore, the investigation teams had to contend with the different time schedules of the different legal teams in order to find suitable dates for consultations and the questioning of witnesses. In addition, many of the witnesses have left the employ of the departments in question and therefore had to be traced.

- (d) The role and function of the media to keep the public informed and to ensure accountability and transparency has been recognised and respected equally throughout the investigation. Clearly, the investigation is a matter of enormous public interest and hence the intense media interest. It appears from news reports that the media conducted an investigation concurrently with the investigation team. This has led to some difficulties.
- (i) The media exposed the names of various individuals and connected them to various allegations before any findings have been made.
- (ii) This resulted in the affected individuals' unwillingness to cooperate with the agencies. There were also unexplained leaks to the media, which often prejudiced the investigation.

In order to address these difficulties, a meeting was held with the media to obtain their support in cooperating with the joint investigation teams.

It should be borne in mind that, while recognising the media's freedom to receive and report information and the public's right to know, these rights are not absolute; they are limited by what is reasonable and justifiable in an open democratic society based on human dignity equality and freedoms.

What we should guard against and what is often counter-productive, are unconsidered and premature revelations and disclosures, speculation, defamatory name-calling and, other actions that might be detrimental to an investigation.

- (e) Difficulties were also experienced at the commencement of the public phase when SABC and Midi TV lodged applications for the direct and/or

delayed broadcasting of the proceedings. After the Public Protector dismissed the applications, SABC and Midi TV applied to the High Court (Transvaal Provincial Division) to have the ruling reviewed. This application was also dismissed.

1.1.7.2 It should be pointed out that the government departments and agencies that were involved in the investigation cooperated with the three agencies. The difficulties experienced also did not have any effect on the results of the investigation.

1.2 THE LEGAL MANDATES, POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR, THE AUDITOR-GENERAL AND THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

1.2.1 The Public Protector, Auditor-General and National Prosecuting Authority, headed by the National Director, exist separately in terms of the Constitution. Each has his own constitutional mandate.

1.2.2 In chapter 9 of the Constitution, the Public Protector and the Auditor-General are grouped together under the heading *“State Institutions Supporting Constitutional Democracy”*. In terms of section 181(2) these institutions are independent and subject to only to the Constitution and the law. They are constitutionally bound to be impartial and to exercise their powers and perform their functions without fear, favour or prejudice.

1.2.3 Section 181(3) of the Constitution places a duty on other organs of State to assist and protect these institutions in order to ensure their independence, impartiality, dignity and effectiveness.

1.2.4 In terms of section 182(1) of the Constitution, the Public Protector has the power to:

"(a) investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

(b) to report on that conduct; and

(c) to take appropriate remedial action."

1.2.5 Any report issued by the Public Protector must be open to the public unless exceptional circumstances require that it be kept confidential.

1.2.6 The powers and functions of the Public Protector are regulated in more detail by the provisions of the Public Protector Act, 1994 (Act No 23 of 1994). In terms of section 7 of the Act, the Public Protector can conduct informal preliminary investigations of allegations and information that refer to matters that fall within his jurisdiction. He can also conduct more formal investigations such as the one under discussion in this report. The Public Protector determines the format and procedure of any investigation.

1.2.7 In terms of section 7(1)(b)(ii) of the Act, the Public Protector may direct that any category of persons or all persons whose presence is not desirable shall not be present at the proceedings of an investigation.

1.2.8 The Act, furthermore, provides in section 7(3) that the Public Protector may request any person at any level of government, performing a public function or otherwise subject to the jurisdiction of the Public Protector to assist him in an investigation.

1.2.9 The Public Protector may direct any person by means of a subpoena to submit an affidavit or affirmation or to appear before him to give evidence in connection with any matter that has a bearing on the matter being investigated

(Section 7[4][a]). He may also request an explanation (without a subpoena) from any person he reasonably suspects of having information regarding the matter being investigated (Section 7[4][b]).

1.2.10 Any person appearing before the Public Protector is entitled to legal representation. He is entitled, through the Public Protector, to question other witnesses (Section 7[9][b][ii]).

1.2.11 Section 9(a) of the Act provides that if it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

1.2.12 In terms of section 6(4) the Public Protector can, in his sole discretion, take the following action to resolve a dispute or to address any improper act or omission:

- (a) mediation, conciliation or negotiation;
- (b) advising the complainant of appropriate remedies, where necessary;
- (c) making appropriate recommendations to the public body involved;
- (d) referring the matter to the authority charged with prosecutions where the facts disclose the commission of an offence; or
- (e) any other means that may be expedient under the circumstances.

1.2.13 Section 188(1) of the Constitution provides that the A-G must audit and report on the accounts, financial statements and financial management of:

- (a) all national and provincial state departments and administrations;

- (b) all municipalities; and
 - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the A-G.
- 1.2.14 The A-G must submit audit reports to any legislature that has a direct interest in the audit. All reports must be made public.
- 1.2.15 The additional powers and functions of the A-G are prescribed by the Auditor-General Act, 1995 (Act No 12 of 1995).
- 1.2.16 In terms of section 3(5) of the Auditor-General Act, the A-G may, when exercising his powers, require any person in the employment of an institution whose accounts are being audited by him to appear before him and to produce all such records, books and other documents in the possession or under the control of such person as the A-G may deem necessary.
- 1.2.17 The A-G has the power, in terms of the Act, to investigate and to make extracts from any record, book, document and other information of an institution whose accounts are being audited by him.
- 1.2.18 Sections 3(5)(b)(ii) and (iii) of the Auditor-General Act provide that the A-G has the right to investigate whether any property, money, equipment and other assets of an institution accounts are being audited by him have been obtained in an economical manner and are being applied efficiently and effectively. The A-G can also investigate the efficiency and effectiveness of internal control and management measures relating to the expenditure and revenue of such an institution.
- 1.2.19 The A-G may interrogate under oath or upon affirmation any person whom he thinks fit to interrogate in connection with any matter in so far as it may be

necessary for the due performance and exercise of his powers and duties (Section 3[5][c]).

- 1.2.20 The National Prosecuting Authority is grouped in chapter 8 of the Constitution under the heading *Courts and Administration of Justice* and is equally constitutionally bound to exercise its functions without fear, favour or prejudice.
- 1.2.21 Section 179(2) of the Constitution empowers the national prosecuting authority to institute criminal proceedings on behalf of the State, and to carry out any necessary functions incidental to instituting criminal proceedings. The Preamble to the National Prosecuting Authority Act, 1998 (Act No 32 of 1998, as amended – hereinafter referred to as the NPA Act), further provides that in order to ensure that the prosecuting authority fulfils this constitutional mandate, provision has been made for the establishment of an Investigating Directorate, which is known as the Directorate of Special Operations (DSO). The directorate has been established in the Office of the National Director (Section 7[1][a]).
- 1.2.22 The NPA Act regulates the powers and functions of the National Director, other members of the prosecuting authority and the DSO.
- 1.2.23 The DSO is headed by a Deputy-National Director, who performs his powers, duties and functions subject to the control and the directions of the National Director (Section 7[3][a]). The Head of the DSO is, in turn, assisted by, *inter alia*, an Investigating Director, Deputy Directors and Special Investigators (Section 7[4][a]).
- 1.2.24 Chapter 5 of the NPA Act sets out the powers, duties and functions relating to the DSO. Investigations are conducted in terms of section 28, which also endows the Investigating Director with discretion to determine the procedure to be followed as dictated by the circumstances of each case (Section 28[4]). This

chapter also makes provision for, *inter alia*, the power of search, seizure and arrest.

- 1.2.25 In terms of section 28(1), if the Investigating Director has reason to suspect that a specified offence (as defined in section 1) has been or is being committed or that an attempt has been or is being made to commit such an offence, he may conduct an investigation into the matter in question. In terms of section 28(13), if the Investigating Director considers it necessary to hear evidence in order to enable him to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1), he may hold a preparatory investigation.
- 1.2.26 The specified offences in respect of which the Investigating Director can conduct an investigation or preparatory investigation include, *inter alia*, any offence of fraud, theft, forgery and uttering, corruption in terms of the Corruption Act, 1992 (Act No 94 of 1992), or any other economic common law offence or economic offence in contravention of any statutory provision, which involves actual or potential patrimonial prejudice to the State, any body corporate, trust, institution or person, which is of a serious and complicated nature.
- 1.2.27 The Investigating Director has a discretion to designate any of the persons provided for in the Act to assist him in the exercise of his functions (Section 28[2][a]).
- 1.2.28 The Investigating Director (or any person designated by him) may, for the purpose of conducting investigations and preparatory investigations, summons anyone who is believed to be able to furnish any information in connection with the investigation or is believed to have in his/her possession or under his/her control any book, document or object relating to the investigation to be questioned or to produce the relevant information (Section 28[6][a]).

1.2.29 Section 28(6)(b) also empowers the Investigating Director (or person designated by him) to question any person who is believed to have information pertaining to the investigation, under oath. The Act also makes provision for such a person to be assisted by a legal representative. Further, that any proceedings in relation to the questioning must take place *in camera* (Section 28[3]).

1.2.30 Section 41(6) prohibits the disclosure of information, the contents of any document or the record of any evidence given at an investigation as contemplated in section 28(1) without the permission of the National Director.

1.3 THE ALLEGATIONS AND CONCERNS INVESTIGATED

1.3.1 The investigation agencies received numerous allegations, most of which were of a criminal nature, referring to issues such as corruption and conflict of interest. The DSO conducted preliminary investigations into these allegations. Some were found to be without any substance and therefore required no further investigation. These allegations are the following:

- (a) That Mr L Swan, a senior official at Armscor, became a director of BAe Systems, which was one of the prime contractors.
- (b) That the Chief of Acquisition of the SANDF, Mr S Shaik; Messrs M Sisulu, M Scott and N Mashembye received motor vehicles from the prime contractors/bidders.
- (c) That there was a link between the arms procurement presently under investigation and the Mpumalanga Parks board promissory notes.
- (d) That the former Minister of Defence, Mr J Modise, paid for shares in Conlog with a bribe received from a successful prime contractor.

Other allegations appeared to have substance and are currently being pursued. In the main, the allegations and concerns, which required extensive investigation by the three agencies can be graphically summarised as set out in the tables below.

1.3.1.1 Concerns raised by SCOPA

	AREA OF CONCERN	INVESTIGATION AGENCY	STATUS OF INVESTIGATION
1.	Cost to State		
1.1	<p><u>Validity of contract amount</u></p> <p>Cabinet's announcement of a total cost of the procurement of R30,3 bn, whilst in September 2000 the figure had allegedly risen to R43,4 bn. The inclusion or omission in determining the final figure of the cost of the SDP of interest, price escalation conditions and the cost effects of negative foreign exchange movements.</p>	A-G and Public Protector	The investigation has been completed. See chapter 9 of the report.
1.2	<p><u>Full financial and fiscal implications</u></p> <p>The movements within certain major currency markets and the realism of the macro-economic assumptions used in determining the cost to the state of the procurement.</p>	A-G and Public Protector	The investigation has been completed. See chapter 9 of the report.
1.3	<p><u>The price of the Gripen and Hawk procurement</u></p> <p>The suggestion that the price of these two items was improperly inflated.</p>	A-G and Public Protector	The investigation has been concluded. See chapter 4 of the report.
2.	The selection of prime contractors		
2.1	The addition of a non-costed option to the value system of the LIFT.	A-G and Public Protector	The investigation has been completed. See chapter 4 of the report.
2.2	The reason for subjecting the value system of only one programme of the SDP to a non-costed option.	A-G and Public Protector	The investigation has been completed. See chapter 4 of the report.
2.3	The presentation to Cabinet of the costed and non-costed options in respect of the LIFT.	A-G and Public Protector	The investigation has been completed. See chapter 4 of the report.

3.	The selection of subcontractors		
3.1	<p><u><i>Conflict of interest</i></u></p> <p>The suggestion that a potential conflict of interest in respect of the Chief of Acquisitions of the DoD could have had an improper influence on decisions pertaining to tenders.</p>	A-G and Public Protector	The investigation has been completed. See chapter 10 of the report.
3.2	<p><u><i>Complaints of C²I²</i></u></p> <p>The complaints and allegations of C²I² (an unsuccessful tenderer) that they have been treated improperly and unfairly during the procurement process.</p>	A-G and Public Protector	The investigation has been completed. See chapter 11 of the report.
4.	Post review of arms procurement process	A-G and Public Protector	The investigation has been completed. See Chapter 3 of the report.
5.	<p>Contracts</p> <p>The concern that the drafting of the contracts is of a low standard, that some of the annexures are missing and that several currencies are referred to in one contract.</p>	Public Protector	The investigation has been completed. See Chapter 13 of the report.
6.	Auditing of bi-annual reports of the progressive realisation of national industrial participation (NIP) and defence industrial participation (DIP)	A-G	It was decided at an early stage of the planning of the investigation that this matter should not be included. It will form part of the normal auditing activities of the A-G.

1.3.1.2 Allegations

	ALLEGATION	INVESTIGATION AGENCY	STATUS OF INVESTIGATION
1.	A possible conflict of interest in respect of various persons involved in the overall acquisition process due to directorships, shareholding, relatives, etc.	Directorate of Special Operations	Under investigation
2.	A high-ranking official is a shareholder and chairman of a local sub-contractor that is a beneficiary of a prime contractor DIP offset offer.	Directorate of Special Operations	Under investigation
3.	Various role players in the overall acquisition process hold shares through nominees in entities, which benefited from the acquisition.	Directorate of Special Operations	Under investigation
4.	Persons involved in the overall acquisition process (amongst whom high-ranking officials) received various gifts.	Directorate of Special Operations	Messrs T Yengeni and Woerfel arrested and prosecuted. Criminal case pending.
5.	A certain bidder was overlooked in favour of a prime contractor at a unit price of more than R3 million above the cost of the bidder's product.	Directorate of Special Operations	Under investigation
6.	An important role player in the acquisition process had personally communicated to several bidders that they would have to come to a specific arrangement with two South African subcontractors if their bids were to be successful.	Directorate of Special Operations	Under investigation
7.	The German Submarine Consortium came last or second-last in the technical and price evaluation of the Submarine bids according to the formal value system and points allocation methodology.	A-G	Investigation completed. See chapter 6 of the report.
8.	FBS did not have the capacity and had to subcontract the initial work allocated to them in terms of a contract until the merger with Conlog/Logtek. The making of undue payments.	Directorate of Special Operations	Under investigation

1.3.2 Status of the investigation by DSO

- 1.3.2.1 In conducting these investigations, the DSO subteams mainly used the provisions of section 28 of the NPA Act. As at the date of this report, in excess of 102 summonses have been issued. As a result of these summonses, more than 57 statements from witnesses, statutory records in excess of 193 entities and numerous documents have been obtained. To date, Messrs Yengeni and Woerfel have been brought before court on charges of corruption, fraud, forgery and uttering. Various premises in France, Mauritius and South Africa have been searched and documents seized.
- 1.3.2.2 It should be borne in mind that the questioning of witnesses has often been laborious, extensive and clouded by issues of participative legal representation, prior requests for access to information and threats of litigation.
- 1.3.2.3 Whilst there may have been individuals and institutions who used or attempted to use their positions improperly, within government departments, parastatal bodies and in private capacity, to obtain undue benefits in relation to these packages, up until now no evidence has emerged, to suggest that these activities affected the selection of the successful contractors/bidders, which may render the contracts questionable. As matters stand, there are presently no grounds to suggest that the Government's contracting position is flawed.
- 1.3.2.4 Due to the nature of an investigation of this kind, and also in order to avoid disclosure of information in contravention of section 41(6) of the NPA Act, it has been decided not to make public the details of the matters under investigation. By the time this report is tabled, numerous events flowing from the investigation would have materialized, which should provide an indication as to its contents.