

Statement by the Director General in the Presidency on behalf of President Mbeki, 19 January 2001

1. The people of South Africa adopted a Constitution that establishes a democratic state based on the principle of the separation of powers. The Constitution sets out different roles for the Government, Parliament and the Judiciary. In addition, it makes provision for independent institutions which support democracy by ensuring that state functionaries conduct the affairs of the state in a lawful and proper manner.

2. Recognising that Corruption and maladministration are inconsistent with democracy and good governance, the democratic Government of the Republic of South Africa introduced legislation to set up specific mechanisms to root out corruption in government. Among these was the Special Investigating Units and the Special Tribunals Act of 1996.

3. Accordingly, the President, in 1997, established the Special Investigating Unit (SIU) headed by Judge Heath.

4. In addition the government has at its disposal other agencies with which to combat corruption, such as the National Directorate: Serious Economic Offences and the National Directorate of Public Prosecutions.

5. Since government approved the Strategic Defence Procurement Package, there has been allegations around the integrity of the Strategic Defence Procurement Package.

6. A thorough assessment has been done by the relevant Cabinet Committee as reported by Ministers Alec Erwin, Mosioua Lekota, Jeff Radebe and Trevor Manuel last week. Cabinet is of the firm view that the procurement process was undertaken with the utmost integrity.

7. However, as was reported by the Ministers: "The government recognises that the Auditor-General and SCOPA have come to the determination that further investigations are necessary. We respect this opinion; and the relevant departments and Ministers will fully co-operate with such investigations."

8. In this regard, Judge Heath requested the President to issue a proclamation authorising the Special Investigating Unit headed by himself to investigate the Strategic Defence Procurement Package. This request

was supported by the chairperson of the Standing Committee on Public Accounts of Parliament.

9. Minister Maduna considered this matter and recommended that the SIU should not be included in the investigation.

10. The President received further information and submissions from the Auditor-General, the Public Protector, and the National Director of Public Prosecutions in order to make his determination.

11. The President also received submissions from Judge Heath.

12. In addition, the President received unsolicited submissions from other non-governmental entities and private persons.

13. Having taken full account of all the information at his disposal, the President has decided not to issue a proclamation to authorise the Special Investigating Unit headed by Judge Heath to investigate the Strategic Defence Procurement Package.

The President's decision is based on the following considerations:

1. On November 28 2000, the Constitutional Court ruled that the Special Investigations Unit headed by Judge Heath is unconstitutional and invalid.

2. The Court held that to have a judge performing executive functions, such as Judge Heath was doing, serves to corrupt the noble principle of the separation of powers. The Court also said that to require a judge to perform these function clearly compromises the independence of the judiciary.

3. The government cannot be party to acts which compromise the judiciary, especially in view of the unfortunate history of the lack of legitimacy of the judiciary in the past.

4. The Court gave the government and parliament a period of one year within which to regularise the position of the Special Investigating Unit. With regard to this period, the President of the Constitutional Court, said:

"Although there may be reasons for allowing sufficient time for all matters to be dealt with simultaneously, there are good reasons for the first respondent's (Judge Heath) position as head of the SIU to be regularised without undue delay."

You will know that the Court identified other legal difficulties with the SIU.

5. In compliance with the ruling of the Constitutional Court, the President has accordingly asked Minister Maduna to urgently attend to the matter of ensuring that the SIU be properly constituted in terms of the directions of the Constitutional Court. This will be acted upon at the earliest possible moment when Parliament re-opens.

6. In the meantime, and in deference to the Constitutional Court ruling, the President will not be referring new matters to the SIU.

7. The President is aware that the Auditor-General, the Public Protector and the National Director of Public Prosecutions are engaged in doing preliminary assessments of the allegations made regarding the Strategic Defence Procurement Package.

8. Government believes that these agencies, together with our courts, have the legal capacity and the jurisdiction, both criminal and civil, to deal with all aspects of the investigation. These agencies and units will receive the government's full co-operation in their investigations.

9. Government re-affirms its commitment to the eradication of corruption from our national life and to transparent and open practices.

<http://www.gov.za/projects/procurement/decision.htm>