

# **APDUSA VIEWS**

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**THE ARMS DEAL -**

**RICH RACKET .....**

**POOR COVER – UP !**

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## **THE INQUIRY INTO THE ARM'S DEAL**

An unimaginably vast amount of money – R66 000 000 000<sup>1</sup> – is going to be spent on arms by the democratic government of the Republic of South Africa. By “arms” is meant instruments and weapons of death and destruction. Who do we want to kill? Who do we want to destroy? Why do we require so much of power to kill and destroy?

## **THE NATURE OF AN ARMS DEAL.**

Buying arms is not as straight-forward and clean a transaction as buying grain or motor vehicles. The very nature of the subject matter- arms – is sensitive. It is not something the purchaser wants publicised. You do not want the country (or any purveyor of military information) against whom you are purchasing the arms to know what you are buying and in what quantities. Hence the hallmark of an arms deal is its **SECRECY**. The secrecy relates to the nature, quantity and cost of the transaction. More importantly the secrecy relates to the country purchasing the arms, the supplier, the identity of the persons representing the parties in the negotiations, the dates of negotiations, delivery etc.

The most important aspect of an arms transaction is the large amount of money involved. Arms transactions are not worth talking about unless they are in the hundreds of millions, or in the billions. George Bush, the president of the US intends refurbishing the US military hardware which he estimates will cost \$2 000 000 000 000, that is, two trillion US dollars.

## **THE ARMS ECONOMY**

The arms industry is lucrative. It thrives like nothing else during a war. When a war is in progress, the demand for arms is unbelievably high. It is in the very nature of the product. The product is designed to destroy but destroys itself in the very process of destroying. Examples: bullets, grenades and bombs. And what does not destroy itself, by its very nature invites, most intensely, destruction by the enemy. The nature of war is destruction. When, therefore, arms are destroyed either in use or by the enemy, there is a constant demand for replacement. Hence the thriving of the armaments industry. Where there is no actual war, there is simulated war through war exercises. The demand is there, none

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<sup>1</sup> Did we say R66 billion? Correction. It was R32 billion a couple of years ago. It suddenly shot up to R66 billion. The increase takes into account interest, the depreciation of the local currency etc. It is best that the assessment of the actual and ultimate cost of the arms procurement deal be left open-ended. Only God knows what it is going to be. And He is not telling!.

theless. Finally, there is the obsolescence factor, which constantly requires renewal and replenishment.

### **“THE ARMS BAZAAR”**

This subtitle is the title of a book written by the British writer, ANTHONY SAMPSON.<sup>2</sup> We very strongly recommend that any person who wishes to make sense of the R66 billion Arms Deal must read Sampson’s “**The Arm’s Bazaar**”. By doing so, what can be so easily dismissed as fiction becomes fact; what would otherwise be considered unbelievable becomes credible. A curtain has been lifted and the reader will be given an excellent account of the activities of the merchants of death. They function in a dark and murky environment. The participants have one thing in common. **The greed for riches.** An all consuming greed which has not a single iota of mercy or compassion. That their merchandise is destined to wreak death and destruction to the innocent multitudes is of no consequence at all. Even if no war is contemplated in the immediate future, the squandering of vast sums of money by developing or poor countries in the purchase of arms can only mean that vitally needed funds for food, hospitals, treatment for AIDS, resources for the law enforcement agencies, succour for the unemployed and the indigent, basic and elementary facilities for schools ( buildings with roofs instead of seeking shelter from trees, water, functioning and clean toilets, books, stationery) etc., etc., ( the list is endless), will be diverted for the purchase of expensive “toys” for the male machos of the military establishment.

### **BRIBERY AND PROFIT**

The all powerful and all consuming motive for the arms industry is, as we have stated, the greed and avarice for riches and wealth. The source is twofold. The one is the enormous profit made by the manufacturer. The other is bribery for the purchaser and handsome commission for the intermediaries. Our interest is bribery for the purchaser.

### **BRIBERY FOR THE PURCHASER**

It is an accepted fact that bribery plays a very crucial part. It can also be stated as fact that no arms deal takes place WITHOUT BRIBERY. It has been claimed that arms deals are, at times, created, not because arms are required *but because the bribes are required.*<sup>3</sup> In other words, if a governing party or influential members of it have need for funds for whatever reason, an arms contract is **fabricated** in order to get the bribe. Here, the

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<sup>2</sup> The author appears to have a split personality. He has written invaluable books like “The Anatomy of Britain”, “The Seven Sisters”, dealing with the gigantic oil companies and “ The Arms Bazaar”. But he has also written a so-called biography of Nelson Mandela which has done him an enormous disservice. Instead of a critical, interesting and stimulating account of the man’s life, Anthony Sampson became Mandela’s encomiast or praise-singer. It is difficult to believe that Sampson, the relentless researcher and investigator, fearless and illuminating in his writings is the same person who wrote Mandela’s biography. “ Did he who made the “tyger” make thee?” (With apologies to William Blake)

<sup>3</sup> A Royal Commission which sat in 1935-6 in England made the point that arms bribes were able to stimulate orders which might otherwise have never been made. (From “The Arms Bazaar”, Coronet Books, p 55)

hapless country has to pay for the arms while the governing party, or a clique in it, receives the bribe.

A variation of stratagem is the case where a country genuinely requires certain arms. What is then done is to purchase more than the required quantity. How much more? It all depends on the amount of bribe required.

Bribery in big business has become so accepted “that the British tax authorities (like the Germans) permitted **business bribes to be regarded as tax-deductible expenses.**”<sup>4</sup> (Our emphasis)

.It is with this sketchy and by no means adequate background that we must examine the events surrounding an investigation into the arms deal..

### **THE STANDING COMMITTEE OF PUBLIC ACCOUNTS (SCOPA)**

This is an oversight committee, a sort of watchdog committee. The committee has no powers to test policy decisions. It only acts after decisions involving policy have been taken. The function of SCOPA is to ensure that the taxpayers’ money has been properly looked after. It even has the power to call Ministers and official to account. It is the most important oversight committee in parliament.

SCOPA is formed by representatives from all the political parties. The number of representatives is in accordance with the representation each party has in parliament. Accordingly, the ANC had the majority although the intention was that SCOPA should function in a non-partisan manner.

As it happened, SCOPA did function in a non- partisan manner until the crisis on the arms deal. The chairman of SCOPA was Dr Gavin Woods, an IFP member. The appointment of a member of the opposition as chairperson is in accordance with international practice and underlines the non-partisan nature of the committee. The leader of the ANC in SCOPA was Andrew Feinstein, a highly trained economist. SCOPA soon earned the reputation of being the perfect example of how the oversight function can be effectively performed by members of different parties working in harmony with one another.

### **THE CALL FOR AN INQUIRY**

Flowing from a report of the Auditor General, SCOPA in turn prepared a report which was submitted to the General Assembly. The gist of the report was that an inquiry be instituted concerning the arms deal. Included in the report was a recommendation that the Heath Investigating Unit be one of the agencies involved in the inquiry. The report

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<sup>4</sup> ibid, p 282

drawn up by Feinstein and Woods was passed “with the support of the full committee in open session.”

Next, the report went to the General Assembly where in the presence of cabinet ministers, unanimous support was given for the report.

Just when everything was set for the next step of obtaining the presidential proclamation for the Heath Investigating Unit, all hell broke loose.

Coming right from the top (the President and Vice President) an attack was mounted on the Heath Investigating Unit’s involvement in the investigation and on SCOPA through the person of Andrew Feinstein. One got the distinct impression that the ANC was caught napping and that at the last minute, Mbeki and Zuma dashed in to save the day. More likely, for reasons known to a very select few (which excluded the majority of the ANC cabinet ministers), there were two **non-negotiable** requirements:-

1. Judge Heath, had , at all costs, to be excluded from the investigation team.
2. SCOPA had to be re-organised and its non-partisan nature had to be obliterated.

### **JUDGE HEATH**

This unit was the pride of the new democracy. It went about its work of uncovering and combatting corruption with refreshing vengeance. It was armed with vast powers of entry and seizure and could initiate swift action in the Courts. It came to be feared by crooks and fraudsters. Among its powers was “**the power to rescind state contracts if it believed that the state was the victim of skulduggery.**” (Our emphasis)

Initially the objection to Heath was his liaison with Patricia de Lille concerning the arms deal. Then Mbeki received a god -send. The Constitutional Court ruled in another matter that the Heath Investigating Unit as constituted was unconstitutional because a judge cannot be both judge and investigator. This judgement was seized upon by Mbeki to refuse the required proclamation.

At the blink of the eye, Judge Heath, democratic South Africa’s knight in shining armour was transformed into a scoundrel in the eyes of the ANC.

Not much is known about the background of Judge Heath. He gives one the impression that he is an Afrikaner in spite of his name. He was educated and trained under the old regime. He may even have been a Nat supporter. Whatever he may have been, one thing was clear. He was not going to buckle under pressure from the ANC. It was also clear that if there were any skulduggery in the arms deal, Judge Heath would pursue the matter to the very end, regardless of the consequences. One could even go so far as to say that it would have given him great satisfaction to hold up persons in very high office as corrupt politicians for the whole world to see.

The question, then, is: Why was it so vitally important to exclude Judge Heath? What was it that Mr. Mbeki feared so much that might/would emerge as a result of Judge Heath's investigations? What was in the arm's deal that had to remain hidden at all costs? Lest it be maintained that in view of the judgement of the Constitutional Court, President Mbeki was obliged to exclude Judge Heath. Not so. An important consideration was the **credibility** of the investigation process. There were very serious allegations of corruption involving important officials – Mr. Chippy Shaik., the chief Defence Procurement Officer, the former Minister of Defence, Mr Joe Modise, General Moloï and others. These persons were not clerks or lowly bureaucrats. And the process of uncovering had just begun. That usually is the tip of the iceberg.

Up to that stage the most effective anti-corruption institution in the country was the Heath Investigating Unit. It was essential to retain this unit if, at all possible. The judgement of the Constitutional Court was not a real obstacle. The essence of the judgement was to draw attention to the untenable and undesirable situation of where functions of a judge and investigator vest in one person. But the obstacle was not insurmountable. All that was needed was for the judge to resign as judge and continue as investigator. If and when the time arrives for Judge Heath to get back on to the bench, he can be simply be appointed as such by the Minister of Justice.

We repeat: The judgement of the Constitutional Court was seized by Mbeki as a “lawful” reason why the Heath Unit could not be appointed.

In addition to what has been stated about why it was so vital to exclude the Heath Unit was the vast powers given to the Unit. The one power, most feared by the Government, was the power of the Unit to “ **rescind state contracts if it believes that the state has been the victim of any form of skulduggery.**”( Our emphasis) (Mail & Guardian November 16 to 22 2001)

### **THE DESECRATION OF SCOPA**

When a new social order is created after the passing of an oppressive and degrading system, there is joy mixed with apprehension. Apprehension of a return of the bad old days or moves in that direction. That is when we cling to institutions created in the new constitution. These institutions – the Constitutional Court to uphold the Constitution as the Supreme Law, the office of the Public Protector, the office of the Auditor General, etc. We believe that these institutions will stand between a power hungry executive and ourselves..

However, life teaches us to GET REAL. We saw how there was packing of the Constitutional Court. There is at least one judge in that court who is fit to be no more than a judge's clerk while another displayed spinelessness in a time of crisis.

In this mood of apprehension, there was at least one bright ray of hope. And that was SCOPA. In this committee, there were members of diverse political organisations. Their function was to ensure that the revenue obtained by the state from the public by way of taxes was utilised as intended by parliament or the various officials of the government. In

performing their duties, the members of the committee did so not as members of their organisations but as members of the committee.

As stated earlier, the committee members worked in harmony as watch-dogs of the public treasury.

As an example. When Chippy Shaik appeared before the SCOPA, he had to endure a close and persistent session of questioning by committee members regardless of their political affiliation. If anything, the ANC members like Laloo Chiba and Billy Nair were “relentless” in their questioning of Mr. Shaik.

SCOPA was, therefore, a proud example of how accountability and transparency worked in the new South Africa. In addition, as stated above, it was the most important of the parliamentary over-sight committees.

Alas! That feel-good glow was all too short-lived.

On the 19<sup>th</sup> January 2001, President Mbeki took the trouble to announce on national television that Judge Heath was not going to be included in the investigation team. With the one source of danger out of the way, the ANC moved swiftly to deal with what it regarded as the other source of danger – SCOPA!

On the 22 January 2001, it became clear that ANC members of SCOPA (excluding Andrew Feinstein) had been whipped into line when they now disputed that the Heath Unit was essential to the investigation.

On the 29 January 2001, Andrew Feinstein is removed as chairman of the ANC group in SCOPA.

Carol Paton, a journalist, eloquently captures the atmosphere of betrayal and capitulation by the ANC members of SCOPA in an article of the Sunday Times of the 4 February 2001:

“Feinstein, an idealistic MP who entered ANC politics not long before 1994 after receiving his master’s degree in economics, had, as ANC leader of the public accounts committee, garnered a small group of ANC members around him who shared his strong views on financial accountability.

But this group which had been pushing for an inquiry, particularly one that involved Judge Willem Heath’s Special Investigating Unit, began to fall apart after the aggressive interventions of President Mbeki and Deputy President Zuma....

From that moment , the pressure was on to fall in line. As one of the less independent-minded members of the ANC study group is said to have remarked at their first meeting:

‘The President has spoken. What more can we be expected to say.’.....

At Monday's meeting, faced with the news that Feinstein was to be axed, his allies buckled. Laloo Chiba, who spent 18 years on Robben Island for sabotage activities, and Billy Nair, another Robben Island veteran and a courageous champion of non-racialism, had been two of the strongest voices in the committee. When Chippy Shaik, head of acquisitions for the Department of Defence, had appeared before the committee, they had been relentless. In the meeting with Yengeni, (29<sup>th</sup> January 2001) they were silent.”(Our parenthesis)

While stalwarts like Chiba and Nair capitulated to party pressure, Feinstein stood his ground. For adopting a principled position, he paid the penalty. He was removed as leader of the ANC in SCOPA and replaced by a party hack by the name of Doidge.

The ANC, through its Chief Whip Tony Yengeni, then reformulated its position of how its representatives in SCOPA should conduct themselves:

“Some people have the notion that public accounts committee members should act in a non-partisan way. But in our system no ANC member has a free vote.” (The Daily News 5 February 2001)

The patent dishonesty of this attitude is borne out by an incident, which took place in 2000 when the UDM leader, Mr. Bantu Holomisa, wanted to insert a “UDM” view on the arms probe. According to Dr Gavin Woods, several ANC members voiced strong indignation and asked him to reaffirm the understanding *that SCOPA members kept party positions out of their work.* (Our emphasis) (Sunday Tribune 4 February 2001).

That was not the end of the matter.

Yengeni is understood to have indicated at the ANC meeting of the 29 January 2001 that he would (in future) attend all study group meetings (of SCOPA) to provide “political authority and guidance” to their deliberations.

The depth of cynicism defies description. Here was a man who was himself suspected of dishonest and corrupt practice. Allegations about Yengeni having received a luxury Mercedes Benz 4 by 4 as a gift/bribe or for a song – in connection with the arms deal. Yengeni, the Chief Whip of the ANC already knew that the noose was beginning to tighten. Yet he had the gall to lecture to the public accounts committee about how he was going to provide “political authority and guidance.”

Already Yengeni's days as Chief Whip were being numbered. The ANC was doing its utmost to protect him and to deflect the damning allegations against him. When Yengeni's neck was on the chopping block in the Ethics Committee of Parliament for failing to disclose the benefit he received by way of a massive discount on his 4 by 4, it was the SACP's Jeremy Cronin who came to his rescue by moving that the matter be held over and finalised as part of the overall investigation into the arms deal. A Comrade to the rescue!



## **THE GOVT NOMINATED JOINT INVESTIGATION TEAM.**

With SCOPA being reduced to a caricature of its former promising self, and Judge Heath and his Unit being duly consigned to safe history, the Mbeki government proceeded to set up its own Investigating Unit. The following three persons in their official capacity were chosen:

1. The Director of Public Prosecution – Bulelani Ngcuka
2. The Auditor General – Shaukat Fakie
3. The Public Protector – Selby Baqwa.

The public was solemnly reminded that the three institutions represented by the three venerable gentlemen were independent and therefore above any suspicion of partisanship; that they, in fact, symbolised transparency and accountability etc., etc.,

What was not told to the public was the fact that any institution is only as effective as the extent of commitment, courage, dedication and determination of the person or persons appointed or elected to those institutions. Without human beings operating those institutions, the latter are totally ineffectual. In other words, these institutions are not supernatural creations, which function without human beings.

## **WHY CHOOSE THESE THREE PARTICULAR INSTITUTIONS?**

The government had a wide choice in selecting an investigating unit. In order to deflect any suggestion of impropriety or bias, the government could have nominated highly skilled lawyers, auditors and experts who are knowledgeable about arms, their effectiveness, their price etc. They could have nominated persons against whom there cannot be the faintest hint of bias, of being pro-ANC or who, because they lack moral fibre, can be subjected to pressure and manipulation. The government could have even nominated a team of persons from outside the country.

In short, if the government had chosen a team of investigators who were considered to be truly independent, the message that would have sent out would have been: “Look at the team we have chosen to investigate allegations against us. These persons are universally considered to be independent. We have nothing to hide. We are prepared to accept their findings, regardless of what they may be.”

Instead, the government decided to choose the abovementioned individuals.

Let us examine who these individuals are and what is their background.

### **MR. BULELANI NGCUKA:**

Up to the time he was nominated the Director of Public Prosecutions, this gentleman was a high profile ANC member.

1. From 1980-81 he was a professional assistant in the firm of GM Mxenge Law Firm. This firm was well known to be a ANC inclined firm.

2. 1991-1993, he was part of the ANC delegation to CODESA and the Multi party negotiations;
3. 1993-1994 he was leader of the ANC Preparatory Delegation to Parliament;
4. 1994-1996 he was an ANC member of the Constitutional Assembly and Constitutional Commission;
5. 1994-1996, he was the Chief Whip of the ANC in the Senate;
6. 1997 he was the Deputy Chair of the National Council of Provinces.
7. 1998 he was appointed the National Director of Public Prosecutions

Here you have it. There is no exaggeration when we describe him as a high profile ANC member. Of course, for the sake of propriety, Mr. Ngcuka had to resign from the ANC when he accepted the new post. What does the act of resignation amount to? All it means is that Ngcuka's name will not appear in the ANC membership list. It also means that the ANC cannot ask him for fees for renewal of membership. That is all! There is no way the strong pro-ANC views he held can be expunged from his brain. There is no way that his past association, close and intimate, with individuals in the ANC can be removed. There is no way that he can remove his pro-ANC position and put in its place an attitude of neutrality.

Mr Ngcuka was appointed as Director of Public Prosecutions, not because of his legal qualifications or knowledge. There are persons far more knowledgeable in law than him. Mr Ngcuka was appointed to this very important position because he is a strong ANC person; someone loyal to the ANC ; someone who can be relied upon and trusted in a time of crisis.

For these very qualities, he was chosen as part of the Investigating Team.

Being a lawyer, Mr. Ngcuka is no doubt familiar with the all important **concept of conflict of interest**.

Here is matter where very serious allegations are being made against a government led by the ANC to which Mr.Ngcuka was very closely associated until very recently. How on earth is he expected to be fair and impartial in his investigations and findings? The conflict of interest is clear. And where there is a conflict of interest, the person involved should **decline the position offered or to recuse him or her self**.

That Mr. Ngcuka failed to do either can only cast very serious doubt on his integrity.

### **MR. SELBY BAQWA: THE OFFICE OF THE PUBLIC PROTECTOR**

Though not a high profile ANC member, Mr. Baqwa , nonetheless, has been a pro ANC person.

In 1989, he was a part of delegation of lawyers, representing NADEL to the International Labour Organisation and to the International Defence and Aid Fund.

NADEL was/is a body of lawyers which has publicly associated with the ANC. It is a rival national lawyers body to the Black Lawyers Association which consists of persons who are either members of or who sympathise with the PAC, AZAPO and the New Unity Movement.

In 1993, he was the General Secretary of NADEL.

In 1994 – 1995, he was the president of NADEL.

In 1995, he was appointed as Public Protector by the ANC government. There is no doubt that there were many other lawyers who had far greater knowledge in law than did Baqwa. But he was chosen because of his pro-ANC position.

His first test of impartiality and dedication to his office came when he had to deal with the debacle of Sarafina II, that ill fated play written to educate the young about the dangers of AIDS. Some 14 million rand of public money went down the drain. Persons from as high as the Minister of Health, Dr. Nkosoana Zuma and the Director General Dr. Olive Shisana were involved. As it turned out the last two named persons were exonerated. The lesser fry were the scapegoats. The non-ANC public was outraged at the decision.

As against that Mr Baqwa was uncompromising in his pursuit of Dr Penuell Maduna who had made wild and unsubstantiated allegations against the Auditor General, Mr. Kluever. Maduna's spurious defence against the allegations cost the taxpayer millions of rands in legal costs.

With all due respect to Mr. Baqwa, we do not believe that he would be capable of exercising impartial and independent judgement when it involves the ANC government as such and certain very important personalities. While he is capable of acting against an individual who has acted irresponsibly, he will not do so against a whole government or a pack of politicians placed high in the government.

### **MR. SHAUKET FAKIE FROM THE OFFICE OF THE AUDITOR GENERAL**

Mr Fakie is the Auditor General. The office of the Auditor General has been created by the new Constitution with the underlying purpose of strengthening "constitutional democracy." Its function is to "audit and report on the accounts, financial statements and financial management of all the government departments including those of the provinces, municipalities" etc.

The importance of the office of the Auditor General and other institutions created by the constitution is underlined by a specific prohibition against interference by any person or state department.

It will thus be seen that the office of the Auditor General enjoys a special status as a watchdog of the country. Its principal activity is to oversee the work of state departments and to report to parliament.

On the face of it, the Auditor General is, par excellence, suited to the job of uncovering irregularities, fraud, theft, corruption, violation of laid-down procedure for awarding contracts and the like.

However, with the passage of time, doubts began creeping in about the integrity and steadfastness of Mr. Fakie:

1(a) In a memo to the Chairperson of SCOPA, Mr. Fakie urged the Chairperson to make written request to President Mbeki to issue the proclamation authorising the Heath Unit to participate in the investigation and stated that it was essential to

have the Heath Unit in the Joint Investigating team. This led to the Chairperson writing to President Mbeki requesting a proclamation to empower the Heath Unit. This took place during December 2000.

I (b) When the government subsequently mounted a massive attack against Judge Heath heading the relevant investigating unit, Mr. Fakie publicly stated that the work of the Joint Investigating Unit could function even though the Unit under Judge Heath were not part of it.. In other words, the presence of the Unit under Heath was not necessary for the proper functioning of the Joint Investigating Unit.

The question is: How does one explain the *volte-face*? Who was at Fakie to make him do the somersault?

2. There is clear and incontrovertible evidence that Mr. Fakie permitted Mr, Chippy Shaik, the Defence Department chief arm's procurement officer to alter the report Mr.Fakie prepared for parliament. The alteration involved scrapping Mr.Fakie's view that the South African navy expressed its preference for the C2 I2 and substituting it with the view that that the preference was "outweighed by prohibitive risk-driven cost implications. (Mail & Guardian 23-29 November 2001). That substitution was the view of Mr.Chippy Shaik. The net result of the substitution was that the contract was awarded to a company in which his brother, Shabir Shaik had a direct interest.
3. Prior to submitting his report, Mr. Fakie had to make it available to President Mbeki and his cabinet. for vetting. This was done in terms of a law passed by the Nationalist Party during its sanctions busting days. The need for secrecy was high those days. But what the need for screening in the year 2001?

We do not know the extent of the alteration of the report by the government. Mr.Fakie hastens to assure us that the executive did not make any substantial changes. Mr.Fakie does not inspire us with any confidence to accept his assurance at face value. Now, if he can make available the original and approved reports, analysts could pronounce on whether the alterations were substantial or not..

What is of significance in the attitude of the Auditor General is the low esteem in which he holds himself. He is a creation of the Constitution, which gives him wide powers of investigation into all state institutions and to report on his investigations.(Section188).

The Auditor General and other institutions like the Public Protector are given the task to strengthen constitutional democracy. These institutions are enjoined to "exercise their powers and perform their functions without fear, favour or prejudice." (Section181 (2) ). Section 181(4) is peremptory: "No person or organ of state may interfere with the functioning of these institutions."

Section 181(2) also states that these institutions **are independent and subject only to the Constitution and the law.** (Our emphasis)

Here you have the case of a constitution which goes out of its way to empower institutions like the Auditor General and to protect them against all persons and organs of state. With such powers and with such protection, one would expect that the highest office holder in the country ( who has done a wrong ) to literally quake in his boots at the approach of the Auditor General. Yet it seems to be the other way round. Hence Mr.Chippy Shaik, a civil servant, takes liberties with the Auditor General. And if he was able to do it, then there is virtually nothing that he would not do to appease the President and his cabinet. More so because of the legal secrecy which determines what goes into the report and what stays out.

The Auditor General who was designed to be the doxy defender of the constitution has turned out to be a political wimp!

#### THE TACTIC BOOMERANGS.

When the investigations into the arm's deal became a painful necessity, the Mbeki government realised that come hell or high water, the Unit under Judge Heath had to be excluded. It was also necessary to destroy the character and spirit of SCOPA and to remove its forceful exponent, Andrew Feinstein .

If we are wrong in our assumption and indeed, there was no hidden agenda and the true purpose was, at all times to arrive at the truth, then we need to be told:

1. Why was it necessary to exclude Judge Heath and his Unit?
2. Why was it necessary to get rid of one their most able and dedicated representative as chairman of the ANC Study Group in SCOPA?
3. Why was it necessary to destroy the spirit non-partisanship of SCOPA and thereby reduce it into a useless rubber stamp?
4. Why was it necessary to pack the Joint Investigation Unit with a stalwart like Bulelani Ngcuka? Or low profile but loyal supporter like Baqwa? We will not ask the same question about Mr.Fakie. We have good reason to suspect why there could have been no objection to his presence even though he was not an ANC person.

We do not believe that the ANC can provide any credible answers to the above questions.

The inescapable conclusion is that the ANC is mortally scared of a huge scandal, a scandal of such proportions that it would embarrass the South African government all over the world and in Africa in particular where the Mbeki government is trying desperately to become Africa's role model in respect of democracy in practice, the rule of law and anti-corruption.

#### **BRIBERY AND THE ARMS DEAL**

We have stated before that an arms deal and bribery are two different sides of the same coin. Where there is an arms deal, there will be bribery.

We believe that the Mbeki government is seeking desperately to suppress evidence of the nature and extent of the bribery and ,very importantly, the names of the people involved. Some details of the sordid deals have leaked out. As stated, those details would amount to no more than the tip of the iceberg, i.e. its upper one tenth.

### **THE UPPER ONE TENTH.**

It will serve little purpose to present details of all the irregular, unlawful and corrupt practices which have taken place. But let us mention the deal for the jet fighter trainers, which is worth R10 billion.

1. An Italian air giant, **Aermacchi**, received the highest score from all the other bidders and by adopting the usual tests and standards ought to have won the contract.
2. But there was a significant intervention by Mr. Modise, who with others altered the tender evaluation criteria. The cost factor was no longer crucial. The military factor became the crucial factor.

The contract was awarded to the British Ae Systems, notwithstanding the following:

1. Aermacchi scored higher than Ae Systems on both sets of criteria, the cost and the military factors
2. Buying from Ae Systems will cost the South African taxpayer **R10 billion**, whereas if the purchase was made from Aermacchi, it would have cost the South African taxpayer **R2, 6 billion** which is a mere 26% of the price to Ae Systems.. The difference is **R7, 4 billion**.

What possible justification can there be for this enormous difference. R7, 4 billion for a country where the government cannot even provide basic medical facility on the grounds of lack of funds!

It came to light that about a month before Modise made his intervention, ( which resulted in a totally unconscionable transaction), Ae Systems gave a donation of R5 million to the Mkhonto we Sizwe Veterans Association! Dr Gavin Woods, the former chairman of SCOPA stated at

that time that his sense of proportion could not make him accept that the donation was sufficient to have influenced the decision to award the contract to Ae Systems. **Who can blame Dr.Woods for suspecting that there must have been other reasons?** To our mind the “other reasons” were most probably more and bigger “donations”. The only question is: Who are the other “donees”? Surely, Mr. Joe Modise would not have been sent off empty-handed after his extraordinary contribution to the awarding of the contract to Ae Systems.

This example illustrates that there is something really rotten in the arms deal. Even the abovementioned investigators found , inter alia,that “officials ignored due process and tender procedures.” Tender procedures are set to ensure that fairness and merit determined the awarding of the contract. Where tender procedures are brushed aside, there is a strong probability that underhand methods are at work.

## **THE FINDING OF THE JOINT INVESTIGATING TEAM**

The government as a whole was exonerated. That ought to have come as no surprise to anyone who keeps in touch with the political development in this country. For guessing the outcome of investigation, you won't even win a brass farthing. It was all so predictable. Why shouldn't the government be exonerated? After all, that is why the team was selected. And that is why Feinstein had to go. And that is why Judge Heath got the boot. No person of integrity would be taken in by the crude and clumsy attempt at a cover-up.

To exonerate every person would really be pushing the limits of credulity to breaking point. The country was demanding justice. People had to focus their anger on something concrete. Hence the need for a scapegoat. That honour was given to Mr, Chippy Shaik and his brother Shabir..

## **WHAT DO WE THINK TOOK PLACE?**

It is not the best thing to do i.e. to speculate on something serious and important. There is a constitutional duty on government to be accountable and transparent. That duty was more prominent in the breach than in its execution. There are a string of cases from which will be seen that the government (consisting of local government, government institution etc) is more concerned about using exceptions to avoid disclosure. If therefore, the state is reluctant to be open and candid, no blame can be attached if one were to engage in speculation.

We suspect that the following took place:

1. That there was a demand from the Defence Force for new military hardware cannot be disputed. There has been a clamour for it for some time.
2. When the time came for the shopping list to be prepared, the matter of the kickbacks and bribery was raised. Everybody knows that hefty kickbacks and bribes are part and parcel of the arms deal.
2. At that time the matter would have been taken over by politicians at the very top. And then too, **only a carefully chosen few**. The majority of the leadership including most of the Cabinet Ministers were kept in the dark.
3. The matter of the kickbacks or bribes was to be used primarily for the ANC and not for the enrichment of the individuals involved.
4. The ANC is a mammoth organisation. Far bigger than in the days of the struggle. It has huge expenses ( running into many millions of rands) and it is not always possible to balance the books. Hence there is always a need to raise funds for the organisation.
5. The ANC has never been fastidious as where the funds come from. For this reason, there was no problem wheedling out R28 million rand from Suharto the butcher of

Indonesia.<sup>5</sup> Also on record, though initially denied, was the sum of R5 million as a donation from the unscrupulous businessman, Sol Kerzner<sup>6</sup> to the ANC.

6. Notwithstanding the secrecy of the underhand deals, news of the Big Kill soon went out. This is what happens in the wild. The big carnivores do all the hard work and risk being gored by the large prey. As soon as they settle down to a well earned meal, the scavengers get to learn of the Big Kill either through a very powerful sense of smell (hyenas) or very sharp sight (vultures) and come racing to the scene.
7. The scavengers get the scraps, the small bits and the left-overs. The Tony Yengenis, the Vanan Pillays and the other 30 some odd discount receivers like them, fit into this category. Casting to the winds all principles, moral values and sense of decency and being fuelled by ungovernable avarice, they plunged their snouts into the prized carcass. The clumsy subterfuge adopted was that discounts were given to them. The give-away was the **size of the discounts**. They were totally foreign to the usual commercial practice. The fact that the recipients knew that their acceptance of the gifts was unlawful is evidenced by the fact that not one of them, who was under an obligation to disclose the discount, did so!
8. Mr. Chippy Shaik was chosen as a sort of an 007 of the ANC. His was the dangerous mission since he would be first (and hopefully, the last) in the firing line should things go wrong. There would be a disowning of him and an official denial of any incriminating knowledge. There would be a raid by the police, a charge and /or an internal disciplinary hearing and a tap on the wrist as punishment. That is supposed to take care of the arms deal saga.

## **TO SUM UP**

1. There is no independent thinker who is taken in by the findings of the Joint Investigation Team. There is unanimity that the purpose of that exercise was to whitewash the government. There is equal unanimity that the Joint Investigation Team consisting of the Auditor General, the Public Protector and the Director of Public Prosecution, excelled in executing the task of whitewashing.
2. Far from clearing up the issue of whether there was corruption and the receiving of bribes, the so-called investigation has given rise to a second serious accusation, namely, the planned cover-up by the appointment of carefully selected individuals and the exclusion of key persons and institutions like the Heath Unit, SCOPA with Feinstein.
3. The public must not allow itself to be fobbed off with an investigation described by Dr.Gavin Woods as “shallow and substandard.”
4. The demand for a proper investigation by competent and impartial persons of integrity must never be abandoned.

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<sup>5</sup> Suharto set the army and Muslim youth on suspected Communist Party members or sympathisers in 1965. More than 500 000 were thus massacred in Indonesia.

<sup>6</sup> The exposure of this deal by Mr.Bantu Holomisa was one of the main reasons why he was expelled from the ANC.



5. All persons who were involved directly or indirectly in the bribery must be charged criminally, regardless of name, status and official position.
6. All monies obtained from suppliers for necessary armaments purchased as discount, baksheesh, presents etc. must be returned to the public treasury for the use of the citizens. The ANC has no right to that money either legally or morally. The money to purchase the armaments does not come solely from the ANC members. It comes from all taxpayers.
7. The majority of ANC members are honest, decent and law-abiding citizens. The majority of the ANC parliamentarians (ordinary members of parliament and cabinet members ) have not soiled their hands in the muck of the arms deal.<sup>7</sup>
8. Their failing is a collective lack of integrity. They know that a wrong has been done to the country and its people. They know who the crooks and fraudsters are. Yet they say and do nothing, for which they stand condemned.
9. Silence, when there is a duty to speak, can only be construed as accompliceship to the crime.

11<sup>th</sup> March 2002

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<sup>7</sup> At a recent meeting, but in a private conversation, Alec Erwin, the Minister of Trade and Industries, pointed to a scrap pad which had a BMW logo on it and which pad he held in his hand and declared: "That is my 4 by 4." He was referring to the pad and not to a motor vehicle.