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SOUTH AFRICA

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MUSIRHELELI WA VANHU ● MUTSIRELEDZI WA VHATHU
OPENBARE BESKERMER ● UMKHUSELI WABANTU ● UMWIKELI WABANTU

NATIONAL OFFICE
PRIVATE BAG X677 PRETORIA 0001 ● HILLCREST OFFICE PARK, 174 LYNWOOD ROAD, PRETORIA
TEL: (012) 366 7000 ● Fax: (012) 366 7047

1941/07

20 April 2007

Mr E Trent MP
Democratic Alliance
PARLIAMENT

Dear Mr Trent

REQUEST FOR AN INVESTIGATION: ALLEGATIONS IN *DER SPIEGEL*

Your letters of 5 February 2007 and 4 April 2007 refer.

1. We have considered your request for an investigation of allegations that appeared in a German publication, *Der Spiegel*, relating to a criminal investigation that is being conducted in Germany into allegations of corruption allegedly involving the former Head of Acquisitions of the South African National Defence Force, Mr "Chippy" Shaik.
2. The article that your request was apparently based on was published in English on the website of *Der Spiegel* on 5 February 2007. It stated, in the main, that:
 - 2.1 German state prosecutors are investigating allegations that a German shipbuilding consortium paid bribes to South African officials to win a major defence contract. The investigation has been ongoing for almost a year;

- 2.2 Investigators visited the headquarters of Blohm + Voss in Germany with a search warrant; and
- 2.3 The prosecutors believe that they have found documents backing up suspicions that the German shipbuilders won the South African contract with the help of “kickbacks”, which apparently include several internal memos that appear to document how employees of the shipbuilders held unofficial talks with the head procurement officer of the South African Defence Force. *“The high ranking bureaucrat allegedly demanded a payment of \$ 3 million at those meetings and in 2000 that sum was indeed transferred to a front company in London”.*
3. As you are aware, the Strategic Defence Procurement Packages were the subject of comprehensive investigations jointly conducted by the Office of the Public Protector, the Office of the Auditor General and the National Prosecuting Authority, at the request of the Parliamentary Standing Committee on Public Accounts.
4. It was agreed by the three investigating agencies that the Office of the Public Protector would conduct a public hearing into the strategic requirements of the SANDF, the process and procedure of acquisition and specific complaints by a tenderer who alleged certain improprieties in the acquisition process that caused his company to be deselected from obtaining a specific contract.
5. The Office of the Auditor General was tasked with a forensic investigation of several aspects of the procurement and its process and the Directorate: Special Operations of the National Prosecuting Authority (DSO) with investigation of the allegations of criminal activities relating to the so called “arms deal”.

6. The investigation by the Office of the Public Protector was concluded under the direction and authority of my predecessor, Adv S A M Baqwa, SC.

7. At the time of the submission to Parliament of the *Joint Investigation Report into the Strategic Defence Procurement Packages* (November 2001), several allegations of corruption were still under investigation by DSO. As you are aware, these investigations resulted in the arrest and prosecution of several persons.

8. Paragraph 1.3.2.3 of the *Joint Report* stated that:

“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.”

9. It should be noted that as far as Mr Shaik is concerned, the *Joint Report* found in paragraph 14.1.17 that:

“There was a conflict of interest with regard to the position held and the role played by the Chief of Acquisitions of DoD, Mr S Shaik, by virtue of his brother’s interests in the Thomson Group and ADS, which he held through Nkobi Holdings. Mr Shaik, in his capacity as Chief of Acquisitions, declared this conflict of interest in December 1998 to the PCB, but continued to participate in the process that led ultimately to the awarding of contracts to the said companies. He did not recuse himself properly.”

10. Mr Shaik resigned from the Department of Defence in March 2002, after a disciplinary enquiry found that he acted improperly by disclosing confidential information contained in a draft report of the Auditor General.
11. In paragraph 14.2 of the *Joint Report*, 15 recommendations were made in respect of improving the administration, process and propriety of the procurement process of the Department of Defence.
12. The *Joint Report* was adopted by the National Assembly, to whom the Office of the Public Protector is accountable.
13. Subsequent to your request for an investigation of the criminal actions of Mr Shaik referred to in the said article, I met with the National Director of Public Prosecutions and the Auditor General. The purpose and result of our meeting appear from the media statement issued on 16 March 2007, which stated that:

"The meeting was held to confirm the variety of requests for investigation that have been sent separately to the institutions and to assess if there were overlapping matters that could be addressed jointly.

However, the three principals came to the conclusion that none of the requests required their joint consideration. They agreed that each institution would deal with issues that have been raised based on their own mandates. This means that the three agencies will not reconstitute a joint investigation team as was structured in the 2001 investigation.

...

The institutions, in line with their respective mandates, have reaffirmed and expressed their willingness to cooperate with any investigative agency that might request their assistance."

14. In your letter of 5 February 2007 you stated that:

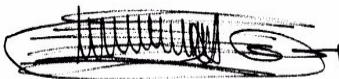
"If the allegation is correct, and Mr Shaik did benefit from a bribe, not only does it bring the sale of the corvettes-by ThyssenKrupp to the South African government- into question but there are numerous, broader implications for South Africa's arms procurement policy, in this regard."(emphasis added)

15. The "allegation" that you referred to relates to criminal conduct that is being investigated by the prosecuting authorities in Germany who are at liberty to contact the National Prosecuting Authority (NPA) in South Africa for assistance. As indicated above, it was agreed that each of the investigating bodies concerned in the 2001 investigation would deal with the recent allegations in terms of its constitutional mandate. The Public Protector does not have powers to conduct criminal investigations and to institute prosecutions. It is therefore for the NPA to decide whether the allegations made by *Der Spiegel* warrant any further investigation in South Africa, at this time.

16. You will appreciate that it will only be possible and proper to consider further investigations or recommendations in respect of the administration, propriety and impact of the procurement process concerned, once the criminal investigation and, if so, prosecution of the suspects, have been completed.

Thank you for bringing this matter to my attention.

Yours faithfully

A handwritten signature in black ink, appearing to be a stylized name, possibly 'S. S.', enclosed within a horizontal oval shape.

**ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA**