



## 'We stand with the people of Yemen'

### Open Secrets and SALC ask the Courts to review decisions to export arms to Saudi Arabia and the United Arab Emirates



On 3 June 2021, the Southern Africa Litigation Centre (SALC) and Open Secrets launched an urgent two-part application in the North Gauteng High Court of South Africa (Pretoria) seeking:

1. The names of all permit holders that are authorised to export arms to Saudi Arabia and the United Arab Emirates (UAE), so that they can be joined to the proceedings. This information is not public knowledge.
2. A judicial review of the decisions by the National Conventional Arms Control Committee (NCACC) to authorise arms exports to Saudi Arabia and the UAE despite their active role in the ongoing humanitarian crisis in Yemen and allegations of committing war crimes.



#### What are the Grounds of the Review?

The grounds for review in this case derive from domestic legislation as well as international law. The application focuses on decisions by the NCACC to grant permits enabling the export of arms to Saudi Arabia and the UAE. The applicants argue that the decisions by the NCACC constitute administrative decisions that must be reviewed and set aside. Under South African law, any administrative decision must take all relevant factors into account when decisions are made. In addition, any administrative decisions must be rational. The law further allows for a review of decisions that are unlawful or unconstitutional. The National Conventional Arms Control Act (NCAC Act) further specifies that: the NCACC must avoid transfers of arms to governments that systematically violate or suppress human rights and fundamental freedom; the NCACC must avoid transfers of arms that are likely to contribute to the escalation of military conflict; and, that the NCACC must adhere to the international law and international law obligations of South Africa.

#### What are some of the criteria that SALC and Open Secrets allege the regulator (NCACC) has not complied with?

The NCACC has ignored publicly available information. Some of the criteria that the NCACC has not complied with include: Section 15(d) and (e) of the NCAC Act. The applicants submit that decisions to grant permits were unlawful and/or unconstitutional. By allowing arms exports to Saudi Arabia and the UAE, the NCACC has not acted per the NCAC Act. When making decisions permitting exports, the applicants further submit that the NCACC has not considered UN expert reports and other reports that accuse Saudi Arabia and the UAE of violating international law. On this basis, the applicants argue that the administrative decisions are unlawful. If the NCACC has considered relevant information, such as the UN expert report, the applicants submit that such decisions are irrational, which makes them unlawful.

## Yemen is the worst humanitarian crisis



In 2014, civil war broke out in the Republic of Yemen. In 2015, Saudi Arabia and the UAE entered the war, escalating it to a regional conflict. The situation in Yemen is now known as the world's worst humanitarian crisis.



Saudi Arabia and the UAE are both parties to the armed conflict in Yemen since 2015. Both countries have been accused by a UN group of experts of violating international human rights law and international humanitarian law with their engagement in Yemen. Yemen suffers under a conflict that poses a threat to the lives of millions of Yemenis. The UN estimated in 2020 that, since the beginning of the conflict in 2014, approximately 112,000 people have died due to hostilities, 12,000 of those people were civilians. More recent sources document that the number has passed 18,000.

Following the situation in Yemen, other states like Germany and Italy, have suspended arms trades to Saudi Arabia and the UAE. However, South Africa has been exporting to these two countries throughout the conflict up until today. Saudi Arabia and the UAE constitute the largest combined source of income for the South African arms industry. According to the figures in the NCACC's annual reports, during the period of the war, exports to Saudi Arabia and the UAE constituted over 36% of the value of all weapons exported from South Africa.

#### According to the NCACC's annual reports to Parliament:

- 2016, almost half of all controlled items exported from South Africa went to Saudi Arabia and the UAE (48.91%).
- In 2017, over 30% of all controlled items exported from South Africa went to Saudi Arabia and the UAE (34,65%).
- In 2018, the transfer of controlled items to Saudi Arabia and the UAE constituted 33% of South Africa's total export value.

- In 2019, when the UN Group of Experts had already called for a cessation of transfer of controlled items to Saudi Arabia and the UAE, 22% of the R4billion worth of exports from South Africa went to Saudi Arabia and the UAE.
- In 2020, two years after the UN Group of Experts called for the cessation of conventional arms sales to Saudi Arabia and the UAE, the percentage of exports from South Africa to Saudi Arabia and the UAE increased to 30,75% of the total export value of R4,581,990,023 (R841,994,893 to the UAE and R567,020,937 to Saudi Arabia).

South Africa, with its history of international crimes under apartheid and its international law obligations, must ensure that it does not contribute to war crimes being committed by other countries.