



SOUTH AFRICAN ARMS TRANSFERS TO MYANMAR DECLARED ILLEGAL

On 22 October 2022, the Southern Africa Litigation Centre (SALC) filed an application in the North Gauteng High Court of South Africa (Pretoria) seeking a declarator that the National Conventional Arms Control Committee (NCACC) must suspend any existing contract and/or export permit(s) pertaining to the transfer of arms to a country that has experienced an unconstitutional change of government; and/or a country reasonably suspected, by a special rapporteur, independent expert, or other person working in term of a United Nations mandate, of having committed any crime against humanity, war crime, or genocide. SALC further sought the review and setting aside of permits that facilitated the transfer of arms to Myanmar (MMR).

Developments in Myanmar	Year	South Africa's Reaction	SA's Arms Exports to MMR
<p>August 2017: Reported violence and human rights violations by Myanmar authorities against Rohingya minority in Rakhine State</p>	2017		<p>NCACC authorises export of arms worth <u>R60,375,000</u></p>
<p>UN Special Rapporteur Report 2018 concludes regarding events from 2017 in Rakhine state: "(...)she is increasingly of the opinion that the events bear the hallmarks of genocide and therefore call in the strongest terms for accountability."</p>	2018	<p>22 November 2018: DIRCO Minister notes: "deep concern about the deteriorating human rights situation in Myanmar and call[s] for an end to the human suffering experienced by the Rohingya people"</p>	<p>NCACC authorises export of arms worth <u>R35,661,600</u></p>
<p>4 July 2019: International Criminal Court (ICC), Prosecutor requested authorisation for an investigation into "alleged crimes against humanity, namely deportation, other inhumane acts and persecution committed against the Rohingya people from Myanmar."</p>	2019	<p>28 February 2019: South Africa's Permanent Representative to the UN during UN Security Council meeting: "South Africa condemns the deadly attacks and violence that took place in Rakhine State in January 2019. It is of paramount importance that the parties cease, immediately, all acts of violence that can only serve to further perpetuate the crisis and prolong and worsen the unbearable human suffering that is has brought about".</p>	<p>NCACC authorises export of arms worth <u>R29,886,590</u></p>
<p>11 November 2019: The Gambia initiates proceedings before the International Court of Justice (ICJ) for alleged violations of the Genocide Convention by Myanmar.</p> <p>14 November 2019: ICC authorises investigation into the situation of Myanmar/Bangladesh.</p>			<p>23 January 2020: ICJ issues provisional measures against Myanmar and directs it to act in accordance with the Genocide Convention in relation to the members of the Rohingya group in its territory.</p>
<p>1 February 2021: Myanmar military takes over power</p>	2021	<p>1 February 2021: DIRCO Media Statement: "These developments undermine democratic reforms undertaken in Myanmar, following the general election held on 8 November 2020, and we call upon the military to respect the rule of law. (...) South Africa will continue to support the people of Myanmar in their pursuit of democracy, peace, human rights and rule of law".</p> <p>18 June 2021: South Africa votes in favour of UN GA resolution calling for a global arms embargo for Myanmar.</p>	<p>NCACC authorises export of arms worth <u>R47,437,500</u></p>
<p>March 2021: UN Special Rapporteur report: "Under the military-drafted 2008 Constitution, the coup is illegal. The generals violated their own rules when they seized control of the government."</p>			<p>Total: R215,735,677</p>

Legislation

Under section 15 of the National Conventional Arms Control Act (NCAC Act), the NCACC must:

- avoid transfers of arms to governments that systematically violate or suppress human rights and fundamental freedoms
- avoid transfers of arms that are likely to contribute to the escalation of regional military conflicts;
- adhere to international law, norms and practices and the international obligations and commitments of the Republic

SALC's arguments

SALC argues that South Africa exported arms from 2017 until 2021 to Myanmar despite having knowledge of the grave human rights violations, potential violations of the Genocide Conventions and a military coup. SALC argued that such exports violate provisions of the NCAC Act and international law such as the Genocide Convention. The Genocide Convention imposes on all states a obligation to prevent acts of genocide.

On 19 July 2024, the High Court of South Africa (Pretoria) granted the sought relief by SALC.