

NGO in court bid over R35bn arms deal

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Dineo Faku

Johannesburg - The Quaker Peace Centre, a Cape Town based non-governmental organisation which focuses on fostering non-violent conflict resolution, has taken legal action in a bid to overturn the government's R35 billion procurement of fighter jets in the 1999 arms deal.

The group wants the controversial acquisition of 24 Hawk Lift aircraft and 28 Gripen Alfa jets from British Aerospace Systems (BAe) to be cancelled and has argued that it not only flouted the constitution, then Finance Minister Trevor Manuel also had no authority to borrow money offshore for procuring the aircraft.

“Should either of the invalidity claims succeed, the invalidity of the deal will involve returning the military hardware, with all money paid to date refunded,” Carol Bower, chairperson of the Quaker Peace Centre, said.

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IAF F-15 fighter jet takes off during exercise dubbed "Jupiter Falcon", held between crews from the US and Israeli air forces, at Ovda military airbase

The organisation said a cancellation due to bribery and corruption had a penalty provision that entitled South Africa to 5percent of the purchase price of hardware as pre-estimated damages. In court papers submitted in April, the centre argued that the aircraft procurement was not equitable.

“They were the most expensive aircraft on offer in the tender process; are unsuitable for, alternatively of very limited suitability for, South Africa’s defence needs; are overpriced and were acquired through tender processes and procedures that were manipulated to favour success of the bid by the BAe by the adoption of what the then Minister of Defence, Joe Modise, called ‘a visionary approach’, whereby the cost of the aircraft was excluded as a factor for consideration in the procurement evaluation and adjudication process and the eventual award of the tender that culminated in the conclusion of the Procurement Agreement, thereby negating the

constitutional requirement of cost effectiveness”, according to the court papers.

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The NGO also detailed how sound advice and recommendations from the South African Air Force regarding its actual needs were ignored, and that the procurement of the aircraft was not competitive, because lower and more suitable bids were rejected.

It also said the aircraft were not acquired in a transparent manner as, among others, lower bids from Italy and the Czech Republic were irrationally rejected in favour of the bid by BAe.

In terms of the bribery allegations, the US State Department charged BAe with violating its arms export regulations through its unregulated and covert use of an offshore company (which operated with specific “intent to circumvent the normal payments reviews”) and middlemen all over the world, including in South Africa.

In 2011, BAe settled, and agreed to pay a penalty of \$79 million rather than face these charges.

According to the organisation, in 2010, BAe was fined \$400 million (R5.28 billion) after pleading guilty to knowingly and “wilfully failing to prevent and detect corruption and bribery in its operations, as well as conspiring to impede the related US investigations”.

In addition, the UK's Serious Fraud Office's investigation of BAe's use of agents and secret commissions worldwide, (including in South Africa) revealed that £103 million (R1.77 billion) was spent on covert payments.

The group said it was also concerned about the phenomenon of state capture and has instructed its lawyers to pen a letter to President Jacob Zuma in which it requests that he acknowledges that he cannot appoint a commission of inquiry to investigate state capture because he is conflicted.

BUSINESS REPORT

<http://www.iol.co.za/business-report/economy/ngo-in-court-bid-over-r35bn-arms-deal-9293378>

Politicians take note as those corrupted by Arms Deal face day in court. Hope springs.

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I'm heartened by the sobriety sweeping through the ranks of those representing South Africa's citizenry. The twin bulwarks of the court of law and the court of public opinion have done much to change the mindset of the political elite. They are suddenly realising they are accountable.

The fresh mood was typified in an address by the youngest member of Jacob Zuma's cabinet. New energy minister Mmamoloko Kubayi (39) told Parliament she has no intention of landing up in jail over the [nuclear deal](#). I have a three month old baby, she said. My little Sandile needs me. Kubayi is right to be nervous of what the future might hold. Yesterday, almost two decades after the event, the Quaker Peace Centre launched a legal claim against the SA Government to cancel a R35bn leg of the corrupt [Arms Procurement Deal](#). Its case is based on bribes paid by British Aerospace to supply Hawk and Gripen fighter jets. In recent years a library of evidence on BaE corruption has been presented to the US and UK authorities.

Ms Kubayi appreciates that any shenanigan today will come back to bite tomorrow. Cavalier attitudes of the late 1990s are no longer fit for purpose in SA's maturing democracy. Hope springs.



ALEC HOGG MAY 23, 2017 | [ARMS DEAL](#), [BAE SYSTEMS](#), [BRITISH AEROSPACE](#), [JACOB ZUMA](#), [MMAMOLOKO KUBAYI](#), [NEWSLETTER](#)

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Go South

Quaker Peace Centre seeks to overturn R35 billion in Arms Deal



IFAISA – 23 May 2017

The Quaker Peace Centre (QPC) has instituted a claim against the South African government to cancel that component of the Arms Deal with British Aerospace [Operations] limited (BAe) and to recover some R35 billion for the beleaguered SA fiscus.

The claim which is based on the unconstitutionality and illegality of that component, concentrates on the biggest of the arms deals, that with BAe. In terms of this deal, Hawk and Gripen fighter jets were acquired at a cost of R35 billion [at 2015 currency exchange rates, including

interest accrued and with provision for fluctuations in the value of the currency].

The BAe deal is not only the biggest but also the most discussed in the books and documents generated in the wake of the arms deals. Gripen fighter jets are manufactured in Sweden, however, in this instance BAe procured them for South Africa. The BAe transaction is assailed both because it is tainted by corruption, and because it is invalid for want of compliance with tender criteria laid down in the Constitution and because the loan taken to pay BAe was unauthorised.

BAe won the contract for the Hawk and Gripen fighter aircraft (in partnership with Swedish defence group SAAB). When the US State Department charged BAe with violating its arms export regulations through its unregulated and covert use of an offshore company (which operated with specific “intent to circumvent the normal payments reviews”) and middlemen all over the world, including in SA, in 2011, BAe settled, and agreed to pay a penalty of \$79 million rather than face these charges.

A year earlier (in 2010), BAe was fined \$400 million after pleading guilty to knowingly and “wilfully failing to prevent and detect corruption and bribery in its operations, as well as conspiring to impede the related US investigations”.

In addition, the UK’s Serious Fraud Office’s investigation of BAe’s use of agents and secret commissions worldwide, (including in South Africa) revealed that £103-million (that’s around R1,79 billion) was spent on covert payments.

It is on the basis of three independent causes of action that QPC seeks to overturn the procurement agreement and ensure the return of all monies already expended to the National Fiscus.

Two of causes of action relate to the invalidity of the deal; the third relies on the deal being tainted by the corruption that attended its conclusion.

The first invalidity claim is based on a failure to comply with tender requirements of the Constitution and the second upon the lack of authority of the Minister of Finance to borrow money offshore to finance the deal.

Should either of the invalidity claims succeed, the invalidity of the deal will involve returning the military hardware, with all money paid to date refunded.

A cancellation due to bribery and corruption has a penalty provision that kicks in and which entitles South Africa to 5% of the purchase price of hardware as pre-estimated damages.



The Quaker Peace Centre, Cape Town, was founded in 1987 by the Cape Western Monthly Meeting of the Religious Society of Friends (Quakers) in response to the repressive policies of apartheid and the need for developing non-violent methods of problem-solving, interaction and conflict resolution in South African society.

In the development of participatory democratic life in South Africa today, these founding Quaker values, peace testimony and principles remain central to the Centre's programme, as it broadens its base of

membership and governance and responds to emerging needs in society.

It is QPC's considered opinion that the Arms Deal in its entirety works against peace in our country. Andrew Feinstein, formerly a senior ANC MP and chairperson of the Standing Committee on Public Accounts (SCOPA), and subsequently author of *After the Party: Corruption and the ANC* (2009), highlighted the negative impact of the Arms Deal on democracy and socio-economic development. In fact, he argued, that Arms Deals are intrinsically corrupt and the global arms trade undermines accountable democracy.

In a country with amongst the highest levels of all forms of violence in the world (interpersonal, sexual, community), investing such huge amounts of money in an Arms Deal with such significant negative impacts in not only inappropriate but obscene. A society at peace with itself and its neighbours, and protecting the full range of rights provided for in our landmark Constitution neither needs nor can afford such a deal.

This is especially true in the case of the BAe component of the Arms Deal.

In addition, the UK's Serious Fraud Office's investigation of BAe's use of agents and secret commissions worldwide, (including in South Africa) revealed that £103-million (that's around R1,79 billion) was spent on covert payments.

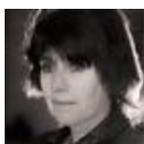
<https://gosouth.co.za/quaker-peace-centre-seeks-overturn-r35-billion-arms-deal/>

DAILY MAVERICK

South Africa

Arms Deal: Now Quaker Peace Centre lodges claim for return of R35bn

- Marianne Thamm



Marianne Thamm

- [South Africa](#)
- 25 May 2017 11:47 (South Africa)



Following in the slipstream of politically connected attorney Ajay Sooklal's affidavit filed earlier this month in support of a high court application by Corruption Watch and Right2Know to have the findings of the Seriti Commission into the arms deal set aside, the Quaker Peace Centre has

instituted a claim against the government to cancel the British Aerospace component of the Arms Deal and for the aircraft to be returned. The centre is wanting R35-billion to be paid back to the country's fiscus as the deal is tainted by corruption and did not comply with legal procurement processes. By MARIANNE THAMM.

President Jacob Zuma took office with the stench of a corrupt arms deal lingering in the body politic. Now, as he approaches the end of his term of office, the malodorous cloud still lingers as applications are piling up to have the deal declared corrupt and illegal.

The Quaker Peace Centre has instituted a claim in the Pretoria High Court which it hopes will set a precedent and which concentrates on one of the biggest components of the arms deal, that with British Aerospace (Operations) limited (BAe). In terms of this part of the deal, Hawk and Gripen fighter jets were acquired at a cost of R35-billion (at 2015 currency exchange rates).

“Gripen fighter jets are manufactured in Sweden; however, in this instance BAe procured them for SA. The BAe transaction is assailed both because it is tainted by corruption and also because it is invalid for want of compliance with tender criteria laid down in the Constitution and because the loan taken to pay BAe was unauthorised,” said the Quaker Peace Centre.

The centre is a non-profit and public benefit organisation founded in 1987 by the Cape Western Monthly Meeting of the Religious Society of Friends (Quakers) in response to the then apartheid government's repressive politics and in seeking to develop non-violent methods of resistance and problem solving.

Respondents in Quaker Peace Centre claim are the government of South Africa, Armscor, BAe, Barclays Bank PLC, Her Britannic Majesty's Secretary of State and the Speaker of the House of Assembly. No relief is sought against BAe, Barclays, the UK Secretary of State or the Speaker of the House of Assembly, who have been joined because of their legal interest in the relief claimed.

The Quaker Peace Centre states that BAe won the contract for the Hawk and Gripen fighter aircraft (in partnership with Swedish defence group SAAB). When the US State Department in 2011 charged BAe with violating its arms export regulations through its unregulated and covert use of an offshore company (which operated with specific "intent to circumvent the normal payments reviews") and middlemen all over the world, including in SA, BAe had settled, and had agreed to pay a penalty of \$79-million rather than face these charges.

In 2010 BAe was fined \$400-million after pleading guilty to knowingly and "wilfully failing to prevent and detect corruption and bribery in its operations, as well as conspiring to impede the related US investigations". In addition, the UK's Serious Fraud Office's investigation of BAe's use of agents and secret commissions worldwide,

(including in South Africa) revealed that £103-million (that's around R1.79-billion) was spent on covert payments.

The Quaker Peace Centre, on the basis of three independent causes of action, is seeking now to overturn the procurement agreement and ensure the return of all monies already expended to the South African National Fiscus.

“Two causes of action relate to the invalidity of the deal; the third relies on the deal being tainted by the corruption that attended its conclusion,” said the centre.

The first invalidity claim is based on a failure to comply with tender requirements of the Constitution and the second upon the lack of authority of the Minister of Finance to borrow money offshore to finance the deal. Should either of the invalidity claims succeed, the invalidity of the deal will involve returning the military hardware, with all money paid to date refunded, said the centre.

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range of rights provided for in our landmark Constitution, neither needs nor can afford such a deal.”

In his affidavit in support of CS and R2K, Sooklal, who acted as a consultant in the Arms Deal, revealed that President Zuma had met with him in August 2012 at his official residence Mahlamba Ndlopfu, and had asked him not to reveal what he knew to the Commission of Inquiry into allegations of Fraud, Corruption, Impropriety in the Strategic Defence Procurement Package – otherwise known as the Seriti Commission.

At that meeting Zuma allegedly told Sooklal, “My brother, I have appointed an arms deal commission to finally put to rest allegations of impropriety, bribery or corruption in the Defence Review Project. I request you not to inform the commission that the French were paying me monies over the years up to 2009.”

Sookal is seeking an order “declaring that a serious conflict of interest on the part of First Respondent [President Zuma] rendered his conduct in appointing a Commission of Inquiry into allegations of fraud, corruption, impropriety or irregularity in the Strategic Defence Procurement Package (SDPP) and which was promulgated in terms of Government Gazette No GNR926 of 4th November 2011 unlawful, invalid and accordingly unconstitutional”.

He is also seeking the setting aside of the findings of the commission, alternatively an order to reopen the commission and to receive evidence, including his as well as “any other evidence which may become necessary...”

In April 2016 the findings of the Seriti Commission were released and unsurprisingly found that there had been no evidence of corruption or wrongdoing during the 1999 arms procurement deal. 3

In 2015, Sooklal says he “felt duty-bound” to provide information to the Seriti Commission “which I thought would assist it in its deliberations”.

“I accordingly sent an e-mail to the commission indicating my willingness to testify... I did not receive a response to the e-mail. I was disappointed because pertinent relevant information had not been placed before the commission and also because I had not been given the opportunity to refute the allegations which had been made against me.”

The Quaker Peace Centre [particulars of claim](#) states that a portion of the bribes paid in the Arms Deal “the exact amount of which is unknown to the plaintiff” were paid over to or made available directly or indirectly for the ultimate benefit of the African National Congress to, inter alia, help fund its 1999 general election campaign.

It also sets out how, in September 2010, General Anwa Dramat, the then head of the Directorate of Priority Crime Investigation (DPCI), informed the Standing Committee on Public Accounts (Scopa) in the National Assembly that the documentation so seized was stored in 3 “Maersksized” shipping containers which contained 460 boxes of documents and 4.7-million computer pages.

The Quaker Peace Centre is seeking an order directing the government and Armscor “to take all steps that may

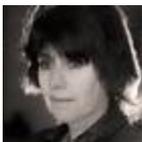
be necessary, to impugn the validity of the Procurement Agreement”, alternatively an order declaring the Procurement Agreement invalid. It is also seeking that government and Armscor “take all steps that may be necessary” to impugn the validity of the Loan Agreement or for the agreement to be declared invalid.

The Procurement Agreement should also be cancelled “whether by negotiation, mediation, arbitration or litigation”. The Quaker Peace Centre would like the court to order that the costs of the suit should be paid by government and Armscor.

And finally, the biggie – it wants government and Armscor to return the aircraft to BAe against repayment of all amounts paid. **DM**

Photo: A Swedish air force Saab Gripen multi task fighter plane performs over the Waterkloof airforce base in South Africa in this November 1, 1998 file photo. REUTERS/Peter Andrews

- Marianne Thamm



Marianne Thamm

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