

Quaker Peace Centre seeks to overturn R35 billion in Arms Deal

Cape Town 22 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 is 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.

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For more information please contact:

Carol Bower, Chairperson, Quaker Peace Centre 061 414 6889

Rommel Roberts, Secretary, Quaker Peace Centre 079 888 7285

Paul Hoffman, Accountability Now, 082 888 0821