

South African Arms Exports, 2000–2009

A dossier

In this dossier, findings from the Ceasefire Campaign’s database of South African arms exports during the period from 2000 to 2009 are disclosed. The dossier is in two parts. The first and main part relates to the failure of the National Arms Control Committee (NCACC) to adhere to the criteria for the issuance of permits for the export of arms to other countries. The second part relates to the failure of that Committee to honour its obligations of transparency.

Evidence of the NCACC’s failure to adhere to those criteria and to honour its obligations of transparency could be led from other sources and events: for example, from the fiasco surrounding the Chinese ship carrying arms for Zimbabwe and from the illegal attempt to transfer arms to the Democratic Republic of Congo earlier this year. Discussion of such history is outside the scope of this dossier.

The Recipients of South African Arms Transfers

In the period from 2000 to 2009 South Africa’s top 10 arms purchasers were the United States, India, the United Arab Emirates (UAE), Algeria, the United Kingdom, Colombia, Sweden, Saudi Arabia, Spain and Germany. Of those, five (India, the UAE, Algeria, Colombia and Saudi Arabia) do not satisfy the criteria laid down in the National Conventional Arms Control Act for the export of arms.

In terms of section 15 of the National Conventional Arms Control Act, when the National Conventional Arms Control Committee considers applications for the export of arms to another country, it must “avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms.” It must also “avoid transfers of controlled items [i.e. conventional weapons and related items] to governments that systematically violate or suppress human rights and fundamental freedoms.” In each of these five countries, human rights and fundamental freedoms are being systematically violated and suppressed.

Another requirement of that section of the Act is that the Committee must “avoid transfers of controlled items that are likely to contribute to the escalation of regional military conflicts, endanger peace by introducing destabilising military capabilities into a region or otherwise contribute to regional instability.” In three of the five countries (India, Algeria and Colombia) the degree of violent conflict is characterised by the frequent and organised use of force.

India

The major human-rights problem in India relates to physical integrity and political terror. The Cingranelli–Richards (CR) dataset contains standards-based quantitative information on government respect for 13 human rights. It rates India zero on rights to physical integrity. Another measure reported by BICC is the political terror scale compiled by Mark Gibney of the University of North Carolina. On the Gibney scale, India is given a rating of 3,5, which means that:

“There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted, [and that, to some extent, these practices] occur in large numbers”.

In its report on India for 2009, Amnesty International stated:

“Police were either inactive or responded with excessive force in the face of sectarian violence against religious and linguistic minorities and ethnic clashes. Adivasis (indigenous communities) and small farmers continued to protest their exclusion from government decision-making on new development projects which could threaten their livelihoods and result in forced evictions. The low-level conflict continued between Maoists and the government and militia widely believed to be supported by the government. Both sides committed abuses including targeting civilians. Bomb-blasts in various parts of the country killed hundreds of people. In response the government arbitrarily detained and tortured suspects. Following the November Mumbai attacks in which more than 170 people were killed, the government tightened security legislation and set up a federal agency to investigate terrorist attacks. Judicial processes failed to ensure justice for many victims of communal violence. The courts sentenced at least 70 people to death. No executions took place.”

Even more telling, though, than its human-rights problems, is India’s record of internal conflict and its involvement in regional conflict. According to the Heidelberg Institute for International Conflict Research (HIICR), there were 18 internal violent conflicts in 2008. According to the Arbeitsgemeinschaft Kriegsursachenforschung (AKUF) at the University of Hamburg there were five ‘internal wars’.

As reported by the BBC in its country profile on the country, India is a nuclear-armed state:

“It carried out tests in the 1970s and again in the 1990s in defiance of world opinion.... Nuclear tests carried out by India in May 1998 and similar tests by [its arch-rival] Pakistan just weeks later provoked international condemnation and concern over the stability of the region.... There have been three wars between India and... Pakistan since 1947, two of them over the disputed territory of Kashmir. A peace process, which started in 2004, stayed on track despite tension over Kashmir and several high-profile bombings until the Mumbai attacks of November 2008, which police blamed on Pakistani militants. India announced that the process was on pause the following month.”

During the ten-year period from 2000 to 2009, South Africa exported arms to India to the value of R3,2 billion, of which 58% was sensitive major or significant weaponry. This was clearly contrary to the requirements of the Act. In fact South Africa also exported R400 million of arms to Pakistan during the period, thus patently fuelling the conflict over Kashmir.

The United Arab Emirates

The UAE not ratified the International Convention on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Freedom House, which rates the political rights and civil liberties of countries between 1 (the best) and 7 (the worst) rates the UAE 6 for political rights and 5 for civil liberties. It concludes that the country is 'not free'. The World Bank rates countries on a Voice and Accountability Index and a Rule of Law index, each from -2,5 (low) to 2,5 (high). While the UAE rate fairly high (0,66) on rule of law, this is clearly an imposed adherence; they rate low (-0,89) on voice and accountability. While the CR dataset rates the UAE high (6 out of 8) on rights to physical integrity, it rates them zero for empowerment rights.

In its report on the UAE for 2009, Amnesty International stated:

Migrant workers were exploited and abused. Cases of torture and prolonged detention without trial were reported. Women continued to face legal and other discrimination. Access to certain websites was blocked. The authorities began to address the cases of stateless persons, or bidoun. One person was executed.

In its country profile on the UAE, the BBC states:

... politically it remains authoritarian. It was the only country in the region not to have elected bodies until 2006..., when it convened a half-elected federal assembly, which, however, was restricted to a consultative role.

During the ten-year period, South Africa exported arms to the UAE to the value of R2,4 billion, of which 59% was sensitive major or significant weaponry.

Algeria

While Algeria has ratified the relevant international covenants and conventions, it's human-rights status is poor. Like the UAE, it rates 6 and 5 for political rights and civil liberties respectively and is 'not free'. On the World Bank indices it rates poorly both on voice and accountability index and a rule of law index (-1,01 and -0,72 respectively). The Cingranelli-Richards dataset scores Algeria very low (1 out of 10) on empowerment rights. On the Gibney scale of political terror, Algeria has a rating of 4, which means that:

“There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.... [These practices occur in large numbers.] Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas.”

According to Control Arms, “the violation of human rights [in Algeria] has been persistent and widespread.”

According to Amnesty International's report on Algeria for 2009:

Terrorism suspects were detained incommunicado and subjected to unfair trials. The authorities continued to harass human rights defenders and journalists. Converts from Islam and individuals deemed to offend its tenets were prosecuted. Irregular migrants faced arrest, indefinite detention, ill-treatment and collective expulsion. Hundreds of people were sentenced to death but there were no executions. Impunity remained entrenched for members of armed groups and security forces who perpetrated grave abuses during the internal conflict of the 1990s.

According to the BBC's country profile on Algeria, "Endemic government corruption and poor standards in public services are also chronic sources of popular dissatisfaction."

AKUF records an internal war during 2007 and HIICR records two internal violent conflicts during the following year, and ongoing sporadic violence.

With regard to the conflict in Algeria, the BBC's country profile states:

"In the 1990s Algerian politics was dominated by the struggle involving the military and Islamist militants. In 1992 a general election won by an Islamist party was annulled, heralding a bloody civil war in which more than 150,000 people were slaughtered. An amnesty in 1999 led many rebels to lay down their arms. Although political violence in Algeria has declined since the 1990s, the country has been shaken by a campaign of bombings carried out by a group calling itself Al-Qaeda in the Land of Islamic Maghreb.

During the ten-year period, South Africa exported arms to Algeria to the value of R1,9 billion, of which 59% was sensitive major or significant weaponry.

Colombia

While Colombia is 'partly free', its World Bank ratings for voice and accountability and for rule of law are both negative. According to the CR dataset, it rates zero for rights to physical integrity. Its Gibney political terror scale at 4,5 is even worse than that of Algeria, signifying that:

"[the terrors] have, to some extent, been expanded to the whole population, [the] leaders of these societies [placing virtually] no limits on the means or thoroughness with which they pursue personal or ideological goals."

AKUF records an internal violent conflict in Colombia during 2007, which it registered as an 'internal war' and HIICR records four internal violent conflicts during the following year. BICC records frequent and organised use of force.

In its country profile on Colombia, BBC reports:

“... it has... been ravaged by a decades-long violent conflict involving outlawed armed groups, drug cartels and gross violations of human rights.”

According to Amnesty International’s report on Colombia for 2009:

“Many hundreds of thousands of people continued to be affected by the ongoing armed conflict. Civilians were the main victims of the conflict, with Indigenous Peoples, Afro-descendants and campesinos (peasant farmers) most at risk; many lived in areas of economic and strategic interest to the warring parties. All parties to the conflict – the security forces, paramilitaries and guerrilla groups – were responsible for widespread and systematic human rights abuses and violations of international humanitarian law (IHL). While some indicators of conflict-related violence, such as kidnapping and hostage-taking, continued to improve, others deteriorated. There was an increase in internal displacement and an upsurge in threats against human rights defenders and in killings of trade unionists. Killings of civilians by the security forces remained high. Paramilitaries continued to operate, despite government claims to the contrary. The killing of dozens of youths by the army led to the sacking of senior members of the military and forced the resignation of the head of the army, General Mario Montoya. Several high-profile hostages regained their freedom after years of captivity at the hands of the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC), but hundreds of people were still being held hostage by the FARC and the National Liberation Army (Ejército de Liberación Nacional, ELN). The FARC were again thought to have been responsible for bomb attacks in urban areas. There was some progress in judicial investigations into emblematic human rights cases, although impunity remained a serious problem. The extradition of paramilitary leaders to the USA on drugs-trafficking charges undermined human rights investigations in Colombia.”

During the ten-year period, South Africa exported arms to the UAE to the value of R1,1 billion, of which 95% was sensitive major or significant weaponry.

Saudi Arabia

Like the UAE, Saudi Arabia has not ratified the International Convention on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights. Freedom House gives it the worst possible rating (7) for political rights and almost as bad a rating (6) for civil liberties. Its World Bank rating for voice and accountability is low (–1,59). Its rating for empowerment rights is zero. The Gibney scale of political terror rates Saudi Arabia slightly better than Algeria and Colombia at 3, meaning that, as in those cases:

“There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted;”

though, in contrast to the cases of Algeria and Colombia, these practices “do not occur in large numbers”.

During the ten-year period, South Africa exported arms to the UAE to the value of R770 million, of which 69% was sensitive major or significant weaponry.

Other countries

Not only must the NCACC observe criteria regarding human rights and conflict in recipient countries, it must also observe criteria regarding embargoes, controls and development.

As regards embargoes, the NCACC must:

“adhere to international law, norms and practices and the obligations and commitments of the Republic, including United Nations Security Council arms embargoes.”

This provision does not limit the restriction of arms sales to UN arms embargoes. In particular, European Union (EU) arms embargoes constitute international practices that must also be adhered to. (Note that ‘international’ does not mean ‘global’; not even UN membership extends to that. It must be taken to mean substantially multilateral.)

As regards controls, the NCACC must:

“consider the conventional arms control system of the recipient country and its record of compliance with end-user certificate undertakings, and avoid the export of conventional arms to a government that has violated an end-user certificate undertaking.”

As regards development, the NCACC must:

“take account of calls for reduced military expenditure in the interests of development and human security.”

As for human rights and conflict, BICC also identifies countries against which there are UN or EU embargoes or that fail to meet minimum standards of controls and development.

The following table sets out the value of exports during the period, for each country that failed to satisfy the criteria on human rights, conflict, embargoes, controls and development. The criteria failed are asterisked. The value of exports are shown separately for categories A and B (sensitive weapons) and C, D and G (other arms).

Recipient country	Criteria					Value (R'million) categories		
	embar -goes	human rights	con- flict	con- trols	devel- op- ment	A & B	C, D & G	Total
Afghanistan		*	*			0	2	2
Algeria		*	*			1 121	783	1 904
Angola		*			*	15	28	43

Bangladesh		*	*		0	23	23
Brazil		*			41	8	49
Brunei		*			3	0	3
Burundi		*	*	*	12	11	22
Cameroon		*			5	5	9
Central African Republic		*	*		0	0	0
Chad		*	*	*	2	0	2
China	*	*			0	232	232
Colombia		*	*		1 085	60	1 146
Congo, DR		*	*	*	0	3	3
Congo, Rep.		*		*	2	0	2
Djibouti				*	12	7	19
Egypt		*		*	20	75	95
Georgia			*		1	3	4
Guinea		*	*	*	13	0	13
India		*	*		1 883	1 340	3 223
Indonesia		*			54	55	109
Iraq		*	*		60	4	64
Israel		*	*		0	2	2
Ivory Coast	*	*	*		0	3	3
Kazakhstan		*			0	0	0
Kenya		*	*		14	66	79
Korea, Dem. Rep.	*	*			0	0	0
Libya		*			0	12	12
Macedonia				*	0	2	2
Malawi				*	0	0	0
Malaysia		*			404	239	643
Maldives		*			3	0	4
Mauritania			*		0	0	0
Mauritius				*	0	0	0
Mexico			*		82	20	102
Nepal		*	*		12	54	66
Nigeria		*	*		84	153	237
Oman		*			174	177	351
Pakistan		*	*	*	52	351	403
Philippines		*	*		121	0	121
Qatar		*			4	9	13
Russia		*	*		1	37	39
Rwanda		*		*	73	18	91
Saudi Arabia		*			527	239	766
Singapore		*			352	81	433
Somalia	*	*	*		5	0	6
Sri Lanka		*	*		0	0	0
Sudan	*	*	*		2	0	2
Swaziland		*			34	5	39
Thailand		*	*		14	20	34
Tunisia		*			0	0	0
Turkey		*	*		46	35	80
Turkmenistan		*			0	1	1
Uganda		*	*		93	100	193

United Arab Emirates	*			1 419	1 001	2 420
Venezuela	*	*	*	24	34	58
Vietnam	*		*	0	41	41
Yemen	*	*		1	0	1
Zimbabwe	*	*	*	0	14	14
Total				7 867	5 354	13 222
per cent				60%	40%	

From the table it may be seen that:

- 58 recipient countries failed at least one of the criteria;
- for every criterion considered there are at least six recipient countries that failed it;
- R13,2 billion of arms were sold to these countries, of which 60% comprised sensitive weapons.

The above analysis is largely based on the BICC ratings in 2010. Some of the countries that failed to meet the criteria in 2010 may have met them at earlier dates when permits were granted. In the first place, though, inspection of changes in the BICC ratings over the period show that changes were few and most were minor. Also, South African intelligence is used by the NCACC, presumably to anticipate such changes. The NCACC must carry responsibility for foreseeable (and arguably even unforeseeable) deterioration in the conditions within the countries to which it sells arms.

It may also be argued that the NCACC cannot be expected to rely on the BICC ratings. That, of course, is true. But it should be borne in mind that the BICC ratings are derived from a wide range of other highly respected sources. They should at least be taken into consideration. Because no ranking method is laid down in the Act, the NCACC must be prepared to defend itself against the BICC rankings and against all the rankings on which those rankings are based.

It is clear from the above analysis that the NCACC has failed to apply the criteria of the Act. In fact, it is suggested that, in general, the Committee has not even attempted to apply those criteria and is in gross dereliction of its duty to do so.

Transparency

Not only does the Act lay down criteria for the export of arms, it also requires transparency. In fact, in the preamble to the Act, it is stated that its purpose is, inter alia, “to ensure the implementation of a legitimate, effective and transparent control process.”

In terms of section 23(1)(c) of the original Act, the Committee was required:

“at the end of the first quarter of each year, [to] present to Parliament and release to the public an annual report on all controlled items exports concluded during the preceding calendar year.”

In an amendment to the Act, which came into force in 2009, the words “and release to the public” were deleted. However, for reports up to and including 2008, that amendment did not apply.

Not only does the Committee fail to be transparent, it labelled some of its annual reports as “SECRET”, and it refused to make them accessible to the public without lengthy procedural and legal action. In some years the reports to Parliament were delayed long after they were due.

The compilation of the Ceasefire database required, inter alia, the annual reports of the NCACC for 2000 to 2009. While some of those reports were in the public domain, others were kept secret. This necessitated costly procedural and legal action over three-and-a-half years. In 2006 Ceasefire requested copies of the NCACC’s annual reports. This request was denied. Ceasefire then sought the help of the South African History Archive (SAHA), which eventually had to secure the legal services of the Open Democracy Advice Centre (ODAC). Only after ODAC took the NCACC to court in terms of the Public Access to Information Act were the documents finally released to SAHA and made available to the Ceasefire Campaign.

The NCACC’s annual reports are extremely bland. They report no issues that the Committee had to consider. They give no details of policy with regard to process or principle in the consideration of applications for arms exports or of matters of transparency. While they give country-by-country statements of the types of conventional arms exported and the value of the exports, they give no more than is required in terms of the Act; there is evidently no commitment to proactive transparency. The types reported are the broad types of the Wassenaar Arrangement. There are only five types shown:

- A: Sensitive major significant equipment
- B: Sensitive significant equipment
- C: Non-sensitive equipment
- D: Non-lethal equipment
- G: General services

These types give little indication of the arms involved.

Up to 2008, in its annual reports, the NCACC, in addition to the recipient country, type and value of arms transferred, gave details of the transfers. However, the details omitted identification of sales. For example, the entry for type-A exports to the UAE in 2005 gives the following details:

Temporary export: evaluation/demonstration/repairs Export as component/sub-system/spares/repaired/development

The value of the arms transferred was R123 million. Clearly there must have been sales. Against some entries (e.g. the transfer of R270 million of type-A arms to Saudi-Arabia in 2007) there are no details. Clearly these must have been sales. Nowhere in these details are sales referred to. The result is that the details are totally misleading.

In 2009, by contrast, details of sales are given. In fact, in most of the records it is indicated that there sales. For the first time, the NCACC is starting to comply with the requirement of the Act that it provide a ‘description’. However, the description is not of the arms themselves, merely of the type of transfer.

Besides the NCACC's annual reports, the Ceasefire database includes records of the United Nations Register of Conventional Arms (the UN Register), as submitted by the NCACC. While the UN Register includes only battle tanks, armoured combat vehicles (ACVs), large-calibre artillery systems (LCASs), combat aircraft, attack helicopters, warships, and missiles and missile launchers, it requires more detail than that disclosed in the NCACC's annual reports. All these items would fall under type A of the Wassenaar Arrangement. On the other hand, certain items that would fall under type A would not necessarily fall within the scope of the UN Register. Nevertheless, South Africa does produce ACVs, LCASs, attack helicopters, and missile and mile launchers. It is an open secret that Denel has been spectacularly unsuccessful in selling its attack helicopter, the 'Rooivalk' to any buyer other than its captive SANDF. South Africa is also now producing battle tanks, but so far this is also apparently only for use by the SANDF. The other items are, however, under production for sale to other countries. Furthermore, the SANDF may from time to time sell or donate to other countries weapons that are antiquated or surplus to its needs. It should, however, be possible to check from the UN Register the countries to which South Africa has transferred weapons that fall within the scope of that register, and to obtain more detail of the arms transferred.

Most of the exports shown in the UN Register are for ACVs. Amongst the recipient countries, the following recipients failed to meet the criteria required by the Act:

- Djibouti;
- Georgia;
- India;
- Indonesia;
- Iraq;
- Malawi;
- Nepal;
- Nigeria;
- Rwanda;
- Saudi Arabia;
- Swaziland; and
- United Arab Emirates.

In addition, 28 LCASs were sold to Malaysia in 2001–03, 5 unmanned aerial vehicles (classified as missiles and missile systems) were sold to the UAE in 2003 and surplus Impala aircraft were transferred to Cameroon in 2002 and to Brazil in 2005–06. Each of these countries failed to meet the criteria. While the NCACC appears to have been punctilious in reporting the transfer of ACVs, it reported no transfers of LCASs or missiles and missile systems other than those to Malaysia and the UAE.

This suggests either that Denel Land Systems has been remarkably unsuccessful in marketing its G5 and G6 artillery systems abroad and that Denel Dynamics has been equally unsuccessful with its missiles and unmanned aerial vehicles, or that the NCACC has been less than transparent in disclosing to the UN Register its sales of these weapons. Recent annual reports of Denel refer to the selection of Denel Dynamics for the supply of Umkhonto air-defence missiles to Sweden, to follow-up orders for the Seeker UAV from a 'customer in the Middle East' (presumably the UAE) and to the formation of partnerships in Germany and the Middle East for the marketing of the G6 in other

countries, but no record in the UN Register seems to relate to these reports. Denel's annual report for 2007 also reports the order by Brazil of Seeker II UAVs. This is not reported in the UN Register. So there appears to be some validity in both of these conclusions: Denel has been unsuccessful and the NCACC has been untransparent. The former reinforces the need to shut down Denel and the latter the need for transformation of the NCACC.

It appears that some of the NCACC's reluctance to report its arms transfers to the UN Register arises from confidentiality clauses in the relevant contracts of sale. In terms of the Act, where no such confidentiality clauses exist, the annual report must include a statement of the quantity of arms involved. No such details are given in the NCACC's annual report.

It is evident that a culture of secrecy, or at least bureaucratic resistance to transparency, reigns within the offices of the NCACC. This is contrary both to the intentions of the Act and to its specific requirements. It is also contrary to the Public Access to Information Act. It undermines the purpose of the Act to recognise the right of the public to information and to build confidence amongst South Africa's trading partners in its sound control of arms transfers. It treats Parliament as a gathering of stooges, and Parliament lamely fails to hold it accountable.

It appears that the culture of secrecy within the NCACC is attributable at least in part to the power of the military-industrial complex established during apartheid and perpetuated in the new South Africa. As discussed in an article in the *Mail & Guardian* in July 2008,¹ this has apparently resulted in regulatory capture of the arms-control process by the arms industry. Instead of controlling the arms industry, the NCACC has become a major agent in the indiscriminate promotion of arms sales abroad. Parliament urgently needs to re-establish the accountability of the NCACC to Parliament itself and, through Parliament, to the people of South Africa. Equally urgently, it needs to ensure that the culture of secrecy ruling there be transformed to a culture of transparency.

¹ Arms watchdog turns on its owner, Rob Thomson, *Mail & Guardian* 11/7/2008