



# PROFITING FROM MISERY


SOUTH AFRICA'S COMPLICITY  
IN WAR CRIMES IN YEMEN


An Open Secrets Investigation




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 Second Floor Community House  
41 Salt River Road  
Salt River, Cape Town 7925


 +27 21 447 2701


 [www.opensecrets.org.za](http://www.opensecrets.org.za)


 [researcher@opensecrets.org.za](mailto:researcher@opensecrets.org.za)


 @OpenSecretsZA


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Research by: Michael Marchant, Zen Mathe, Caryn Dolley,  
Hennie van Vuuren and Naushina Rahim

Copy editor: Helen Douglas

Designer: Gaelen Pinnock | [www.polygram.co.za](http://www.polygram.co.za)

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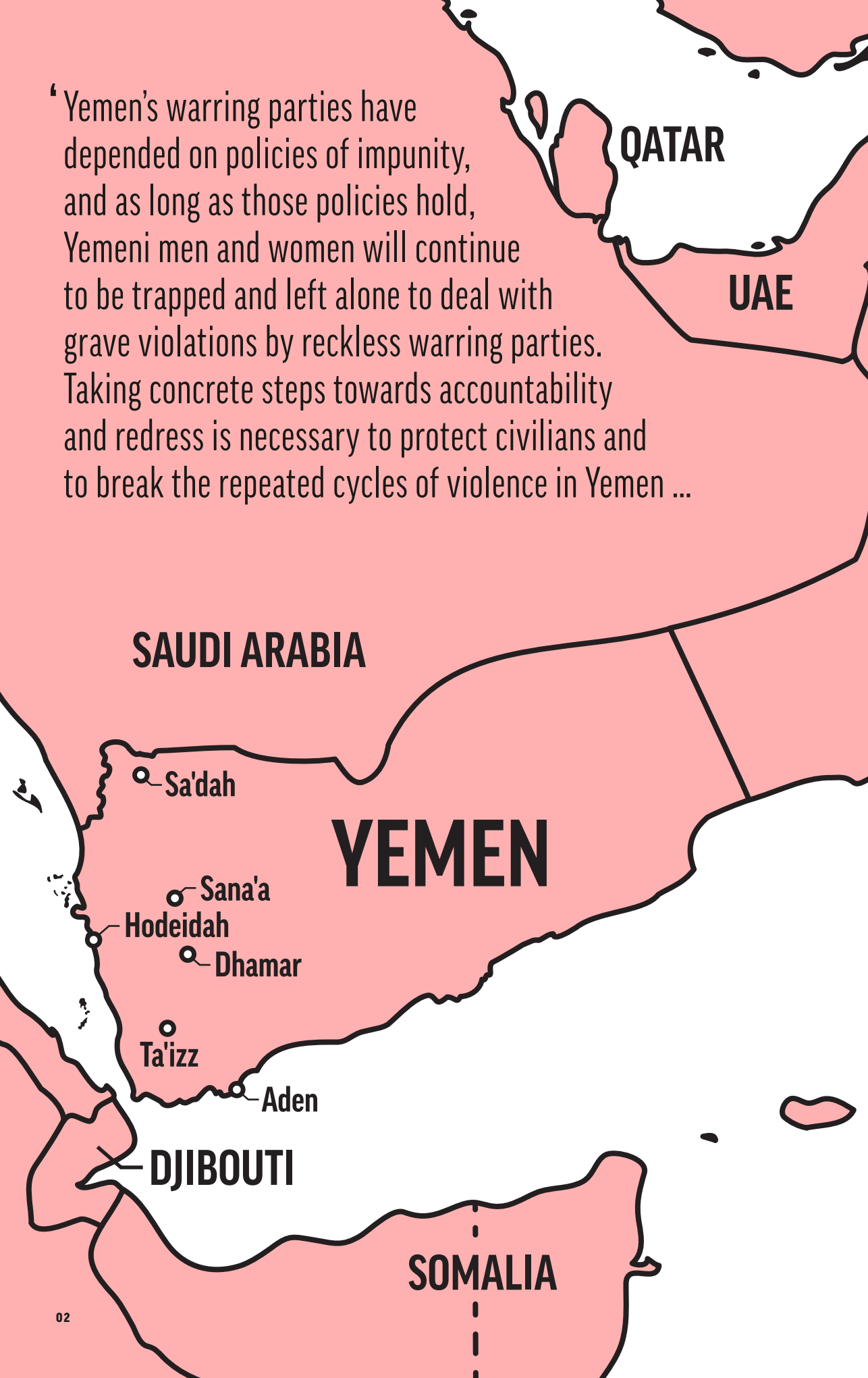
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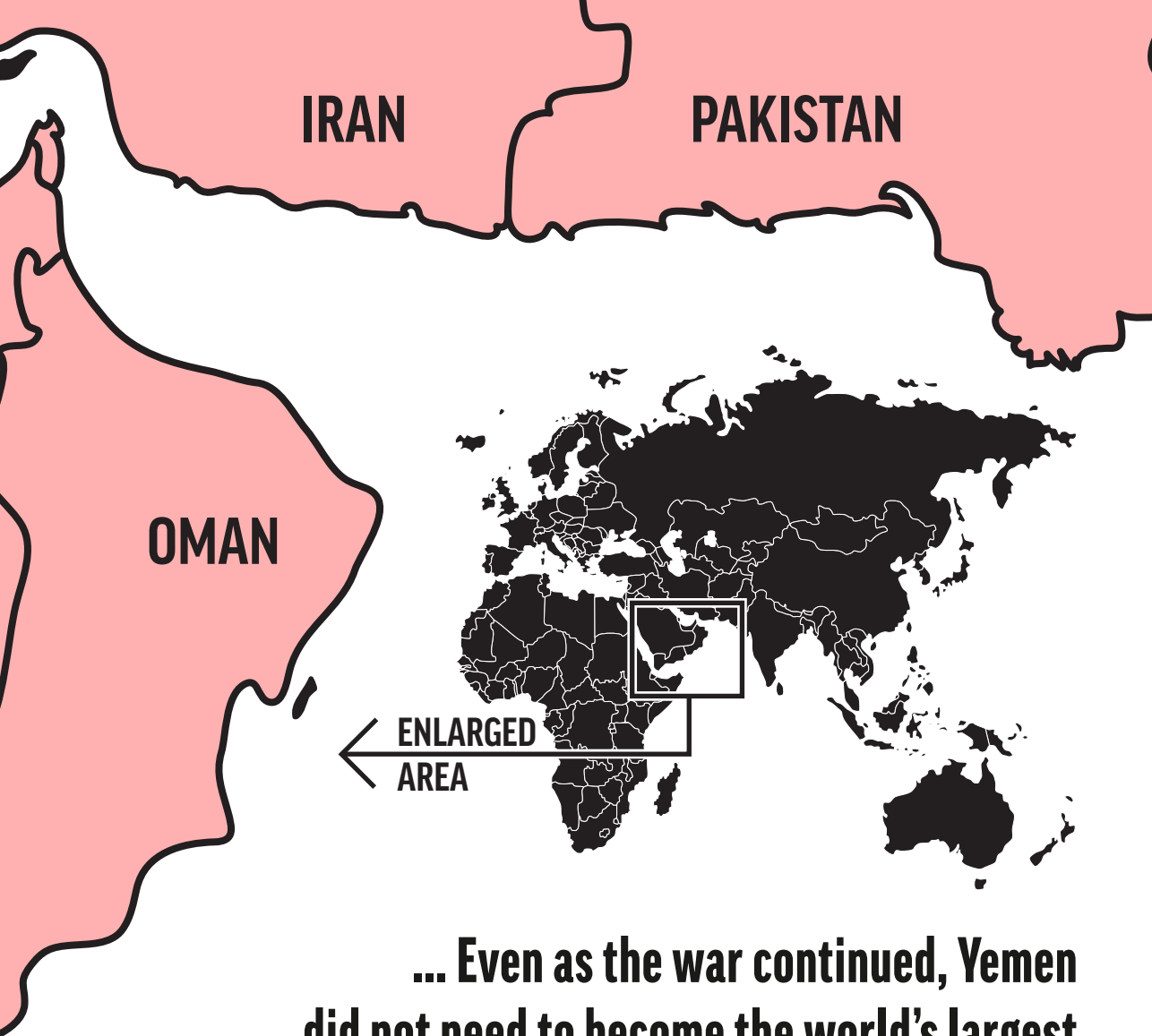
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‘Yemen’s warring parties have depended on policies of impunity, and as long as those policies hold, Yemeni men and women will continue to be trapped and left alone to deal with grave violations by reckless warring parties. Taking concrete steps towards accountability and redress is necessary to protect civilians and to break the repeated cycles of violence in Yemen ...







**... Even as the war continued, Yemen did not need to become the world's largest humanitarian crisis. This happened because of the lack of accountability, and because of every war crime the parties to the conflict committed without consequence. The international community must meet its responsibility to end the policy of impunity and to ensure war criminals are held to account and victims receive redress.'**

---

~ Radhya Almutawakel, Chairperson of Mwatana for Human Rights

## KEY TERMS

### ARMS TRADE TREATY:

An international treaty that regulates the international trade of arms/conventional weapons.

### COALITION:

Also known as the Arab coalition or Saudi-led coalition, a group of several Arab countries involved in operations purportedly against the Houthis in Yemen's civil war. It is led by Saudi Arabia and the UAE.

### CONTROLLED ITEMS:

The National Conventional Arms Control Act governs the export of what it calls 'controlled items'. This is the catch-all term for weapons and related products. The definition is broad and includes 'weapons, munitions, explosives, bombs, armaments, vessels, vehicles and aircraft designed or manufactured for use in war, and any other articles of war'. It also includes 'any component, equipment, system, processes and technology of whatever nature capable of being used in the design, development, manufacture, upgrading, refurbishment or maintenance' of anything contemplated in the list above. Finally, the definition includes dual-use goods that are not exclusively for military use but can be used for a military purpose. Controlled items cannot be exported from South Africa without an export permit issued by the NCACC.

### END-USER CERTIFICATE:

A critical tool to ensure that munitions don't end up in the wrong hands, an end-user certificate (EUC) is a documented contract between a country selling arms and the purchaser of the arms. It effectively means that a purchasing country needs to agree that the munitions bought will not be transferred any further without the selling country's permission.

### EXPORT PERMITS:

Any company that wants to export 'controlled items' from South Africa is required by law to apply to the NCACC for an export permit.

### GENEVA CONVENTIONS:

Rules established in the aftermath of the Second World War that form the backbone of international humanitarian law regulating armed conduct and deal with, among others, the protection of civilians during wartime.

### GULF COOPERATION COUNCIL:

A political-economic alliance between the UAE, Bahrain, Kuwait, Oman, Qatar and Saudi Arabia.

### HOUTHIS:

The colloquial name for Ansar Allah, a faction fighting in the Yemeni civil war. The Houthi movement is a Zaidi group based in northern Yemen bordering on Saudi Arabia. Zaidi people are a sect of Shia Islam and constitute roughly 30 to 35 percent of the Yemeni population.

## NATIONAL CONVENTIONAL ARMS CONTROL ACT:

(NCACA) The South African legislation setting out the parameters governing South Africa's arms trade.

## NATIONAL CONVENTIONAL ARMS CONTROL COMMITTEE:

(NCACC) A committee consisting of cabinet ministers and deputy ministers that is meant to be South Africa's arms trade watchdog, upholding human rights and enforcing the National Conventional Arms Control Act.

## SOUTHERN TRANSITIONAL COUNCIL:

A secessionist group that has sought an independent state in Southern Yemen since 2007.

## ABBREVIATIONS

**AQAP** Al-Qaeda in the Arabian Peninsula  
**DIRCO** Dept. of International Relations & Cooperation  
**EUC** end-user certificate  
**FRG** Federal Republic of Germany  
**MBS** Mohammed Bin Salman  
**NATO** North Atlantic Treaty Organization  
**NCACA** National Conventional Arms Control Act  
**NCACC** National Conventional Arms Control Committee  
**RDM** Rheinmetall Denel Munition  
**SAMI** Saudi Arabian Military Industries  
**UAE** United Arab Emirates  
**UAV** unmanned aerial vehicle  
**UN** United Nations

## KEY FACTS

- ! Saudi Arabia and the UAE have been among the biggest importers of South African munitions since 2014.
- ! South Africa's approved exports to Saudi Arabia and the UAE between 2010 and 2019 amount to over R11 billion and constitute more than 20 percent of all approved exports in this period.
- ! South Africa's total approved exports to Saudi Arabia and the UAE since the outbreak of the civil war in Yemen in 2015 amount to over R7 billion.
- ! In 2015 and 2016, approvals of exports to Saudi Arabia and the UAE spiked and made up over 40 percent of all approved weapons exports from South Africa.

Between 2015 and 2018, the United States topped the list of arms exports to both Saudi Arabia and the UAE – delivering around \$10 billion and \$3 billion worth of weapons to these two states respectively.<sup>2</sup> For exports to Saudi Arabia, the United Kingdom was second on the list and delivered \$2 billion in weapons. In the case of the United States, these weapons deliveries constitute only around 10 percent of the weapons offers made to Saudi Arabia and the UAE in this time period. In the case of the United Kingdom, these figures do not include billions more revenue made by British companies by, amongst other things, servicing the fighter jets they sell to Saudi Arabia. However, while South Africa's exports are dwarfed in monetary value by these two military giants, it does not diminish the complicity of South African firms that export weapons that are used against civilians and in the commission of war crimes.

# NUMBERS AT A GLANCE:

**16 MILLION**  
PEOPLE IN YEMEN  
DO NOT HAVE ACCESS  
TO ENOUGH FOOD IN 2021



THE UN BELIEVES SAUDI ARABIA IS USING THIS AS A TACTIC IN THE CONFLICT

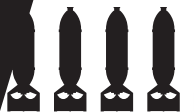


**18 MILLION**

YEMENIS WITH NO ACCESS TO DRINKING WATER IN 2019 & MORE THAN A MILLION WERE IMPACTED BY A CHOLERA OUTBREAK

**212+**

CIVILIANS KILLED OR INJURED  
BY SAUDI AIR RAIDS IN 2020  
54 OF THOSE KILLED WERE CHILDREN



# MONEY FOR GUNS

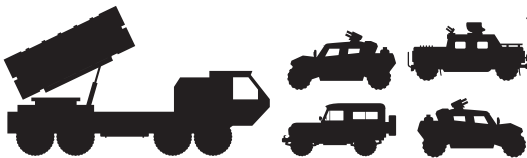
## SOUTH AFRICA'S EXPORTS TO THE PARTIES IN THE YEMEN WAR

	Saudi Arabia	United Arab Emirates	All other countries	Proportion of weapons exports going to the UAE and Saudi Arabia
2010	R68 million	R577 million	R7,6 billion	7.8%
2011	R228 million	R279 million	R8,6 billion	5.6%
2012	R279 million	R1.4 billion	R8.9 billion	15.7%
2013	R6 million	R99 million	R3 billion	3.4%
2014	R333 million	R806 million	R1.8 billion	38.2%
2015	R579 million	R574 million	R1.5 billion	42.1%
2016	R411 million	R1.6 billion	R2.1 billion	48.9%
2017	R331 million	R987 million	R2.1 billion	38.3%
2018	R383 million	R1.2 billion	R3.1 billion	33.9%
2019	R575 million	R330 million	R3.1 billion	22.3%
<b>TOTAL</b>	<b>R3.2 billion</b>	<b>R7.8 billion</b>	<b>R42 billion</b>	<b>20.8%</b>

Civil war broke out in Yemen

# R1.2 BILLION

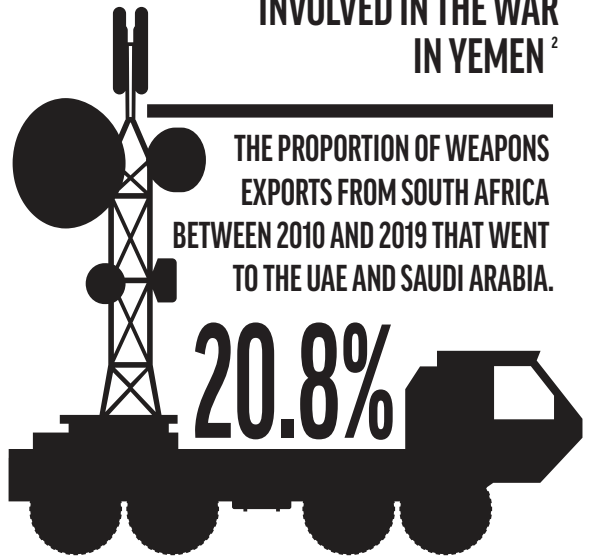
IN VEHICLES, BOMBS & SHELLS SOLD TO THE UAE IN 2018



THE VALUE OF MUNITIONS APPROVED BY THE NCACC FOR EXPORT FROM SOUTH AFRICA TO THE TWO MAIN STATES INVOLVED IN THE WAR IN YEMEN<sup>2</sup>

THE PROPORTION OF WEAPONS EXPORTS FROM SOUTH AFRICA BETWEEN 2010 AND 2019 THAT WENT TO THE UAE AND SAUDI ARABIA.

# 20.8%



# R11 BILLION

SOUTH AFRICAN WEAPONS SOLD TO SAUDI ARABIA AND THE UAE BETWEEN 2010 AND 2019



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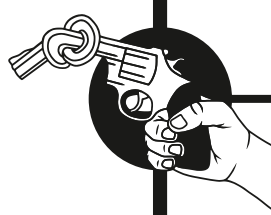
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**‘Yemen remains a tortured  
land, with its people ravaged  
in ways that should shock  
the conscience of humanity.’**

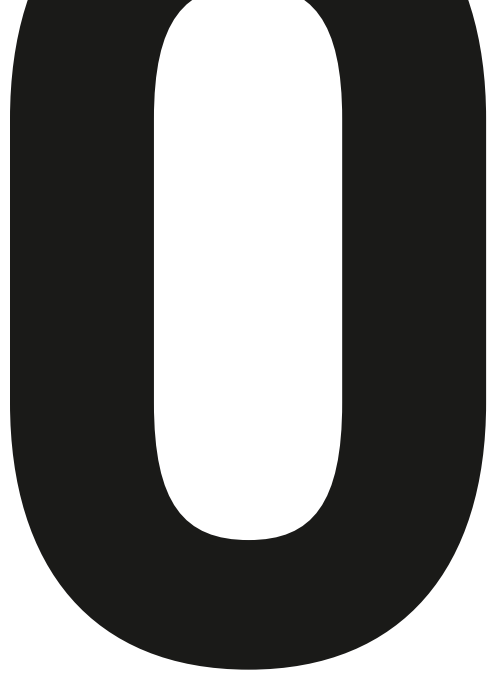
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**~ United Nations Human Rights Council**

1







# INTRODUCTION

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## SOUTH AFRICA'S COMPLICITY IN WAR CRIMES IN YEMEN

**Whether through ongoing air strikes, the crippling blockade, indiscriminate artillery attacks, the impeding of humanitarian relief supplies and access to food and health care, harm from landmines, arbitrary detention, torture and enforced disappearance, widespread displacement, assaults on civil society and minorities, recruitment and use of children, gender-based violence and endemic impunity, Yemen remains a tortured land, with its people ravaged in ways that should shock the conscience of humanity.**

~ United Nations Human Rights Council<sup>2</sup>

It may seem to many people in South Africa that what is happening in war-torn Yemen is a tragedy unfolding far away without any direct connection to us, and with little we can do. This is not true. This report reveals that, since the war in Yemen broke out, South African arms companies like Rheinmetall Denel Munition (RDM) have cashed in on the sale of weapons to some of the central parties to this conflict who may be guilty of gross human rights violations in Yemen.

These firms have joined many global arms companies in profiting from the devastation of war and the resulting misery of Yemenis. South Africa's regulators of the weapons

trade are legally required to prevent the export of weapons that will contribute to human rights violations or worsen conflicts. In this case, they have completely failed to do so. Instead, the South African government has bowed to the interests of the arms industry and its profits, and the suffering of Yemenis has been ignored.

But this can change. South Africans should demand an end to the flow of weapons from this country to those actors committing war crimes in Yemen, and the return of human rights and humanitarian concerns to the centre of not just South Africa's foreign policy rhetoric but its practice.

Yemen is home to the world's worst humanitarian crisis and is the epicentre of a regionalised civil war. Over the past six years, thousands of combatants have been killed, and United Nations (UN) reports show extensive evidence that civilians have been deliberately targeted in the brutal conflict. A myriad of state and non-state actors, including terrorist groups, have joined the conflict, exacerbating its complexity. **Schools, factories and hospitals have been destroyed and a staggering 80 percent of the population – 24 million people – desperately need humanitarian help.**<sup>3</sup> In 2018, it was already estimated that 85 000 children had starved to death since the start of the war.<sup>4</sup> Since 2020, Yemen has to face these horrors with the added burden of the Covid-19 global health pandemic.

While the conflict is complex and there is evidence of widespread abuses by all parties, the coalition of forces led by Saudi Arabia and the United Arab Emirates (UAE) have used their considerable military might to unleash a barrage of attacks on the civilian population. In September 2020, a UN report on the conflict concluded that both Saudi Arabia and the UAE, along with the government of Yemen and secessionist forces, have committed acts that may amount to war crimes. These actions include targeting and murdering civilians, rape and sexual violence, torture, and use of child soldiers.<sup>5</sup> When it comes to targeting civilians and using force indiscriminately, Saudi Arabia and the UAE – and their proxies – have used weaponry sourced from arms companies around the world, including South Africa.<sup>6</sup>

Their insatiable demand for weapons has in fact been a boon for the South African arms industry, beset with many woes also as

a result of more recent state capture. **Saudi Arabia and the UAE have become the most important clients of South Africa's arms companies since 2014, the year the civil war broke out in Yemen. South Africa has exported more than R11 billion worth of arms to these two states since 2010, but over R8 billion of this has come since 2014.**<sup>7</sup> (See graph on page 07)

In 2015 and 2016, the first two years of the conflict, nearly half of all South Africa's approved weapons exports were for these two states.<sup>8</sup> In 2019, there was a brief respite from South African complicity in arming these warring parties when a dispute over the terms of the end-user certificate (EUC) delayed the granting of export permits to several countries, including the UAE and Saudi Arabia. (See box below). The gates of the trade in guns were reopened, we believe, in large part due to massive pressure from the arms companies and their partners in the state. South African authorities bowed to industry pressure and moved swiftly to soften the terms of the EUC, amending it in May 2020.

### END-USER CERTIFICATES

An EUC is one of the critical tools used to prevent munitions from ending up just anywhere. It is a documented undertaking between a country selling arms and the purchaser of the arms. It effectively means that a purchasing country needs to agree that the munitions bought will not be transferred any further without the selling country's permission.

While we cannot track precisely where each exported gun or bomb ends up, or how it is used, there is increasing evidence that some weapons from South Africa have been used in Yemen. This report focusses primarily on Rheinmetall Denel Munition (RDM), a South African-based arms company, and the evidence that it was the supplier of mortars used in illegal attacks on civilians in Yemen. RDM is a joint venture between German arms company Rheinmetall Waffe Munition GmbH (which holds a 51 percent stake) and South African state-owned arms company Denel (with 49 percent).

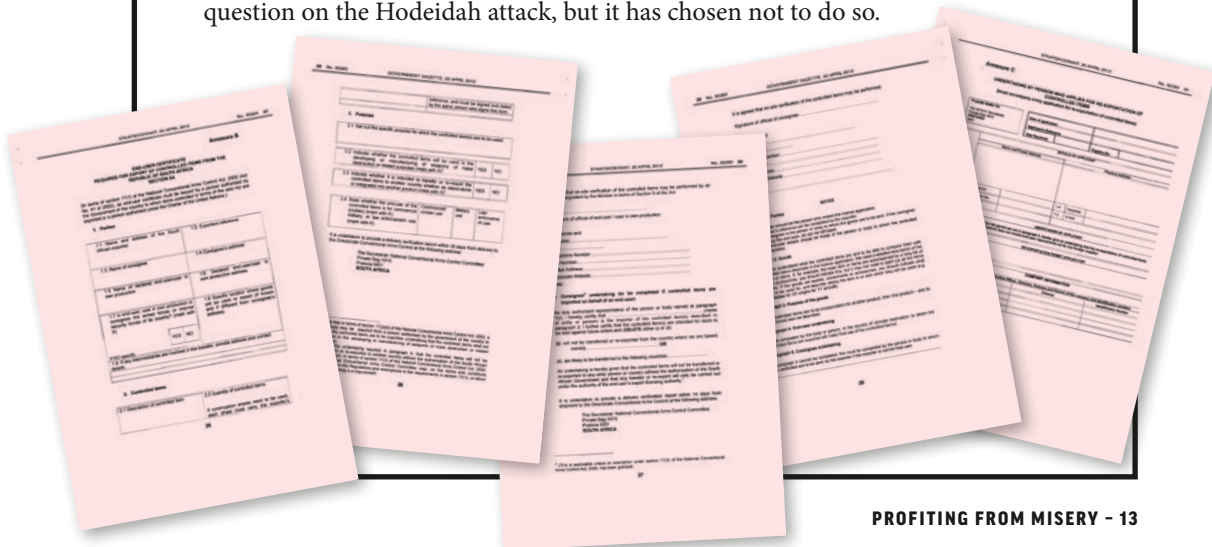
## THE NATURE OF THE EVIDENCE

This report shows that RDM and other South African companies have regularly supplied Saudi Arabia and the UAE with weapons before and since the civil war started in Yemen. This is confirmed by National Conventional Arms Control Committee (NCACC) reports as well as the companies' own statements on these countries being an important and lucrative market. RDM have even set up a munitions factory in Saudi Arabia that produces, amongst other weapons, mortar munitions. The evidence of these countries' commission of human rights abuses in Yemen, discussed at length in this report, is sufficient to show that weapons exports from South Africa should have been prohibited by the NCACC.

This report also discusses the evidence that RDM manufactured munitions were used in a specific attack where civilians were killed in the port city of Hodeidah, Yemen. No single piece of evidence is conclusive in this regard. It is always difficult to conclusively identify the fragments of explosive munitions found in war zones. Not only are the explosive munitions necessarily fragmented and scattered on impact, but forces on the ground in an active war zone prevent local civil society organisations and activists from retrieving fragments for the purpose of identification.<sup>9</sup> For these reasons, making a 100 percent positive identification of explosive munitions is very difficult to do.

In this context, we believe the evidence linking RDM's munitions to the attack in Hodeidah is compelling. This report shows that independent experts at Bellingcat and investigators from the United Nations, despite not coming to an absolutely definitive conclusion, have named RDM and Rheinmetall as the most likely source after their in-depth investigations considered the weapon's characteristics, fragments found at the scene, and satellite imagery from the attack. Evidence that supports this conclusion is that RDM specialises in manufacturing these kinds of mortars and regularly supplies several participants in the conflict. It also exports entire factories to these countries which, amongst others, produce these kinds of munitions.

In an attempt to corroborate these independent reports and afford RDM the opportunity to respond, Open Secrets asked the company if it had investigated the evidence that its weapons have been used by combatants in Yemen over the past five years, possibly including RDM-produced mortars in the attack in Hodeidah. We also asked that if it had not investigated this evidence, to explain why. RDM declined to provide a response to this specific question, saying only that it applied to the NCACC for all necessary permissions to export weapons from South Africa. Open Secrets prompted RDM to provide an answer to the specific question on the Hodeidah attack, but it has chosen not to do so.



Another reason we focus on RDM is that its German majority shareholder – Rheinmetall – faces a ban in Germany against exporting any weapons to Saudi Arabia, in large part due to concerns about human rights violations committed by Saudi Arabia and their partners in Yemen.<sup>10</sup> While our investigation focuses on RDM, all roads lead back to Germany. Ultimately Rheinmetall Waffe Munition GmbH, and executives in Germany higher up in Rheinmetall's corporate food chain, are effectively responsible for RDM's operations in South Africa and so they too should be held accountable for human rights violations. The obvious question is whether Rheinmetall, and possibly other international companies, may see South Africa as a 'soft touch' jurisdiction - a discreet backdoor, if you like – from which to export weapons in order to avoid more onerous regulation at home.

This certainly should not be the case. On paper, South Africa has for a generation had a well-constituted, albeit largely dysfunctional system intended to ensure that dodgy arms deals are not tolerated. Established in 1995 under the presidency of Nelson Mandela, the National Conventional Arms Control Committee (NCACC) consists of a squad of ministers and deputy ministers, and is mandated to stop any weapons exports that could contribute to human rights abuses. Other government departments, including international relations and cooperation, defence, and intelligence, also play a role in the committee's processes.

These officials are meant to scrutinise what weaponry crosses the country's border to ensure that South Africa does not break domestic and international law, and possibly become complicit in the murder of civilians or other human rights violations. It was precisely South Africa's experience of such trade during apartheid that informed what should be a tough and effective regulatory system guided and informed by democratic constitutional values.

This report shows that the NCACC is guilty of regulatory failure over an extended period of time. When asked to respond to our questions regarding the war in Yemen, as detailed in this report, the NCACC revealed not only a lackadaisical approach to regulation but an absolute failure to appreciate the seriousness of their task and the magnitude of the consequences. The fact that the

NCACC has continued to approve export permits for weapons destined for Saudi Arabia and the UAE when these countries have been publicly implicated over a number of years in war crimes in Yemen, is proof of this. The NCACC has, for more than a decade displayed a profound indifference to the rights of vulnerable civilians who are the target of human rights violations in far-flung corners of the world. They have emulated the indifference displayed by politicians in many of the world's leading arms exporting nations.

Who benefits from this? The NCACC's weakness is the arms companies' gain. Our evidence shows that arms companies like RDM have taken advantage of weaknesses in the regulatory regime and profited without any regard to resultant human rights abuses.

Before attending the UN General Assembly in New York in September 2019, South Africa's Minister of International Relations and Cooperation Naledi Pandor said that she wanted to remind the UN of how South Africa benefitted from international solidarity. She added that,

***"There are others in the world who need similar solidarity. The suffering people of Yemen. The suffering people of Syria'.***

**~ Naledi Pandor**

Minister of International Relations and Cooperation

The minister is correct. South Africa should show solidarity to the people of Yemen. It can start by ending its supply of the weapons that are used against them.

## What is in this report?

### Chapter One

This chapter explains the background and key players in the war in Yemen, focusing on the complexities of a brutal civil war and the intricacies and interests compounding it. It also details the evidence of systemic crimes by the parties to the conflict, and the rights violations that Yemenis have faced.

### Chapter Two

The second chapter sets out the clear international and domestic laws and regulations that govern weapons exports and prevent the export of weapons where it might worsen conflict or contribute to human rights violations. Particular focus is on the NCACC and its role in South Africa's regulatory framework.

### Chapter Three

This chapter presents the evidence that weapons exported from South Africa have found their way to Yemen. The focus is on RDM, the history of its German parent company during the Nazi era in Germany and the apartheid era in South Africa, RDM's dealings with Saudi Arabia, and the evidence that RDM's weapons have been used in Yemen.

### Chapter Four

This chapter brings together the analysis from the preceding chapters to evaluate whether the NCACC has fulfilled its mandate to protect the human rights of civilians affected by war, and its legal duties to effectively regulate South Africa's arms trade. It shows that the NCACC's failure with regard to Yemen is indicative of systemic failures in South Africa's regulator that have dire consequences for human rights.

### Chapter Five

The last chapter concludes with recommendations for how to fix the system and ensure accountability for those who are profiteering from an unjust war. This is also a call to action. For the sake of those suffering in Yemen, it is urgent that South Africa immediately revokes all export permits for weapons that might be used in Yemen.







A TYPICAL GARDEN WHICH ABOUNDS IN THE OLD CITY OF SANA'



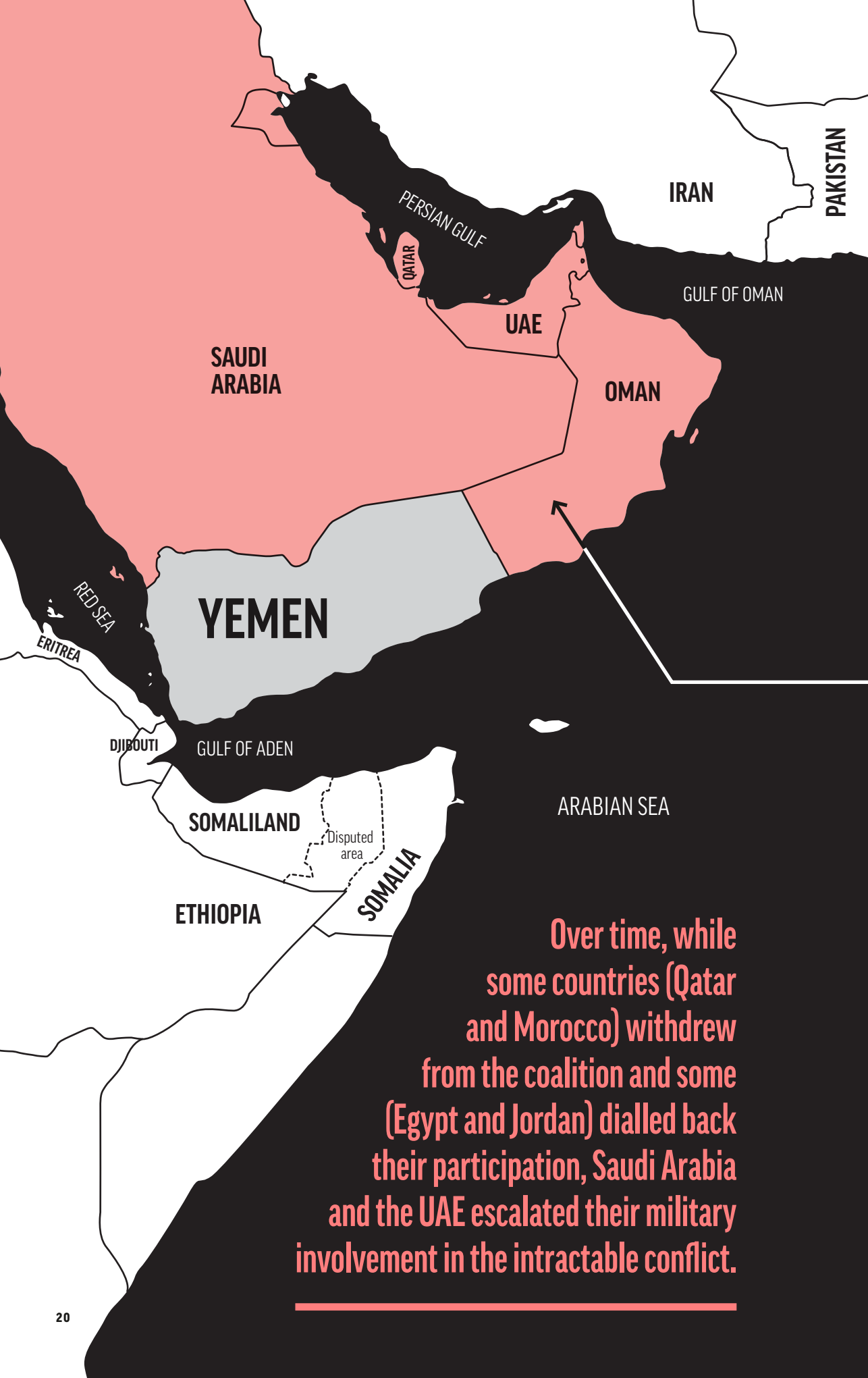


# THE CIVIL WAR IN YEMEN

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**If someone had asked me before this experience about the feeling that would take hold of me if I lived under aerial bombardment, I would have replied that it was fear. During these days however, fear was not the 'monster', but rather humiliation, which is the headline under which all other feelings fall. We would run quickly towards the neighbours' house as we tried to grab with our hands documents, food and pillows. We would cry tears that refused to fall down our faces. We would cling to each other's bodies, and pray to God to save us from a death that we did not deserve. ~ Huda Jafar <sup>1</sup>**

The Yemeni civil war officially started at the end of 2014 but has deep roots in domestic conflict going back decades. Like many civil conflicts, it quickly became internationalised and now involves a complex web of domestic, international and transnational groups that have shifted their conduct, allegiances and goals over time. These different groupings and the suppliers of their weapons are responsible for what has become the greatest humanitarian crisis in recent years. Not only have they all been directly implicated in human rights violations and violent attacks on civilians in Yemen, but they have also dismal-



Over time, while some countries (Qatar and Morocco) withdrew from the coalition and some (Egypt and Jordan) dialled back their participation, Saudi Arabia and the UAE escalated their military involvement in the intractable conflict.

---

ly failed in their legal duty to protect civilians from the conflict.

Yemeni citizens have been left exposed to the effects of fighting, and have effectively been denied continued access to food, water and medical care.<sup>2</sup> By the end of 2019, it was confirmed that roughly 18 million Yemenis had no access to drinking water and more than a million were impacted by a cholera outbreak.<sup>3</sup> Human Rights Watch estimated that up to 14 million people were at risk of starvation, which the UN believed Saudi Arabia was using as a tactic in the conflict.<sup>4</sup> In mid-2020, the UN reported that the situation in Yemen had never been worse – conflict continued even as the country started buckling under the weight of the Covid-19 pandemic, food prices soared and most Yemenis did not have enough money to meet even their most basic needs.<sup>5</sup>

These are the entirely unjustifiable consequences of deliberate actions by armed groups involved in the civil war, and those that supply them with weapons and other resources.

Fighting escalated in 2009 and 2010 and spilled over the Saudi Arabian border. The response was a joint Yemeni–Saudi aerial bombing campaign called ‘Operation Scorched Earth’, which killed thousands of civilians and displaced hundreds of thousands more.<sup>6</sup> US and UK jets and other technical support were essential to this early aerial campaign. The involvement of these countries on the side of the Saudi-led coalition has remained a pivotal element in the conflict.

Hadi came to power in Yemen in 2012, following mass protests against President Ali Abdullah Saleh, who had ruled the country for 33 years. The Yemeni revolution was part of the wider ‘Arab Spring’ that swept the region in that period. In Yemen, it prompted a transition of power to Hadi and immunity for Saleh, negotiated by the **Gulf Cooperation Council**, as well as a national dialogue to draft a new constitution.<sup>7</sup>

When this process frayed in 2014, hostilities sparked again and Houthi forces, together with forces loyal to Saleh, seized Yemen’s capital Sana’a and forced Hadi to resign. In March 2015, forces loyal to Saleh and the Houthis launched an attack on the airport in Aden, a city on the southern coast of Yemen, and declared a full mobilisation. Throughout March 2015, the Houthis and their allies successfully and very rapidly took over large parts of northern and western Yemen, including Dhahran and Taiz, where heavy fighting has continued to this day, gutting Taiz, the town once considered the centre of Yemeni culture.<sup>8</sup>

In early 2015, Hadi escaped Sana’a and fled to Aden, declaring it the provisional capital. He withdrew his earlier resignation and called for military intervention by the Gulf Cooperation Council. He remains the head of government in exile as a guest of Saudi Arabia, where he eventually fled.

While the Houthis aimed to overthrow Hadi’s government and establish greater control over the domestic political landscape, they had another stated objective: to counter the growing presence of two terror groups – Al-Qaeda in the Arabian Peninsula (AQAP) and the Islamic State (IS). Yemen is the base of AQAP, a powerful offshoot of Al-Qaeda, while the Islamic State established its presence in the country in 2015.<sup>9</sup>

Both groups have launched attacks on the Houthis and Zaidi communities in Ye-

KEY TERM

## GULF COOPERATION COUNCIL

The GCC is a political-economic alliance between the UAE, Bahrain, Kuwait, Oman, Qatar and Saudi Arabia.

## THE KEY PARTIES TO THE CONFLICT

### DOMESTIC PARTIES AND TERROR GROUPS

The primary domestic parties to the Yemeni civil war are Ansar Allah (colloquially known as the Houthi movement or Houthis), which is opposed by forces loyal to the exiled head of the Yemeni government, Abd-Rabbu Mansour Hadi. The Houthi movement is a Zaidi group – a sect of Shia Islam that makes up between 30 and 35 percent of the Yemeni population. It has waged a low-level insurgency against the Yemeni government since 2004, with the intensity of the fighting (and involvement of Saudi Arabia) fluctuating ever since.

men. Just a day after fighting reached Aden in March 2015, there were devastating attacks on two mosques in Sana'a that were mainly used by Houthi supporters. Four suicide bombers detonated explosives and killed more than 100 worshippers.<sup>10</sup> While IS claimed responsibility for the attack, analysts said that the much more established AQAP may have actually been behind it.<sup>11</sup>

Both Saudi Arabia and the UAE have also stated that, aside from defeating the Houthi forces, their interventions are aimed against extremism and particularly AQAP. This goal is purportedly shared by several parties involved in the conflict. But the result, perhaps unsurprisingly, has in fact been the opposite. In the early fighting in March 2015, AQAP seized control of several towns and has grown more powerful and entrenched since then.<sup>12</sup>

There is evidence that local militias allied with the Saudi-backed Yemeni government have, in some instances, helped get weaponry to AQAP.<sup>13</sup> Increasing evidence also suggests that the external parties to this conflict – mainly the UAE and Saudi Arabia – are breaking export agreements and passing on sophisticated weaponry to allied militias and other forces inside Yemen.<sup>14</sup> Houthi forces have also been able to access some of this weaponry.

## **EXTERNAL INTERVENTION - SAUDI ARABIA AND THE UAE**

Reaction to the Houthi advance in March 2015 was instant. On 25 March 2015, a coalition led by Saudi Arabia and joined by the UAE, Qatar, Egypt, Bahrain, Kuwait, Jordan, Sudan and Morocco launched 'Operation Decisive Storm' to stop the Houthi advance and 'restore the legitimate government' of Hadi.<sup>15</sup> Saudi and UAE forces headed the assault, which involved a severe aerial bombing campaign led by the Saudi air force, a naval blockade, and a ground force attack led by the UAE.<sup>16</sup> The bombing raids, coupled with escalating ground fighting, led to mass displacement in Yemen and made millions vulnerable. This has only worsened as the fighting drags on.

Over time, while some countries (Qatar and Morocco) withdrew from the coalition and some (Egypt and Jordan) dialled back their participation, Saudi Arabia and the UAE escalated their military involvement in the intractable conflict.

Modern conflicts in the Middle East are often presented as essentially a proxy battle between Shiite Iran and its Sunni neighbour, Saudi Arabia. While this situation is used to their own advantage by big powers such as the USA, Russia and China, the conflict is fundamental to understanding some of the biggest political contestations in the region – with their mutual distrust dating to the Iranian revolution of 1979.<sup>17</sup>

The Saudis have framed their intervention in Yemen as a way of preventing Iranian 'aggression and expansion' there. Writing in the *New York Times* in 2016, Saudi Foreign Minister Adel Bin Ahmed Al-Jubeir pointed to Iranian support for the Houthi takeover in Yemen that had led to the bloodshed there, and said that this was part of Iran's 'dangerous sectarian and expansionist policies'.<sup>18</sup> This line is echoed by the United States – a key Saudi ally and source of weapons for them – whose long-standing antagonism to Iran resurged under the Donald Trump administration.

However, the story is more complicated. Iran's support for the Houthis may have grown in recent years, but the Houthis are a home-grown movement whose original source of weapons was, in fact, the Yemen army and domestic black market.<sup>19</sup> As is often the case with foreign intervention, it has had unintended consequences. While Iranian support was limited before 2015, the escalation of the war and the involvement of the Saudi coalition appears to have pushed the Houthis closer to Iran.<sup>20</sup>

Saudi Arabia has backed the Hadi government since 2011 in the hopes of creating an ally there. But crucial domestic developments in Saudi politics have contributed to a changed approach to foreign policy. The ascendance of King Salman and the appointment of his son Mohammed Bin Salman (often referred to as MBS) as minister of defence and deputy crown prince (he has been crown prince since 2017) – has ushered in a more expansionist foreign policy that seeks to assert Saudi Arabia's status as a regional power and counterweight to Iran.<sup>21</sup>

MBS is famous for a series of crackdowns and the arrests of high-profile members of the royal family. This is widely seen as an attempt to secure his place as the de facto ruler of the Kingdom and not a desire to rid the oligarchic Saudi system of governance from endemic corruption.<sup>22</sup> However, he has also

used his position to assert foreign policy decisions and is seen as the main orchestrator of the war in Yemen. He has tied his status and prestige, along with that of the Kingdom, to a victory of sorts in Yemen, insisting on remaining in the conflict despite the apparent failure of Saudi forces to secure any decisive advantage in a war that attracts strong foreign criticism and has proven hugely expensive.<sup>23</sup>

Saudi Arabia's main partner in their coalition has been the UAE, whose forces have been central to the ground war. However, as the conflict has dragged on, the UAE's interests and objectives have developed and shifted, sometimes even putting it in direct confrontation with Saudi Arabia.

The UAE is a diminutive oil state established in 1971 from a federation of seven emirates, of which Abu Dhabi and Dubai are the most recognisable. The UAE's stated motivation for intervening in Yemen aligns with that of Saudi Arabia – to counter the Islamic extremism of AQAP and to counter Iranian influence in the region.<sup>24</sup> However, the UAE's increasing support for separatists in the south of Yemen has revealed their much broader and more ambitious aspirations. It has shown increasing support and provided military resources to the armed groups of the Southern Transitional Council, a secessionist group that has sought an independent state in southern Yemen since 2007.<sup>25</sup> The UAE's support has involved the creation of a 'military-driven patronage network', training and arming tens of thousands of armed militias in the south that fight with UAE forces to reclaim territory from AQAP, but also against pro-unity forces in Yemen.<sup>26</sup>

**This all means that, while the UAE continues to support the Saudi coalition and the Hadi government in the north of Yemen, its military forces operate a war-lord type of structure in the south that oversees a parallel state against, and completely independent of, the Yemeni government.<sup>27</sup> There is evidence that UAE forces in the south have been involved in widespread human rights violations, including the use of torture in a network of secret prisons.<sup>28</sup>**

In some instances, their support for the secessionist movement has brought UAE-backed forces into direct conflict with the Saudi-led forces and Hadi loyalists.<sup>29</sup> However, it is part of the UAE's longer-term strategy to control the Red Sea ports. Control in Yemen would go together with their rapidly

increasing naval and military presence on the Horn of Africa, including Djibouti, Eritrea and Somaliland.<sup>30</sup>

The overall consequence of this UAE strategy has been the proliferation of armed groups in Yemen and an even greater flood of weapons into the region.

## WEAPONS AND HUMAN RIGHTS VIOLATIONS

Extensive evidence emerging from Yemeni organisations and international NGOs shows that there have been widespread war crimes and other human rights violations by most, if not all, of the actors involved in the Yemeni war. This includes aerial bombing campaigns and ground-based attacks that have indiscriminately killed civilians. But, given the endless flow of weapons from arms companies around the world to Saudi Arabia and UAE, it is unsurprising that these two countries and their backers are central to allegations of the very worst violations.

### THE AERIAL BOMBING CAMPAIGN

A 2019 Human Rights Watch report claimed that it recorded at least 90 'apparently unlawful coalition airstrikes' since 2015.<sup>31</sup> These strikes hit many essential infrastructure facilities, including schools, hospitals, homes, markets and mosques – killing thousands and destroying facilities that provide necessary services to Yemenis. The strikes have occurred across the country but are particularly severe in Houthi-controlled territory in northern Yemen, where Saudi Arabia has adopted a scorched earth policy with such ferocious bombing that survivors say it takes them weeks to retrieve the body parts of those killed.<sup>32</sup>



**Warning:** The content on the following pages contains disturbing details of graphic violence.

**On Sunday, 8 April 2018, around 9:30 pm, coalition aircraft target a family gathering outside in the Al Mahoul village in the Khidair district of Taiz governorate.**

**Twelve people, including five children, are killed and another is wounded. Muhammad Sadiq, 24, whose relatives were killed, recalled events from that day:**

*' We heard a plane flying overhead, and my father ordered the whole family to leave the house for somewhere far away because he was afraid that the plane would bomb our house. The plane, however, was focused on the terrified and fleeing women and children, and, as soon as they had gathered, the plane unleashed hell on them, leaving their body parts scattered all over the nearby trees...*

*We spent the night collecting what was left of my siblings, and the only thing left of their bodies was charred pieces of meat. We could not tell any of the bodies apart. We gathered what remained of them in plastic bags and we buried them all together.'*

33

**Eyewitness**



Those monitoring the conflict have criticised the Saudi coalition for using 'double-tap attacks': dropping a second bomb or bombs minutes after the first strike to target emergency responders and other civilians who go to the initial site.<sup>34</sup> Médecins Sans Frontières has reported how ambulances and other first responders were targeted by follow-up strikes in a January 2016 attack in Saada.<sup>35</sup>

**The most infamous examples of this were an attack on a wedding party in Al-Wahjah in September 2015 where 131 civilians were killed and a similar 2016 attack on a funeral in Sana'a that killed 155 people and wounded hundreds more.<sup>36</sup> There have also been attacks on schoolchildren, including the dropping of a United States Lockheed Martin Mark 82 bomb on a school bus in the town of Dhahyan that killed 44 people. Evidence also points to the use of cluster munitions, prohibited by the laws of war.<sup>37</sup>**

While the Saudi Air Force is leading these attacks and is directly responsible for targeting civilians, which violates international law, they are doing so with the weaponry and technical assistance of western governments – most notably the United Kingdom and the United States. Human Rights Watch has found the remnants of munitions originating from the US at the sites of more than 25 such attacks on civilians.<sup>38</sup> The Mark 84 bomb commonly used in airstrikes is deadly and indiscriminate – it has a lethal radius of 360 metres and can cause injury up to 800 meters away.<sup>39</sup>

The Yemen Data Project is an independent organisation that collects, collates and publishes data on the conflict in Yemen. It has recorded 22 184 Saudi-led coalition airstrikes since the war started: an average of 11 a day. Thirty percent of these have hit civilian targets, and nearly 20 000 civilians have been killed or injured in these attacks.<sup>40</sup> The most recent data available shows a recent increase in air attacks. Of those Yemenis killed in air attacks in 2020, nearly half were children.<sup>41</sup>

## OTHER EXPLOSIVE WEAPONS

**The parties to the conflict in Yemen continue to launch indiscriminate ground attacks on civilians, using in the majority of their attacks imprecise weapons with wide-area effects. Many of these attacks**

**struck residential neighbourhoods and crowded markets, and forced hundreds of people to leave the areas in which they were living in search of safer places.** – Mwatana for Human Rights<sup>42</sup>

The Saudi coalition's brutal and relentless aerial bombing attacks have understandably gained lots of attention when it comes to those involved in the conflict violating international law. Aside from aerial attacks, the fighting on the ground, using small arms, artillery, mortars and a range of armoured vehicles, has caused an equally severe human rights impact. This is why South Africa's practice of selling munitions to Saudi Arabia and the UAE – including mortars, vehicles and ammunition – is callous and possibly unlawful.

As indicated, the ground war has seen the number of combatant groups multiply on all sides. For example, in the southwestern Yemen city of Taiz, Houthi forces have besieged and shelled the city for years – but there are now more than 24 separate military factions fighting them on the other side, 'including local militias backed and sponsored by the UAE, as well as al-Qaida and other jihadists. Some fighters switch sides according to who is offering funds.'<sup>43</sup>

*On Sunday evening, 15 July 2018, Houthi forces tried to shell a government complex in northern Al Hazm. Instead, they hit a farm – five children were killed, two were wounded and two women were also wounded in the attack. A 25-year-old witness said:*

*I was in a sitting room with others, near the farm, and we all rushed to try to help the victims. The things that I saw cannot be described, and it was a terrifying scene. I tried to be strong, but I could not, and I left immediately.<sup>44</sup>*

~ Eye-witness account

An Oxfam survey of artillery, rockets and mortars used in Yemen, especially in urban settings, noted that these cause disproportionate harm to civilians not just via direct killings, but by destroying vital infrastructure.<sup>45</sup> Both Houthi forces and coalition forces commonly use 155mm artillery shells and



notoriously inaccurate rocket launchers that fire multiple rockets with little precision – the latter are mostly BM-21 Grads that date back to Soviet production in the 1960s.<sup>46</sup>

In late 2018 and 2019, fighting in Yemen became increasingly fierce in the port city of Hodeidah. This included a surge of Saudi air attacks. On the ground, in both Taiz and Hodeidah, there was also extensive use of mortars, artillery shells, rockets and improvised explosive devices, including on civilian targets like hospitals and markets.<sup>47</sup> As will later be detailed, South Africa's RDM is suspected of having supplied weapons that were used in this brutal attack.

Oxfam's report also noted that the impacts of these types of explosive weapons are also gendered. Such weapons greatly contribute to displacement, which then puts women at heightened risk of sexual abuse, trafficking and gender-based violence.<sup>48</sup> Women account for more than three-quarters of internally displaced people in Yemen. The destructive effects of these weapons on crucial infrastructure like hospitals and markets also have a particular impact on young mothers and pregnant women: by 2017, more than a million pregnant or lactating women in Yemen were suffering from moderate to acute malnutrition.

## WHERE THE WEAPONS COME FROM

Between 2015 and 2018, the United States topped the list of arms exports to Saudi Arabia – delivering around \$10 billion worth of weapons.<sup>49</sup> Next on this list was the United Kingdom which delivered \$2 billion in weapons. Other significant suppliers were Germany, France, Italy and Spain. South Africa was 14th on that list, approving the export of over R1.3 billion (around \$100 million) in arms during that period.

The United States also topped the list of exporters of weapons to the UAE during this period, with exports valued at just under \$3 billion. South Africa sits 8th on that list, having permitted weapons exports to the Emirates valued at R3.2 billion (around \$250 million).<sup>50</sup>

While US exports to Saudi Arabia dwarf all others, the UK is notable for another reason: the British essentially run the Saudi aerial bombing campaign. Not only does Britain produce a significant number of the bombs dropped by Saudi planes – including Storm

Shadow cruise missiles that cost nearly R20 million apiece – but the British company BAE Systems provides more than 6 000 contractors (per the wishes of the British government) to operate on Saudi bases training pilots, maintaining planes, and even sitting in operating rooms where Saudis choose targets for strikes.<sup>51</sup> One BAE employee told British journalists that if these British contractors weren't there, the Saudis would not be able to put a jet in the air within a week or two.<sup>52</sup> The UK based Campaign Against Arms Trade (CAAT) reports that BAE Systems alone received £15 billion in revenue from Saudi Arabia between 2015 and 2019.

The UK's Royal Air Force (RAF) also trains Saudi pilots in the UK – including allowing them to simulate airstrikes – before they return to Yemen to do the real thing. They have trained more than 100 pilots at RAF bases in the last decade, ensuring that the Saudi Air Force can use the planes, supplied by the UK to fulfil lucrative contracts, in the kind of airstrikes that have killed civilians.<sup>53</sup>

For all of these countries and the companies based in each, the war in Yemen has been an endless bonanza of profit as the thirst for bombs and guns never ceases. A UN committee examining the conflict has pointed out that the US and UK, as well as France, may be complicit in war crimes committed by various combatants in Yemen.<sup>54</sup> It has also been argued that countries supplying weapons to parties they know are committing acts that violate the Geneva Conventions – including the targeting of civilians or failure to discriminate between combatants and non-combatants – are in violation of both international human rights law and the provisions of the multilateral Arms Trade Treaty.<sup>55</sup>

**South Africa's culpability in this regard has received much less attention, but this report aims to change that. In the context of the systemic violations of law and human rights described above, South Africa's decision to continue supplying weapons to the UAE and Saudi Arabia must also be evaluated against both these international legal provisions as well as South Africa's domestic legal framework for the export of weapons. The report turns to these legal and regulatory frameworks now.**





# **LAWS AND REGULATIONS GOVERNING SOUTH AFRICA'S ARMS TRADE**

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***'South Africa [should] play a leading role in championing the values of human rights, democracy, reconciliation and the eradication of poverty and underdevelopment'.***

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~ 2011 DIRCO white paper

The previous chapter outlined the widespread suffering and human rights abuses in Yemen, and the role of the Saudi and UAE military in committing those abuses. This information is widely known and has been reported since 2015 by Yemeni citizens and civil society, international institutions like the United Nations, and international NGOs like Human Rights Watch. By 2020, the UN group of experts on Yemen had alleged that the conduct of Saudi and UAE military forces may amount to war crimes.<sup>1</sup>

This widespread reporting and public knowledge are important because the companies and countries supplying weapons to the parties responsible for suffering in Yemen cannot plead ignorance of their complicity. In this chapter, we look at the South African laws and institutions specifically designed to prevent South Africa and its corporations from contributing to conflict and human rights violations. It is against these laws and the duties of the South African government that we must assess the country's weapons exports to militaries that are engaged in the war in Yemen.

However, before we get to South Africa's regulatory framework, we should consider what this framework was built to serve: a new vision for a constitutional democratic South African state and its role in global affairs. This vision foresaw a radical break from an apartheid past that saw South Africa fuelling conflict and human rights violations around the world, in part through systemic illicit arms trafficking.

# BREAKING WITH THE PAST? FOREIGN POLICY AND ARMS CONTROL IN DEMOCRATIC SOUTH AFRICA

Recent South African shipments of weapons to Yemen are not the first time South Africa has played a role in fuelling conflict there. In fact, Yemen was at the centre of a watershed moment, now almost forgotten, in South Africa's transition to democracy. This moment was also an important impetus for reform of the arms trade.

In September 1994, the government of Nelson Mandela was rocked by media reports that a large consignment of South African weapons had been sold by state-owned arms company Armscor to war-torn Yemen. In the mix was an elusive arms dealer known as Eli Wazan and connections to Lebanon and Saudi Arabia. The context of the furore was that a liberated South Africa, by flooding Yemen with more weapons, was fuelling a civil war that had erupted on 27 April 1994 – the day on which South Africa went to the polls in its first democratic election.<sup>2</sup>

While South Africa was embarking on a journey towards peace, a shipment of weapons, authorised for sale by the last apartheid cabinet, was en route to Yemen. It included 10 000 AK-47 assault rifles, 15 000 G3 assault rifles, and a million rounds of ammunition.<sup>3</sup>

The government moved swiftly to investigate the matter and appointed Judge Edwin Cameron – now a retired Constitutional Court justice – to lead a commission of inquiry. The outcome of this process was to be profound. It not only probed this and subsequent deals, it also probed the arcane practice of arms procurement and sales in South Africa. It was an opportunity for the nascent democratic state to wrest control from the securocrats in military intelligence and elsewhere who had accrued enormous power during the final two decades of apartheid rule. Not only were their practices now the subject of a public hearing, but also the impact of those practices. As the Commission noted at the time:

**Throughout the proceedings we were struck by the detached way in which witnesses described their business of selling weapons. We wondered whether any of them had ever given thought to who used the weapons, against whom, for what reason, and with what consequences... Hundreds, perhaps thousands, of people killed or hurt by South African weapons were also intimately involved in the story. They had no voice in our inquiry and have no name in this report. Yet at all times in our investigation and subsequent deliberations, we have felt their presence like the burden of a shadow.<sup>4</sup>**

The Commission found that Armscor and other South African officials showed a 'general, institutional lack of responsibility regarding the end destination of South African arms exports.'<sup>5</sup> However, it had managed to expose 'only a fraction of the underworld inhabited by South African arms manufacturers and dealers.'<sup>6</sup>

The Commission would prove a defining moment for the defence establishment; it would no longer enjoy the veil of protection afforded by national security imperatives, and the culture of secrecy and impunity was finally challenged. The Commission revealed that Armscor's operations were characterised by 'freewheeling... and subterfuge, of lucrative and often extravagant commissions... of deals structured to conceal their true nature, a world without rules and code of conduct.'<sup>7</sup> This was not consistent with the values and principles of the constitutional democratic state.

The recommendations of the Commission ultimately informed new government policy which was meant to end the practice of 'freewheeling and subterfuge' favoured by Armscor during apartheid. This led to the creation of new laws and a new institution – the National Conventional Arms Control Committee (NCACC) – meant to ensure that the sale of weapons would align with the values enshrined in the Constitution. No longer would weapons be sold to the highest bidder regardless of how they would be used.

The protection of human rights in countries where weapons were to be sold was supposed to become an imperative.

This was a radical approach undertaken by the Mandela administration, given the size and influence of the defence establishment at the time. Until 1994, any information concerning the import and export of weapons from South Africa was secret, and any disclosure of it punishable by imprisonment.<sup>8</sup> This was to provide cover for a vast commercial enterprise which, by the 1980s, saw Armscor emerge as one of the top 20 companies in South Africa in terms of its holdings. It had factories across the country and employed 20 000 people directly and a further 100 000 indirectly, many of whom worked for its 3 000 subcontractors.<sup>9</sup>

The weapons produced were intended to fuel the apartheid wars in southern Africa. However, by the late 1980s, much of this newly acquired and developed technology became the basis for the export of weapons across the globe. This was in contravention of a compulsory UN arms embargo. By that point, Armscor, through massive public subsidy, had helped equip the most advanced military machine south of the Sahara. It was also one of the top arms exporters in the world. Weapons of South African origin were deployed in conflicts and human rights violations across the world at the time, from Angola and Mozambique to Rwanda, Chad and Iran.<sup>10</sup>

If war is indeed a racket, then the apartheid regime had 'successfully' carved out its turf. It relied on a mix of secrecy, impunity and collaboration with a network of allies across the globe.

As the negotiations to end apartheid gathered pace in the early 1990s, Armscor was divided into an acquisitions arm and a sales division. The latter became the state-owned arms company Denel. At about the same time, a massive privatisation process unfolded which lasted into the 2000s and saw a number of large European arms companies procure assets in South Africa or enter into joint ventures. While Armscor and Denel today are shadows of the behemoth they once were under apartheid, the legacy of their cultures of practice has not been erased despite a quarter-century of constitutional democracy.

The new weapons control regime under the NCACC would also serve a new vision of how a democratic South Africa would

engage with the world. This was first articulated by Mandela in a seminal 1993 article in *Foreign Affairs*, where he argued that human rights would become the guiding light for a free South Africa's foreign policy.<sup>11</sup> This was not only a signal of a change in the substance of foreign affairs, but it underscored the intention that the country's Department of International Relations and Cooperation (DIRCO) would play a far greater role in defining South Africa's relations with the world. This would no longer be steered by the military establishment, with diplomats relegated to the role of propagandists and second-tier supporters of a criminal regime.

While the Mandela administration offered much hope of human-rights-based foreign policy, particularly given the principled stance it took on issues such as human rights violations in Nigeria and Palestine, this started to slowly unravel in the 2000s, particularly as a result of the politics of President Thabo Mbeki. It is now often overlooked in polite circles that Mbeki's administration, through its failed policy of quiet diplomacy, enabled massive human rights violations against civil society and opposition politicians in Zimbabwe.

In 2011, DIRCO issued a white paper reasserting a vision for 'South Africa to play a leading role in championing the values of human rights, democracy, reconciliation and the eradication of poverty and underdevelopment'.<sup>12</sup> However, the reality has been very different. As the recently released volume *Values, Interests and Power: South African Foreign Policy in Uncertain Times* argues:

**[U]nder the Zuma presidency (and some may argue this was the case under the Mbeki presidency also) there was a drift away from the normative foundations of foreign policy into a crude instrumentalism characterised by diplomatic ceremonialism and unprincipled pragmatism while on the domestic front we have witnessed a descent into a patrimonial and predatory type of politics that has severely damaged the fabric of its nascent democracy.<sup>13</sup>**

In summary, the politics of state capture is mirrored in an unprincipled application of foreign policy. The continued sale of weapons to countries engaged in war crimes in Yemen, with the approval of the NCACC and full knowledge of the minister of International Relations and Cooperation over many years, is a powerful reminder not only of the extent to which DIRCO has been weakened but also the manner in which unprincipled politics has prevailed.

South Africa's foreign policy is in a muddle and needs a reorientation back towards human rights. This would be a crucial step towards ensuring that democratic institutions such as the NCACC are guided by principles of human rights. If it is left to the securocrats and arms companies, the status quo of light-touch regulation in the export of weapons to war zones will prevail. If DIRCO fails to lead this process, the NCACC is likely to continue to fail the values of the South African Constitution, but also the rights of Yemeni people.

## THE NATIONAL CONVENTIONAL ARMS CONTROL ACT

On paper, South Africa has a rigorous set of laws and institutions meant to filter out dubious arms transactions. The country is also signed up to an expansive set of international agreements and conventions to try and ensure that, among other things, it does not engage in illicit arms transactions.

The cornerstone of South Africa's arms trade policy is the National Conventional Arms Control Act (NCACA). The NCACA was passed in 2002 to establish a 'legitimate, effective, and transparent' arms control process.<sup>14</sup> The preamble to the Act gives significant insight into the overall purpose of establishing these controls. It notes that the well-being and social development of all countries require the protection of all people's right to life and security against repression. Importantly, it adds that South Africa is a 'responsible member of the international community and will not trade in conventional arms with states engaged in repression, aggression or terrorism', and that it is 'vitaly important to ensure accountability in all matters concerning conventional arms.'<sup>15</sup>

The NCACA requires any company wishing to import or export weapons to or from South Africa to be registered with the secretariat of the National Conventional Arms Control Committee (NCACC).

Most importantly, for the purposes of this report, the Act requires registered arms companies wishing to export any '**controlled items**' to apply for an export permit from the NCACC. (See infobox to the right). The Act requires the NCACC to assess each application on a case-by-case basis. Section 15 of the Act lays down 'guiding principles and criteria' that should inform decisions regarding any weapons exports. These include that the NCACC must avoid approving transfers in circumstances described below.

16

### THE NATIONAL CONVENTIONAL ARMS CONTROL ACT (NCACA) MUST AVOID APPROVING TRANSFERS WHERE THOSE WEAPONS:

- ! 'are likely to contribute to the escalation of regional military conflicts';
- ! 'may be used for purposes other than the legitimate defence and security needs of the government of the country of import';
- ! will be sent to 'governments that systematically violate or suppress human rights and fundamental freedoms';
- ! will be sent to a government 'that has violated an end-user certificate undertaking' by diverting weapons to other parties without the agreement of the seller.



## CONTROLLED ITEMS

The term controlled items is very broadly defined in the Act and includes 'weapons, munitions, explosives, bombs, armaments, vessels, vehicles and aircraft designed or manufactured for use in war, and any other articles of war', as well as 'any component, equipment, system, processes and technology of whatever nature capable of being used in the design, development, manufacture, upgrading, refurbishment or maintenance' of the things listed. In what follows, for simplicity, we often simply refer to weapons instead of 'controlled items'.

A central argument in this report, which will be explored in detail, is that the NCACC has fundamentally failed to take these guiding principles into account when authorising the export of weapons from South Africa to Saudi Arabia and the UAE while the war in Yemen has raged. The extensive evidence of these states' conduct in Yemen means that the NCACC cannot have properly applied its mind to the consequences of the continued supply of weapons to them by South African firms like RDM.

The NCACA also requires the NCACC to consider international law and any of South Africa's international obligations or commitments, including UN arms embargoes, when deciding whether to grant an export permit.<sup>17</sup> These international obligations and commitments are numerous; many are listed in the table at the end of this chapter and they will not be dealt with exhaustively here.

However, it is important to take note of two important sources of international obligations. The first is the **Arms Trade Treaty (ATT)**, which South Africa supported in the General Assembly of the UN and then ratified in December 2014, just months before the civil war broke out in Yemen. Amongst other important provisions, Article 6 of the

## ARMS TRADE TREATY (ATT)

Both Germany and South Africa are parties to the Treaty, but Saudi Arabia, the United States and the UAE are not.

## GENEVA CONVENTIONS

The Geneva Conventions are rules that came about via talks in the aftermath of the Second World War. They created the backbone of international humanitarian law regulating armed conduct during war and deal with, among others, protection of civilians during wartime.

ATT prohibits state parties to the treaty from exporting weapons if they know at the time of authorisation that those weapons will be used to commit war crimes, be used against civilians, or violate the **Geneva Conventions**.<sup>18</sup> The NCACC must ensure that the provisions of the Treaty are implemented in South African policy and practice.

It appears that the parties to the ATT look favourably on the legal control framework in place in South Africa. In 2019, the ATT chose South Africa to present and discuss its arms control framework at a meeting of the ATT's Technical Working Group in Geneva. As we will discuss in the following sections, there is a disturbing gulf between the written laws of this control framework and how it is enforced in practice.

The second source is the UN Security Council Resolution 2216, which imposes an arms embargo against certain parties to the conflict in Yemen and reiterates that the 'humanitarian situation will continue to deteriorate in the absence of a political solution'.<sup>19</sup> The UN embargo reflects the position of the five permanent members of the Security Council. As a result, it firmly backs Hadi's government-in-exile and the Gulf Cooperation Council, and aims to cut off the weapons supply to Houthi forces as well as forces aligned to AQAP and other terror groups. It does not discourage the supply of weapons to the parties to the Saudi coalition. However, as indicated in the chapter on the civil war in Yemen, there is evidence that weapons exported to all parties to this war, including Saudi Arabia and the UAE, are being transferred to other armed groups. Further, the NCACC is required by the NCAC Act to take 'diversion' of weapons into account when considering export applications.

There are thus several principles that the NCACC has to consider when deciding whether to grant an export permit. But once an export permit is granted by the NCACC,

there is an added layer of protection contained in the Act. It places certain responsibilities on countries that receive South African arms transfers. The most important is that, when arms are exported or ownership transferred, the recipient country must provide an undertaking that these will not be re-sold, re-exported or transferred again without South Africa's approval. This agreement is reflected in an end-user certificate (EUC), a document stipulating the endpoint of purchased munition – which is agreed by the buyer. EUCs are meant to ensure that weapons are not passed on to parties without the knowledge of the seller.

A country's track record of abiding by EUCs is another 'guiding principle' that the NCACC must consider when deciding whether to grant an export permit. The Act requires the Committee to examine a recipient country's compliance with EUCs 'and avoid the export of controlled items to a government that has violated an end-user certificate undertaking'.<sup>20</sup> We provide evidence later in the report that shows that the NCACC has not done nearly enough to enforce the provisions of EUC agreements, leaving the country in the dark as to where its exported weapons are ending up.

## THE NATIONAL CONVENTIONAL ARMS CONTROL COMMITTEE

As discussed above, enforcement of the provisions in the Act is the responsibility of the National Conventional Arms Control Committee (NCACC). The NCACC is a unique cabinet committee, made up of ministers and deputy ministers appointed directly by the president, though the president has the prerogative to appoint non-ministers if they deem it necessary. Currently, the Committee is made up of nine ministers and three deputy ministers. The chairperson and deputy chairperson are also chosen by the president but cannot have a 'line-function interest in trade in controlled items'<sup>21</sup>, to ensure objectivity in the Committee's decision-making. Jackson Mthembu was the Chairperson until his death in January 2021. At time of writing, we are awaiting the announcement of a new chairperson. Ronald Lamola (minister of justice) is currently the deputy chairperson.

The Committee is the body responsible for setting up the structures and processes needed to give effect to the Act and related legislation. It also has broad powers to undertake the investigations and research into the trade of weapons, and to advise the cabinet on any issues linked to this trade.<sup>22</sup> However, the Committee's most crucial regular function is to assess and decide on whether to grant or refuse export permits for weapons and other controlled items, taking into account the guiding principles discussed in the preceding section and the overarching goals of the Act to ensure that South Africa is responsible in its conduct in the trade of weapons.

The Committee is assisted by the Directorate Conventional Arms Control (DCAC), a secretariat with a largely administrative function, which sits in the ministry of defence and is currently headed by Ezra Jele. The DCAC prepares documents, facilitates communication between the NCACC, arms companies and others in the defence industry, and finally is tasked with executing the decisions and policies of the Committee.<sup>23</sup>

Crucially, the Act also requires the minister of defence to establish an inspectorate that is independent of the secretariat. The function of the Inspectorate is to ensure that all trade in weapons is compliant with the Act and that the Committee's regulatory processes are being followed.<sup>24</sup> The Inspectorate is given the power to undertake inspections and obtain warrants to search premises of companies licensed in terms of the Act<sup>25</sup>, and it is an offence to 'hinder or obstruct' an inspector.<sup>26</sup>

While the secretariat and inspectorate play vital roles, the NCACC has also set up a 'scrutiny committee' expressly for the purpose of assisting it in considering permit applications and advising the Committee.<sup>27</sup> Representatives from the departments of defence, international relations and cooperation, trade, state security, public enterprises and police sit on this committee. This ensures that the NCACC receives a wide range of input and information from other government departments and functions. This input is particularly important when assessing requests for export permits. After all, the Committee requires information that will enable it to make an informed decision that accords with all of the requirements in Section 15 of the Act – including that no export permits are granted for weapons that are likely to be used



**National Conventional Arms Control Act**



South African legislation to prevent dubious arms deals and ensure it does not arm 'governments that systematically violate or suppress human rights and fundamental freedoms'. 28



**South Africa is bound by the following legislation, regulations and conventions**

South African legislation to give effect to the Rome Statute of the International Criminal Court (ICC). It provides for the arrest and prosecution of persons accused of committing grave crimes.

**Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (ICC Act)**

**Wassenaar Arrangement**

The first multilateral agreement on controls on the export of munitions. It aims to promote transparency and responsibility in the arms trade to contribute to regional and international stability.



**Arms Trade Treaty**

A multilateral treaty that regulates the international trade of arms to try to prevent illicit deals: 'South Africa's approach is to manage the trade in controlled items (arms) in all the various aspects, through a legitimate, transparent process'. 30



**UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects**

To ban or restrict the use of specific munitions that 'cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately'. 32



**UN Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction [Mine Ban Treaty]**

This is aimed at doing away with the use, stockpiling and production of anti-personnel mines. 31



**Convention on Cluster Munitions**

An international treaty involving more than 100 countries 'that addresses the humanitarian consequences and unacceptable harm caused to civilians by cluster munitions'. 33



**Biological Weapons Convention**

This multilateral treaty 'effectively prohibits the development, production, acquisition, transfer, retention, stockpiling and use of biological and toxin weapons and is a key element in the international community's efforts to address the proliferation of weapons of mass destruction'. 34



**Treaty on the Non-Proliferation of Nuclear Weapons**

An international treaty to prevent the spread of nuclear weapons and related technology.



**Nuclear Suppliers Group**

A group of nuclear-supplying countries that want to contribute to the non-proliferation of nuclear weapons via two sets of guidelines for nuclear and nuclear-related exports. 35



**Chemical Weapons Convention**

Aimed at prohibiting the use, creation and transfer of chemical weapons.

**Missile Technology Control Regime**

An export control regime aimed at limiting 'the proliferation of missiles and missile technology'. 36



**Zangger Committee Trigger List**

Maintains a list of equipment, designated for nuclear use, that may only be exported if the recipient meets certain conditions.



to worsen a conflict, in human rights violations, or for repressive purposes.

In correspondence with Open Secrets, the former chairperson of the NCACC, Jackson Mthembu, confirmed that the NCACC relied most closely on DIRCO, the State Security Agency, defence intelligence, and South Africa's foreign missions to provide it with the information it needs in this regard.<sup>37</sup> However, the NCACC has also stated that, when scrutinising applications to export weapons, it takes into account all 'publicly available information.'<sup>38</sup> This suggests that the Committee should consider all relevant information in the public domain when deciding whether to grant permits, even if that information was not specifically raised by DIRCO or another advisor.

Despite these stringent requirements, the evidence suggests that arms companies face few questions from the NCACC when applying for permits to enter contracts with foreign states and export weapons. The NCACC's annual reports show that between 2015 and 2019, the NCACC approved 1108 applications by South African companies for permission to enter supply contracts with foreign persons and companies. In that period, it denied only 10 applications. In both 2017 and 2019, not a single application was denied.<sup>39</sup>

In sum, the trade in weapons is supposed to be closely regulated in South Africa. The laws and institutions built to enforce them are a direct attempt to break from a past of clandestine and illicit arms trading that fuelled conflicts and human suffering around the world. **By law, the NCACC may not permit the export of weapons where those weapons will contribute to human rights violations or worsening conflict. It must take into account 'all publicly available information' when making these decisions.**

However, the NCACC is failing to uphold this mandate. While the atrocities and suffering in Yemen have been widely reported, as has the role of the armed forces of Saudi Arabia and the UAE, arms companies like RDM have had little difficulty in obtaining the permits to export weapons to Saudi Arabia and the UAE since the war started. In some instances, they are partnering to build entire weapons factories. The next chapter turns to the evidence that weapons made in South Africa are being used to devastating effect in Yemen.



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## THE INSTITUTIONAL FRAMEWORK FOR ARMS CONTROL IN SOUTH AFRICA

# National Conventional Arms Control Committee (NCACC)

Ministers and deputy ministers appointed by the president to monitor South Africa's arms trade. The Committee sets up processes to enforce the Act, and receives and considers all applications for weapons export permits.

## Secretariat: Directorate for Conventional Arms Control (DCAC) in the Department of Defence

Provides administrative support to the NCACC by preparing documents, facilitating communication between the NCACC, arms companies and other actors in the defence sector. It executes the NCACC's decisions and policies.

## Inspectorate

Role is to ensure trade is compliant with the National Conventional Arms Control Act and that internal regulatory processes of the NCACC are above board.

## Support & Information

Includes departments of defence, international relations and cooperation, state security, trade and industry, police.



**RHEINMETALL**  
**DENELMUNITION**



# RHEINMETALL DENEL MUNITION: PROUDLY SOUTH AFRICAN BOMBS DESTINED FOR YEMEN

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**'We have a saying in our firm – if you see a penny on the ground then pick it up.'** ~ Norbert Schulze, former Rheinmetall Denel Munition CEO

Since the civil war broke out in Yemen in early 2015, South African arms companies have exported weapons worth R2.81 billion to Saudi Arabia, and weapons worth R4.74 billion to the UAE. These exports include mortars and mortar shells, artillery guns and shells, ammunition, armoured combat vehicles, and software for various types of electronic warfare.<sup>2</sup> Much of this materiel has likely been used as part of the Saudi and UAE offensive in Yemen, with devastating consequences for the civilian population.

These exports come from many South African companies. However, this chapter deals primarily with the evidence that armaments exported by Rheinmetall Denel Munition (RDM) – the South African subsidiary of the German arms giant Rheinmetall – have been deployed in Yemen.

The focus on RDM is motivated by two factors. Firstly, there is compelling evidence that fragments of RDM munitions were found at the site of an attack on the port city of Hodeidah in Yemen, an attack that targeted civilians and first responders. Secondly, RDM is one of several Rheinmetall subsidiaries around the world implicated in exporting weapons to the Saudi coalition despite a German ban prohibiting German firms from

exporting directly to Saudi Arabia. This raises the possibility that South Africa, despite its self-professed commitment to rigorous arms control, is being used by companies like Rheinmetall to circumvent arms bans in their home countries that aim to protect human rights.

After exploring the evidence against RDM, this chapter briefly sets out evidence against other companies behind these exports to Saudi Arabia and the UAE. These include South Africa's state-owned arms company Denel, as well as a range of private companies including South Africa's largest private weapons producer, the Paramount Group. Their role in supplying the UAE and Saudi Arabia will be discussed, along with the evidence that South Africa's arms sector has increasingly pivoted towards these two big military customers to seek new financial opportunities and pad its profits.

**Below:** RDM's manufacturing facility in Macassar near Somerset West is one of five RDM facilities in South Africa. In 2018, an explosion at the Macassar plant killed eight employees.

**Following spread:** Adolf Hitler speaks at a Rheinmetall factory in Berlin in 1940. During World War II, Rheinmetall was the second biggest supplier of weapons to Hitler's war machine. The company also profited from using slave labour from German concentration camps.

## MULTINATIONAL ARMS GIANT - RHEINMETALL'S EXPANSION FROM GERMANY TO SOUTH AFRICA

Before we turn to the evidence against RDM, it is necessary to explore its history and that of its majority shareholder, Rheinmetall. Doing so reveals Rheinmetall's dubious history in Germany, as well as close and intricate ties with the apartheid-era military establishment.

To the outsider, RDM may seem to be a young gun in the South African arms industry – proudly homegrown with only a hint of German influence in the appointment of successive German CEOs. However, to understand the company it is necessary to step back and look at the German arms behemoth Rheinmetall, which holds 51 percent of the total shares in RDM (the balance is held by the South African state). This reveals a history of profiteering from war and injustice that is deeply embedded in Rheinmetall's institutional make-up.



## PROFITING FROM SLAVERY AND GENOCIDE IN EUROPE

Today, Rheinmetall AG is a corporate giant, earning more than €6 billion in revenue in 2019 and employing more than 25 000 people around the world. Looking back, Rheinmetall AG (Rhine Metal in English) was founded in April 1889 in Düsseldorf on the banks of Germany's Rhine River. This was the centre of Germany's booming industrial heartland, the Rhineland, where locally mined coal and iron ore fuelled the massive foundries that would build Germany's imperial war machine.<sup>3</sup> Starting as a small factory, it grew to become one of Germany's biggest arms manufacturers.

By 1936 when Hitler's Nazi Party was in full control of the German economy, Rheinmetall merged with one of the most important train and engine manufacturers in fascist Germany, August Borsig GmbH, to become Rheinmetall-Borsig AG. Just prior to the outbreak of the Second World War, all German arms factories – including Rheinmetall-Borsig – were brought under the direct control of the armed forces of Nazi Germany.<sup>4</sup> During the six-year long war Rheinmetall-Borsig was the second biggest supplier of weapons to Hitler's war machine.<sup>5</sup>

Between 1939 and 1945, Rheinmetall used the German concentration camp system to exploit prisoners. Through slave labour inmates were forced to manufacture weapons, set up underground arms production facilities and supplement other Rheinmetall factories.<sup>6</sup> The Nazi state's hundreds of slave labour camps across Europe provided free labour to large German companies like Rheinmetall which generated enormous profits from the exploitation of prisoners in concentration camps.<sup>7</sup> Rheinmetall was not the only German arms corporation to have exploited slave labour during the Second World War, but it is known as one of the 'greatest offenders'.<sup>8</sup>

Rheinmetall also had close ties to the SS, Hitler's paramilitary organisation, and was involved in the exploitation of prisoners in Auschwitz, where nearly 1.1 million people were murdered as part of the Holocaust. The company enslaved more than 5 000 concentration camp inmates, and itself had camps in Sömmerda, Hundsfeld near Breslau and Unterlüss.<sup>9</sup>

After the war, proof of Rheinmetall's complicity in gross human rights violations surfaced. Rheinmetall was unapologetic and evasive. It denied the accusations and refused to offer compensation to survivors of slave labour camps. Author Tom Hoffman writes that in general, Rheinmetall acted immorally in their rejection of any restitution for their proven use of slave labour during the war.<sup>10</sup>

The company only relented and offered limited compensation in 1966 when it seemed that a lucrative contract to provide weapons to the United States Army was in danger of falling through. There was a public outcry in the US over the country purchasing arms from a German corporation that was willing neither to admit to its wrongdoing nor to offer compensation to the slave labour survivors. Responding to this financial incentive, Rheinmetall relented and provided meagre compensation in cash, food parcels and clothing. The company still refused to admit any wrongdoing.<sup>11</sup> The compensation was limited to Jewish survivors. When groups representing survivors asked the company to extend the payments to other survivors of the camps, Rheinmetall wrote that the previous payment had been made 'only in view of a prospective contract' and thus was made entirely on a 'quid pro quo basis'.<sup>12</sup> This revealed an intention which had little to do with restitution and reparation and was all about closing the next deal.

### RHEINMETALL - AN APARTHEID ALLY

South Africa's history and continued struggle for justice is a searing reminder of the complicity of arms companies and foreign governments that capitalised on apartheid. While the UN Security Council enforced a mandatory arms embargo against the regime in 1977, a range of states and companies defied this and lined up to sell weapons to it – at a premium. They made a fortune from propping up a crime against humanity.<sup>13</sup> Many companies and states are doing the same today in regard to Yemen.

Throughout the 1970s and 1980s, the Federal Republic of Germany (FRG)<sup>14</sup> was one such apartheid ally – and an important source of weapons for the apartheid military. This was part of a broader economic and financial relationship: the FRG was one of South Africa's largest trading partners and German banks managed more than half of all







loans by international banks to South Africa in the early 1980s, most of which went to the government and state-owned companies.<sup>15</sup>

Several of Germany's largest companies were eager to do business with the apartheid state. Declassified apartheid-era military records reveal that companies including Siemens, Krauss-Maffei, and Thyssen collaborated with the apartheid military in the areas of electronic warfare, tanks, and submarines respectively.<sup>16</sup> The German military even assisted South Africa in accessing NATO codes, used by members of the military alliance to integrate their equipment and weapons systems.<sup>17</sup>

**Rheinmetall was one of these key German suppliers. Starting in the 1970s, and using fraudulent export declarations, Rheinmetall illegally exported weapons to the regime. This included the illegal export of an entire munitions factory that produced 155mm extended range projectiles needed by apartheid security forces for their wars in southern Africa.** The Rheinmetall-made plant was set up in Pretoria and started operating in 1979, producing up to 100 rounds of ammunition per hour.<sup>18</sup> The production and export of munitions factories would remain an enterprise of the company for decades to come.

In 2002, several South Africans represented by the Khulumani Support Group brought a class action lawsuit against Rheinmetall and other corporations in the United States District Court in New York. They were 'the personal representatives of victims of extrajudicial killing, or were themselves direct victims of... crimes perpetrated by the security forces of the apartheid regime between 1960 and 1994'.<sup>19</sup> Rheinmetall was among several corporations the Khulumani Support Group accused of knowingly aiding and abetting South Africa's security forces during apartheid and of participating in the 'furtherance of the crimes of apartheid, extrajudicial killing, torture, prolonged unlawful detention, and cruel, inhuman, and degrading treatment in violation of international law'.<sup>20</sup>

Khulumani alleged the clandestine activities of Rheinmetall and its subsidiaries, especially the Swiss-headquartered Oerlikon Contraves AG (known today as Rheinmetall Aerospace), were crucial to arming South Africa's apartheid regime. It also alleged that Rheinmetall, through its links to South

Africa's arms procurement and production agency Armscor, significantly contributed to the apartheid regime's efforts to build a fully self-sufficient arms and defence industry.<sup>21</sup> They claimed:

**It is known that Armscor worked closely with private companies, including Defendant Rheinmetall Group AG... to ensure that the security forces of the apartheid regime acquired the armaments and military equipment it needed to suppress dissent and control the population despite the international arms embargoes.<sup>22</sup>**

Khulumani further alleged that the defence equipment Rheinmetall supplied to the security forces in South Africa was 'made to kill; they had an inherent capacity for harm and were particularly susceptible to harmful and illegal use under international law'.<sup>23</sup> The case also referenced a German tribunal from the mid-1980s that found Rheinmetall had gone to great lengths to obscure their dealings with the apartheid state. They created fictitious firms in countries abroad to conceal their relationship with apartheid security forces and submitted falsified end-user declarations.<sup>24</sup>

For many years, the South African government, under Thabo Mbeki's presidency, publicly opposed the lawsuit. But in 2009, Jacob Zuma's new administration changed its tune and announced support for the case.<sup>25</sup> Unfortunately, the protracted legal battle was ultimately unsuccessful. In 2013, a US court dismissed the case on a technicality, saying it did not have jurisdiction to hear the matter.<sup>26</sup> This effectively meant the end of the road for efforts to use the US court to hold Rheinmetall to account for aiding and abetting a crime against humanity.

## **RHEINMETALL DENEL MUNITION - NEW CHAPTER OR THE SAME OLD WAYS?**

While Khulumani's legal battle moved through the US court system, Rheinmetall had already set up new roots in South Africa. On 1 September 2008 Rheinmetall Denel Mmunition (Pty) Ltd was established when four divisions of South Africa's state-owned

industrial group Denel became part of the Rheinmetall Defence Group.<sup>27</sup> Today RDM is jointly owned by Rheinmetall subsidiary Rheinmetall Waffe Munition GmbH (51%) and the South African state through its arms company Denel (49%). RDM specialises in the design and manufacture of artillery and mortar systems, as well as large and medium-calibre ammunition.<sup>28</sup>

Denel was established in the early 1990s when Armscor was split into two; Armscor retained a procurement function while Denel took over the arms production role. Denel inherited Armscor's workforce and facilities, but also Armscor's notorious culture of impunity and unaccountability, a hangover from the apartheid period.<sup>29</sup> Cracks began to show in Denel's financial outlook early on, and by the mid 2000s, the state was urgently looking for equity partners to invest and help turn around Denel's core businesses. Rheinmetall's investment in one of those, Denel Munitions, was seen as a vital part of this overall turnaround.<sup>30</sup>

Given that Denel Munitions was essentially insolvent at the time, Rheinmetall did not actually pay the South African government for the 51 percent stake; instead, it committed money to a new joint venture.<sup>31</sup> Rheinmetall made it clear that the joint venture with Denel was part of the company's plan to increase its presence in the arms trade market and to 'penetrate new markets with major strategic potential'.<sup>32</sup>

While RDM is an independent company with its own governance structure, board, management and operations,<sup>33</sup> Rheinmetall exerts a powerful influence. In particular, the company's 51 percent shareholding in RDM allows it to appoint three of the five board members, manage the daily activities of the company, and choose the chief executive officer and chief financial officer. Despite this, Denel's annual reports indicate that the South African government still exercises 'significant influence' at RDM.<sup>34</sup> Presumably then, both shareholders guide and approve the strategic direction of the firm.

This strategic direction has meant aggressive expansion into markets in the Middle

East, and it has delivered financial success. In stark contrast to Denel, which has been unable to pay salaries in recent years<sup>35</sup> and sought bailouts from the state, RDM has been profitable for the last ten years – mostly thanks to lucrative international orders.<sup>36</sup> Sixty percent of RDM's exports go to the Middle East, and two of its largest customers are Saudi Arabia and the UAE.<sup>37</sup> Speaking in 2014, then RDM chief executive Norbert Schulze boasted:

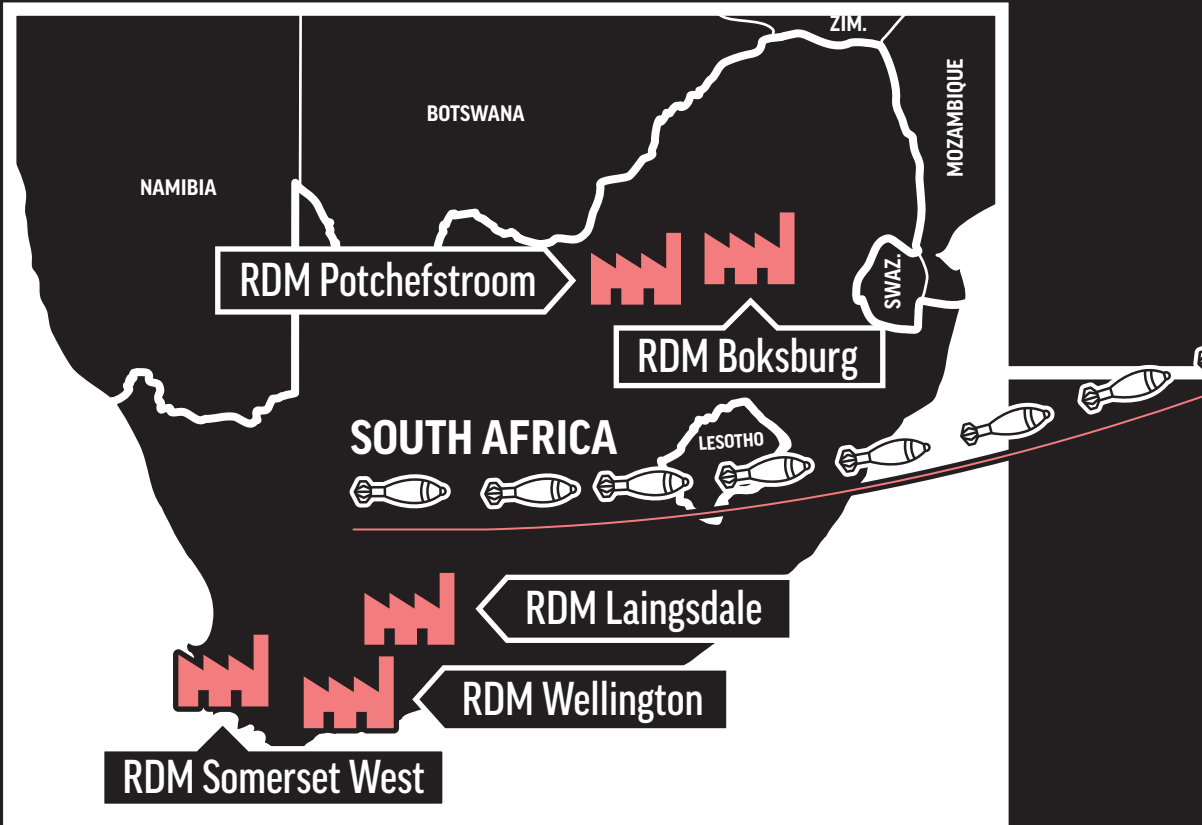
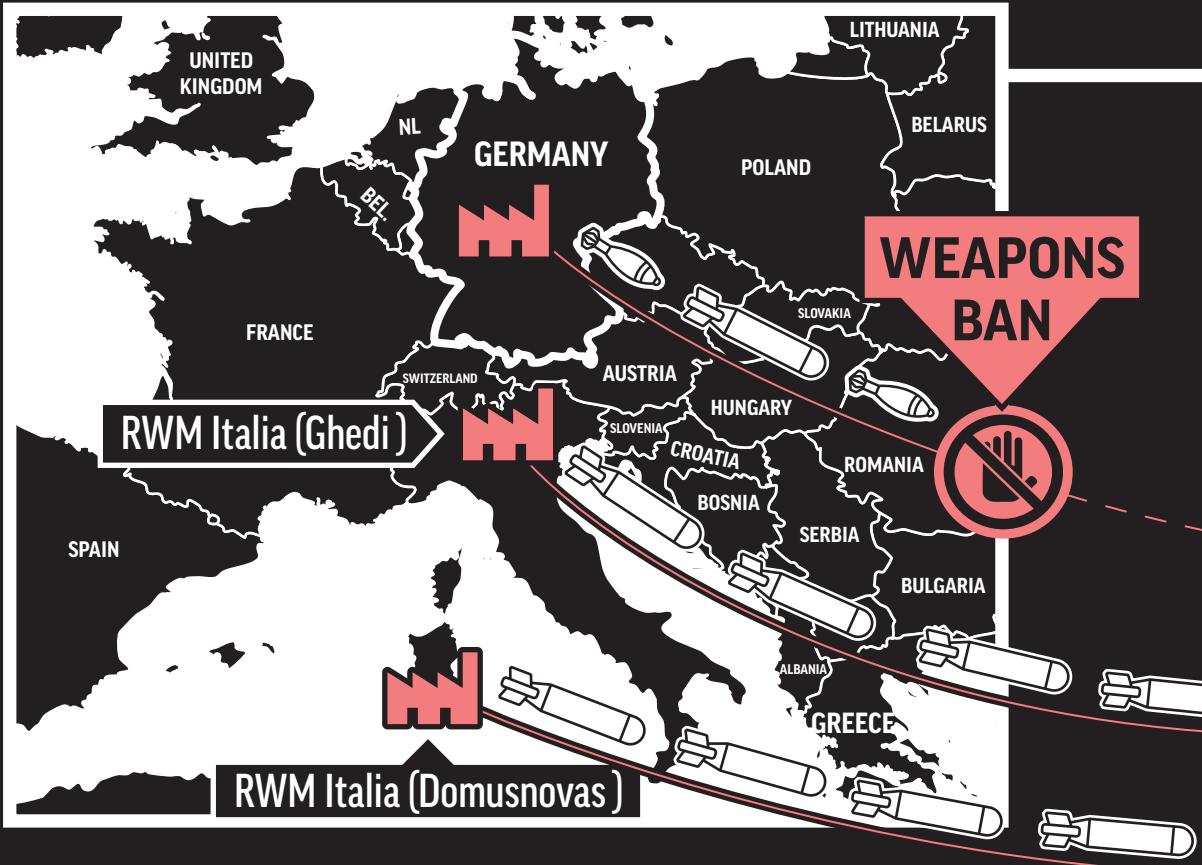
***We are supplying virtually all the countries in the Middle East and it constitutes a vitally important market sector. It is the most important market for the South African defence industry as a whole and what is more, that market is fully accessible. We actually need more information on the Middle East to fully realise and exploit the market potential there.***

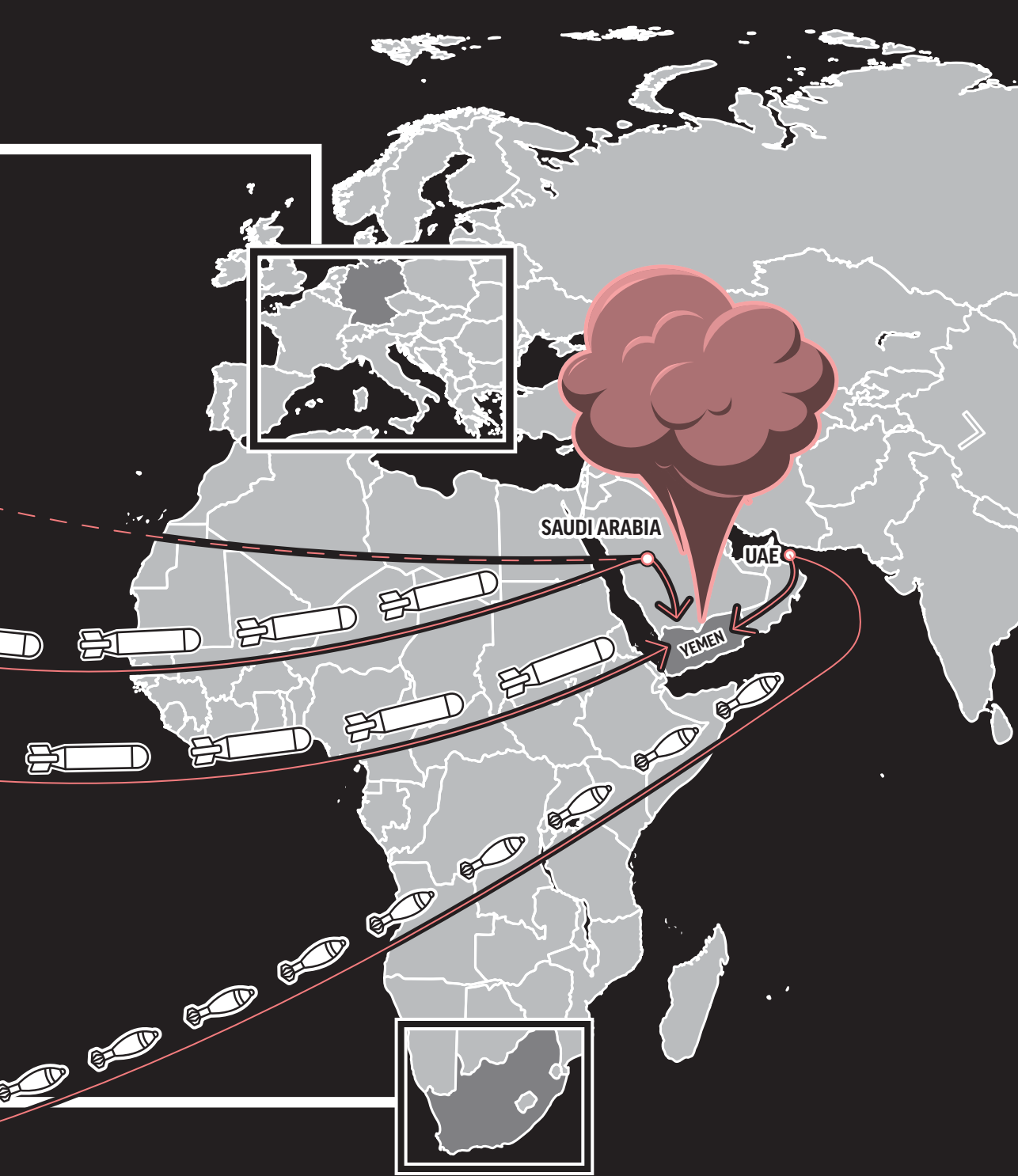
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The success of RDM in the Middle Eastern market has not only helped plug Denel's losses but has arguably taken on greater importance to majority shareholder Rheinmetall since 2018. In March of that year, a new coalition government in Germany imposed a ban on the export of any weapons from Germany to Saudi Arabia and other countries 'directly involved' in the Yemen civil war. The initial ban was significantly strengthened following the murder of journalist Jamal Khashoggi by the Saudi government in October 2018.<sup>39</sup> The ban has been extended several times since and remains in effect.

In theory, this cuts off Rheinmetall from supplying arms to the world's third largest weapons market. However, in practice Rheinmetall's subsidiaries in other jurisdictions ensure that the company can still profit from selling arms to the Saudi coalition. By 2019 Rheinmetall had direct or indirect holdings in a staggering 156 companies and had of-







## RHEINMETALL'S SUBSIDIARIES A WAY AROUND THE GERMAN BAN?

RDM is one of several Rheinmetall subsidiaries around the world implicated in exporting weapons to the Saudi coalition despite a German ban prohibiting German firms from exporting directly to Saudi Arabia. Remnants of bombs used in an airstrike by the Saudi-UAE coalition on Deir Al-Hajari in northwest Yemen in 2016 were identified as being manufactured by RWM Italia - a Rheinmetall subsidiary in Italy.

fices or production facilities in 129 locations across 32 countries.<sup>40</sup> The question is whether Rheinmetall can use these subsidiaries, including RDM in South Africa, to sidestep the domestic ban on exports to those engaged in the war in Yemen. The evidence suggests this is the case, given that exports from these countries are not subject to the German ban.

In fact, where evidence of Rheinmetall weaponry has been found at the site of attacks in Yemen, the source was often Rheinmetall subsidiaries outside of Germany. This predates the 2018 German export ban to Saudi Arabia. For example, remnants of bombs used in an airstrike by the Saudi-UAE coalition on Deir Al-Hajari in northwest Yemen in 2016 were identified as being manufactured by RWM Italia – a Rheinmetall subsidiary in Italy. That particular attack killed a family of six, including a pregnant woman and her four young children.<sup>41</sup>

Are exports from the company's South African subsidiary RDM having the same devastating effect as those from Italy? While RDM and Rheinmetall boast of forays into new profitable markets, they say little about how their weapons are used by their customers. The evidence suggests that RDM has also become a key contributor to human rights violations in Yemen.

## RDM MORTARS USED IN HODEIDAH DOUBLE ATTACK?

In June 2018, Saudi-UAE coalition forces launched an offensive on the Yemeni port city of Hodeidah, held and fortified by Houthi forces since 2014.<sup>45</sup> It would become the biggest battle since the conflict started three years earlier, and more than half a million

### GERMAN COMPANIES ACCUSED OF USING THIRD PARTY COUNTRIES TO SIDESTEP DOMESTIC ARMS REGULATIONS

German researchers have named both Italy and South Africa as possible routes for German arms companies to avoid domestic controls on weapons exports. Academic research undertaken by the Peace Research Institute Frankfurt – and published by Greenpeace Germany in 2020 – shows an increase in the proportion of German made weapons destined for export to third countries. In the last decade, 60 percent of all German weapons were exported to a third country (underscoring the role of companies such as RDM which re-export German arms and technology from South Africa).<sup>42</sup> However, the research also reveals a trend of German companies setting up production facilities in other countries to exploit loopholes in domestic restrictions on exporting weapons for use in conflicts. The report found that:

*A new model of German arms export weapons policy can be identified in the issue of armaments production – namely the growing trend towards the internationalisation of German*

*arms companies. Joint ventures such as Rheinmetall's takeover of Denel in South Africa have led to new ventures which supply conflict afflicted regions such as the Middle East North Africa (MENA) region, Latin America as well as South Asia and South East Asia. Bombs produced by the company RWM Italy were deployed in the Yemen conflict and led in one instance to the death of six family members.*<sup>43</sup>

The report concluded that Germany needed to urgently review its own arms export laws to prevent this practice:

*It is necessary to close the loopholes in German arms export policy with regard to technology and know-how transfer by German armaments companies to foreign companies. This could be achieved by passing an arms export control law which creates a uniform and legally binding law – as opposed to the current entanglement of norms and practice.*<sup>44</sup>



civilians were trapped inside the city as the battle raged. Over the next months, airstrikes and ground attacks from the Saudi and UAE coalition forces became commonplace, along with counterstrikes by Houthi forces defending the city. Scores of civilians were killed.<sup>46</sup>

On 2 August 2018, another attack targeted Hodeidah's fishing harbour. Ambulances rushed casualties to the nearby Al-Thawra Hospital where a second attack targeted survivors and first responders.<sup>47</sup> Sixty people, including children, were killed in the attacks, and more than 100 were wounded.<sup>48</sup> As noted in the first chapter, coalition forces have been widely criticised for using 'double-tap attacks' – launching a second strike minutes after the first strike to target emergency responders and other civilians who rush to the initial site. Alaa Thabet, a resident who witnessed the strikes, said 'it seemed as if the warplanes were chasing the casualties and the second batch of strikes killed more than the first... When I went nearer to see the impact, I saw a motorcyclist who had been killed but his hands did not leave the motorcycle. I cannot forget this scene.'<sup>49</sup>

Thabet was not the only person to think that the attacks were from airstrikes. Other initial reports also claimed that the attacks were further Saudi airstrikes, unsurprising given the relentless air bombardment by the Saudi coalition over the previous months in and around Hodeidah.<sup>50</sup> However, a subsequent investigation by the forensic investigative journalist platform Bellingcat showed otherwise. Bellingcat's examination of photographic, video and satellite evidence of the remaining fragments of the munition used, the patterns of damage, and the craters left by the bombs revealed that the attack was in fact from **mortars**, likely launched by ground forces.<sup>51</sup> (See infobox on the following page).

Having worked out that the weapons used in the attacks were mortars, Bellingcat sought to identify their origin. Their investigation led them to RDM:

**BELLINGCAT** is an independent international collective of researchers, investigators and citizen journalists using open source and social media investigation to probe a variety of subjects - including conflicts and crimes against humanity. They use advanced technology and forensic research to inform their work.

**The nature of these craters, the damage seen at the harbour and the remnants of munitions found at the scene strongly indicate mortars were used... Mortar bombs produced by Rheinmetall Denel Munition (RDM) appear to have fins with a very similar shape, and display vent holes in the distinctive 4, 5, 4, 5 pattern. However, it was not possible to positively ID a 120mm HE round with this configuration due to augmentation charges obscuring the vent holes. It should be noted that Rheinmetall supply both Saudi Arabia and the UAE with weapon systems, including 120mm mortar systems.<sup>52</sup>**

Rheinmetall did not respond to Bellingcat's requests for comment or provide images of examples of its 120mm mortar ammunition.<sup>53</sup> However, when asked by investigators from German weekly news magazine *Stern*, Rheinmetall said it was contractually prevented from commenting on possible projects relating to possible clients.<sup>54</sup>

Perhaps the strongest evidence that Rheinmetall or RDM munitions were used in the massacre at Hodeidah was presented in a January 2019 letter from the UN Panel of Experts on Yemen to the UN's Security Council president. The panel reviewed video and photographic evidence, and concluded that while it could not conclusively attribute responsibility for the attacks,

**[t]he mortar used for that attack had characteristics of those produced either by Rheinmetall in Germany or by its South African subsidiary Rheinmetall Denel Munition, which reportedly also produces mortar shells in a factory in Saudi Arabia.<sup>55</sup>**

A mortar fires an explosive shell that has a fin to guide it in the air. Like the Bellingcat investigation, the UN panel concluded that the fin assembly (or 'stub') found on the site after the incident, had characteristics consistent with the fin assembly of 120mm mortar

# MORTARS<sup>56</sup>

## INDISCRIMINATE KILLERS

A mortar is a lightweight portable muzzle-loaded weapon made up of a metal tube linked to a base plate. A mortar fires explosive shells.

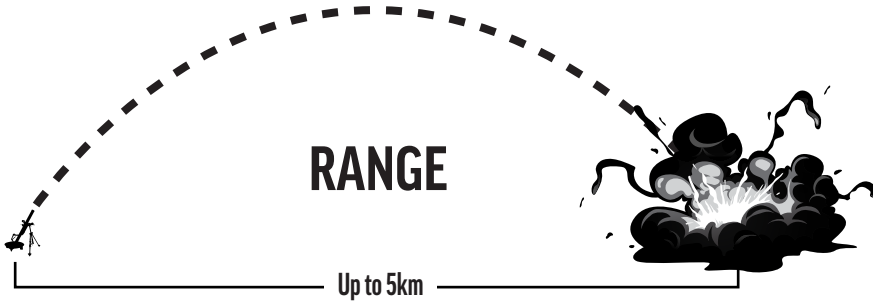
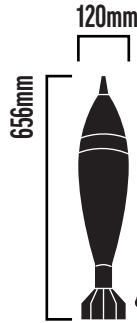
### HEAVY ROUND:

120mm [  ]

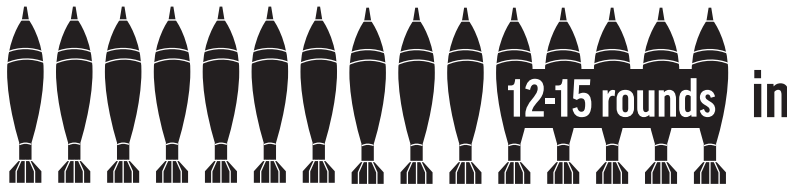
The 120mm mortar is characterised as a heavy mortar and has a lethal radius of at least 30 metres from point of impact. Anyone within 100m of the strike is at risk of serious injuries. Their use in urban areas carries significant risk of civilian death.

LIGHT ROUND: 60mm [  ]

Mortars are launched from a simple, lightweight, man-portable, muzzle-loaded device.



### RATE OF FIRE:



In populated areas, civilians made up

# 95%

of deaths and injuries from mortar attacks targeting armed actors

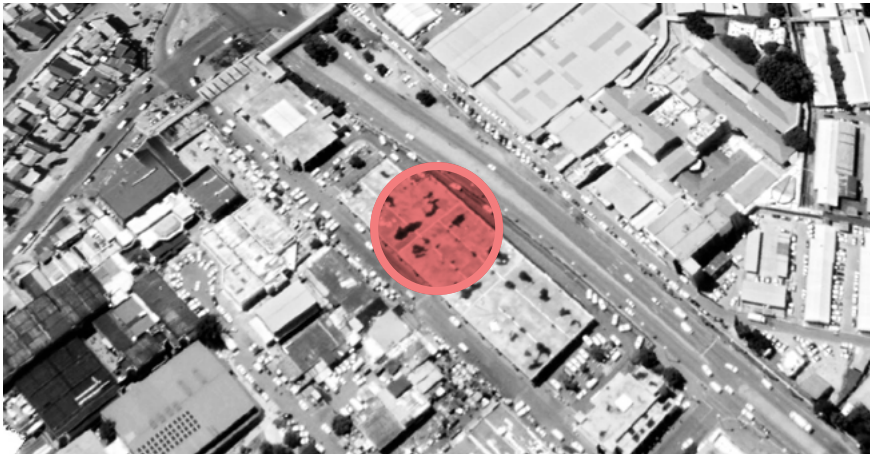


# UNDERSTANDING IMPACT

## WHAT IF A MORTAR TARGETED A SOUTH AFRICAN CITY?

**BLAST  
RADIUS**  
28.44m

**Bara  
Taxi Rank**  
Soweto



**Mandela  
Square**  
Sandton



**Greenmarket  
Square**  
Cape Town



bombs produced either by Rheinmetall in Germany or by its South African subsidiary Rheinmetall Denel Munitions (RDM).<sup>57</sup>

Crucially, the expert panel also pointed out that mortar ammunition in question – 120mm mortar rounds – was produced by a factory in Al-Kharj, Saudi Arabia.<sup>58</sup> That factory was run by RDM. Indeed, in August 2016, Jacob Zuma attended the factory's opening, giving it his presidential blessing. At the time, it was noted that the complex could produce 'military projectiles' including 120mm mortar rounds.<sup>59</sup>

There is thus compelling evidence that RDM was the source of the mortars used in the Hodeidah massacre that cost 60 people their lives and wounded more than a hundred more. However, the link to the factory in Al-Kharj raises a more systemic problem. Rheinmetall and RDM are not only export-

ing individual weapons systems to Saudi Arabia and the UAE. They are increasingly playing a central role in exporting and setting up weapons factories for their customers, regardless of their human rights records.

**Below:** Then South African president Jacob Zuma and Deputy Crown Prince Mohammed bin Abdulaziz, then Saudi Arabian minister of defense and chairman of the Military Industries Corporation open an arms factory in Al-Kharj in March 2016. In the background are Malusi Gigaba (then minister of home affairs) and David Mahlobo (then minister of state security).





## RDM'S BOOMING BUSINESS - 'BOMB FACTORIES' EXPORTED EN MASSE

**If you go to your customers and say to them, guys, we are not just in the business of selling you ammunition, but we will help you establish your own ammunition manufacturing plant facility that you can produce your own ammunition and you can purchase the components from us and the appropriate technology, then you find that they are naturally very keen.**

- Norbert Schulze, 2014<sup>60</sup>



While RDM exports artillery and mortar systems as well as ammunition, the company also specialises in the highly lucrative area it calls 'plant engineering'. The company provides engineers and contractors to build the factory and test it, and it works closely with the client to provide training to operate the factory independently.<sup>61</sup> In 2017, then CEO Norbert Schulze said that exporting factories 'provided [RDM] customers on all major continents with a turnkey solution in their quest for autonomy'.<sup>62</sup> When announcing a new contract with a 'long-standing customer' in 2020, current CEO Jan-Patrick Helmsen added that this strategy of exporting factories 'strengthens our relationship and long-term partnership with clients around the globe'.<sup>63</sup>

The export of entire munitions factories raises serious issues when it comes to enabling human rights violations. In the case of states with a record of systemic human rights violations, assisting clients in their 'quest for autonomy' can amount to guaranteeing their capacity to continue to commit grave violations of human rights. While we return to evaluate the NCACC's failure in the next chapter, it is important to note that the NCACC's controls extended to the export of a munitions factory. As defined in Chapter 2, 'controlled items' includes any system or technology used in the manufacture of weapons.

The precise locations and clients for these factories is often shrouded in secrecy. In 2017, Schulze boasted that RDM was in the final stages of completing its 39th such facility around the world and that it was building two or three per year.<sup>64</sup> However, RDM would only confirm that the latest plant was being built somewhere in North Africa. Since then, the company often announces only that a plant will be exported to 'an existing client'. However, when there is fanfare or media attention at the opening of a plant, the identity of some of these clients has become public knowledge. This is how we know that Saudi Arabia and the UAE both had RDM-supplied munitions factories providing for their war effort.

### RDM AND A SAUDI MUNITIONS FACTORY

In 2016, President Jacob Zuma travelled to the Middle East on a proclaimed 'Gulf investment drive'. The trip included visits to the UAE and Saudi Arabia. Saudi Arabia's

official news agency, the Saudi Press Agency, reported on a crucial reason for the trip when Zuma appeared with Saudi Deputy Crown Prince Mohammed Bin Salman – widely believed to be a key orchestrator in the civil war in Yemen – to open a projectiles facility in Al-Kharj, roughly 80 kilometres outside Riyadh.<sup>65</sup>

While the munitions factory was owned and operated by the Saudi Arabian state-owned Military Industries Corporation (MIC), it was set up by RDM, which continued to provide technical assistance at the facility. MIC head Mohammad Almadhi announced that ‘the factory opened today was created with a license and help in construction by the company (Rheinmetall Denel) for ammunition of South Africa at a cost of approximately \$240 million.’<sup>66</sup> More specifically, the facility produces projectiles including the 120mm mortar rounds suspected of being used in the double-tap attack in Hodeidah. It also manufactures artillery shells and heavy aircraft bombs weighing up to 900kg.<sup>67</sup> The factory has the capacity to produce 300 artillery shells or 600 mortar projectiles a day, supporting Saudi’s relentless air and ground bombing of Yemen.

While Saudi state media trumpeted the joint project, the South African government was silent on this aspect of Zuma’s visit, neither alerting media to the event nor briefing them afterwards. When South African media did pick up on the event a month later in April 2016, the Presidency finally released a statement confirming that RDM was behind the facility:

**The President and the Crown Prince symbolically unveiled a plaque of the military facility, met with and took photographs with personnel and senior management of the Rheinmetall Denel Munition and the South African staff who are bringing expertise to the military factory.**<sup>68</sup>

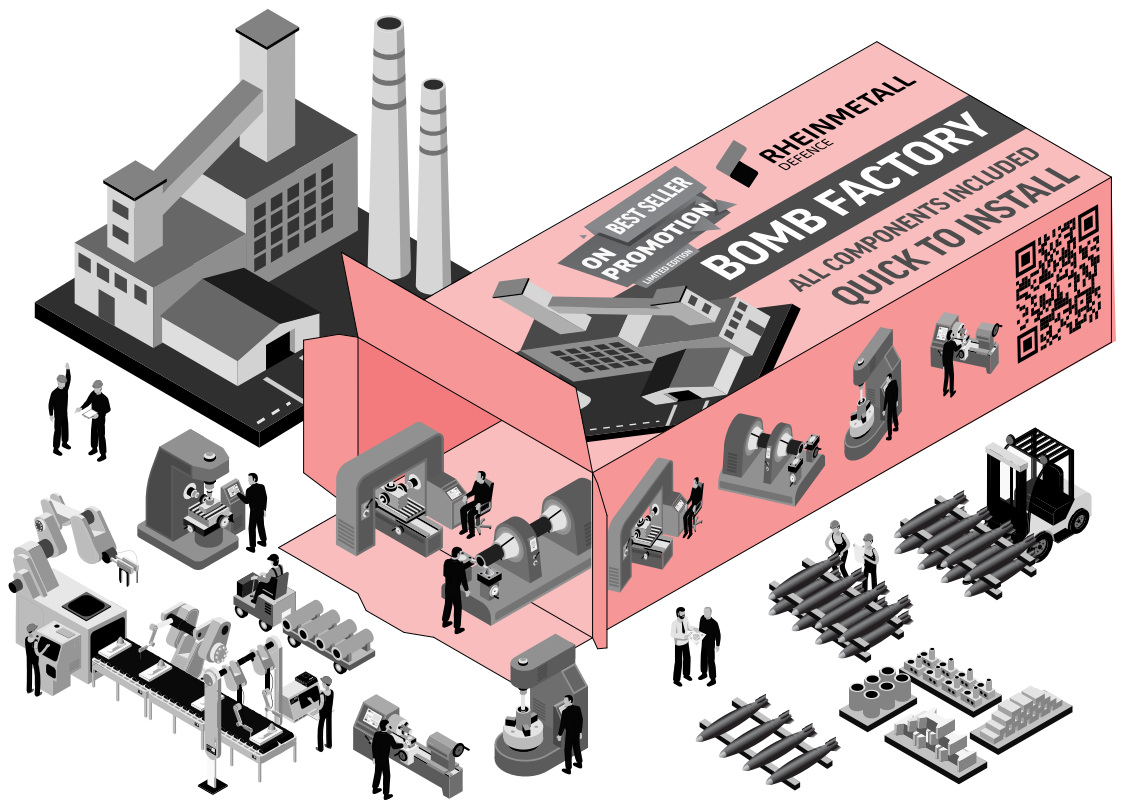
Zuma’s presence and the involvement of RDM confirmed South Africa’s role in facilitating the manufacture of weapons in Saudi Arabia for the main coalition partner in the civil war in Yemen. What remained unan-

swered was the precise involvement of the South African state in this deal. Was there some kind of formal bilateral agreement that led to the factory being set up, or was this led entirely by RDM? Further, was it approved by the NCACC?

In June 2016 the South African History Archive (SAHA) – an independent human rights archive and access to information champion – tried to find out. It submitted a request for information under the Promotion for Access to Information Act (PAIA) to the department of defence. SAHA asked for copies of any bilateral investment agreements between RDM and Saudi Arabia, through the Military Industries Corporation, relating to the joint Al-Kharj facility.<sup>69</sup> The department transferred the request to RDM, saying that, if the records did exist, the company would be the party that had them.

This request was denied by RDM on the basis that there were no such bilateral agreements. Then CEO Norbert Schulze provided an affidavit to SAHA confirming that RDM was a private body and did not require bilateral agreements. Crucially, Schulze added that ‘the design and construction of the facility was subject to and was conducted in compliance with all export control measures imposed by the National Conventional Arms Control Committee Act 41 of 2002.’<sup>70</sup> This is a vital admission. It confirms that the export of an entire munitions factory is, as indicated previously, subject to the Act and thus requires an export permit from the NCACC. In turn, this requires the NCACC to take into account the human rights implications of approving such a permit, as outlined in Chapter 2.

RDM is thus playing a key role in developing Saudi Arabia’s military capacity, with the approval of the NCACC. It is one of a few arms companies contributing to what Saudi Arabia calls its ‘Vision 2030’. Saudi Arabia recognises that it is the world’s third-biggest spender on weapons, but 98 percent of this goes to other countries, including South Africa. The state thus aims ‘to localize over 50 percent of military equipment spending by 2030.’<sup>71</sup> To achieve greater self-sufficiency in weapons production, the Saudi state envisions ‘strategic partnerships with leading companies in this sector... [to] transfer knowledge and technology, and build national expertise in the fields of manufacturing, maintenance, repair, research and development.’<sup>72</sup>



It's clear that RDM is one such key strategic partner. However, the ties between the German, South African and Saudi arms sectors go beyond this single factory and have strengthened since Zuma's ribbon-cutting ceremony in 2016.

In January 2018 Andreas Schwer, who had previously headed Rheinmetall in Germany, was announced as the new CEO of the state-owned Saudi Arabian Military Industries (SAMI).<sup>73</sup> South Africans also feature prominently in SAMI's leadership. Johan Steyn is SAMI's executive vice president of land systems. He was previously the managing director at BAE Systems Land Systems South Africa Pty (Ltd) and CEO at Denel Vehicle Systems. Jan Wessels is SAMI's executive vice president of defence electronics. He was previously a managing director for the South African branch of the German-headquartered company Hensoldt, the CEO at Denel Group, and the CEO at Denel Dynamics.<sup>74</sup>

A network of people with historic ties to Rheinmetall in Germany and Denel in South Africa – the two shareholders of RDM – is thus now intimately involved in the efforts of Saudi Arabia to become militarily independent. Perhaps, then, it is little surprise that RDM was the chosen partner for the factory in Al-Kharj.

## RHEINMETALL FACTORY IN THE UAE

The UAE is equally interested in developing greater self-sufficiency as it increasingly stretches its military muscle in the Middle East and the Horn of Africa. Just as in Saudi Arabia, Rheinmetall has been an important part of this process.

A Rheinmetall company presentation at an arms industry conference in 2011 spoke to the company's role at Project Burkan Munition Systems in the UAE. Rheinmetall Waffe Munition in Germany held 40 percent in the project, as did the UAE's Al Jaber Trading Establishment. The final 20 percent was held by Tawazun Holding LLC, the UAE's primary corporate vehicle to develop an independent internal industrial base.<sup>75</sup> Mohammed Al Bawardi, the UAE's minister of state for defence since 2016, was a board member of Tawazun Holding.<sup>76</sup> In 2011, Rheinmetall described the project as an 'offset programme' – the facility would primarily be used to destroy ammunition, thus contributing to Rheinmetall's commitment to 'environmental protection'.<sup>77</sup>

However, the vision for the future of Burkan Munition Systems is different. The same Rheinmetall presentation noted its intention to assist in building the facility into an am-





## TAWAZUN HOLDINGS

Denel also has connections to Tawazun Holdings. The two companies are partners in a joint venture for the development and manufacturing of precision-guided weapon systems. The joint venture trades as Tawazun Dynamics, owned 51 percent by Tawazun Holdings and 49 percent by Denel.

80

munition producer that met international standards and that would help ensure that the 'UAE will gain independence from foreign suppliers and build up an industrial manufacturing base for defence products.'<sup>78</sup> The company noted its commitment to this process, saying that 'Rheinmetall is the technology partner in this enterprise and a committed partner with an in-depth knowledge of industrial ammunition and defence businesses... Rheinmetall [has] its feet on the ground and is actively involved in building up Burkan.'<sup>79</sup> The similarities to RDM's role in developing capacity in Saudi Arabia are striking.

In 2011, Rheinmetall envisioned selling its share in Burkan to Tawazun in around 15 years. However, it happened long before that, in February 2012. Despite the sale of its share, Rheinmetall continued to play a role at Burkan. Media reports in the UAE indicated that 'Rheinmetall's relationship with Burkan will continue in its capacity as component and support services supplier as well as a provider of technical services.'<sup>81</sup> The report added that 'Rheinmetall... has cooperated closely with the UAE military for many years in numerous projects'. Rheinmetall thus remained heavily involved in the creation of the UAE's capacity to produce munitions.

This partnership was clearly successful, as Burkan Munitions has become a key supplier to the UAE armed forces during its extensive involvement in the civil war in Yemen. It has also continued its connection to the Rheinmetall family. In 2015, investigators showed that Burkan was importing MK82 and MK84 bombs made by RWM Italia – Rheinmetall's subsidiary in Italy – for onward supply to the UAE's armed forces. These bombs were then used in Yemen.<sup>82</sup>

## RHEINMETALL SHIFTS THE BLAME

Rheinmetall is not oblivious to the ongoing suffering of the people of Yemen. Officially, its policy is to try to

**prevent the negative consequences of its business activities and supply chain impacting its ability to uphold human rights. It is a matter of course for us to identify human-rights-related risks associated with our business activities and sphere of influence through, for example, adequate due diligence processes and to mitigate these risks as far as possible through suitable measures.<sup>83</sup>**

One could expect that the company's due diligence would have picked up on the human rights violations in Yemen, and the great risk of worsening the situation there by exporting weapons to the main protagonists in the conflict. A bitter irony is that, in its corporate PR spin in 2017, Rheinmetall boasted of its involvement in a project to help refugees who had fled to Germany in search of a safe haven. The project included people who had fled Yemen due to the war.<sup>84</sup> It seems that Rheinmetall was ostensibly trying to help some of those who had fled the crisis in Yemen by upskilling them even as they worked on projects that are part of the supply chain for munitions sold to states involved in the Yemeni conflict – a cynical circle of violence in which perpetrators praise themselves for offering charity to their victims.

So, in this context, how does Rheinmetall justify its subsidiaries supplying countries like Saudi Arabia and the UAE? With a self-serving sleight of hand, it says it has no control over what 'foreign' governments decide. Responding to repeated allegations that RDM weapons had been found in Yemen, Rheinmetall AG's chair Armin Papperger said that, while they were 'aware that various press reports have speculated about this – [they] have no such information.'<sup>85</sup> He did not say whether Rheinmetall was investigating the press reports or even whether it viewed such reports as a concern.

Papperger said that it was not the company's job to provide oversight in South Africa and that South African authorities were responsible for ensuring that arms exported from South Africa arrived at their intended destination, adding:

*I can only say that decisions in South Africa about individual licences are made after careful consideration and in accordance with South African law. South Africa is a democracy and aligns itself with international agreements... In South Africa, like in Germany, political decisions involve various actors to approve the sale of weapons. Comparable to the Federal Security Council (Bundessicherheitsrat) in Germany is the NCACC in South Africa which also takes into account the UN Human Rights Treaty.<sup>86</sup>*

While this is indeed the responsibility of the NCACC, what Papperger fails to acknowledge is that RDM in South Africa – in which Rheinmetall is a majority shareholder – is simultaneously lobbying to operate unencumbered by the NCACC's oversight and limit the regulator's control over the export process. We turn to this lobbying by RDM and other arms companies in the next chapter.

## RDM RESPONDS

Open Secrets wrote to RDM in December 2020 and asked a series of eighteen questions about their exports to Saudi Arabia and the UAE. We asked the company to provide the value of its contracts to supply weapons to both Saudi Arabia and the UAE since 2015, and importantly whether RDM had ever investigated or assisted any investigations into the evidence that their weapons were used against civilians in Yemen. We also asked about RDM's involvement in the operation of the munitions factories that it exports, and whether RDM had procedures to ensure its clients did not violate the provisions of the end user certificates they are required by law to sign.

RDM declined to answer any of these specific questions. Instead, the company's CEO Jan-Patrick Helmsen offered a brief blanket response to the issues raised. The response made no mention of Saudi Arabia or the UAE. Instead, Helmsen restated the provisions of the South African legal framework and indicated that RDM had to obtain contracting

and export permits from the NCACC before it could export weapons from South Africa.<sup>87</sup>

Helmsen described the South African munitions as 'highly regulated', pointing out that:

*RDM can only supply its products after receipt of the required national South African governmental approval, such as a marketing and contracting permit from the National Conventional Arms Control Committee ("NCACC") and the required export permits from the Directorate of Conventional Arms Control ("DCAC"). RDM also needs to adhere to various other national and international legislation. RDM will at all times adhere to the South African legislation and its requirements. It must be noted that these requirements are at par with all our international counterparts and RDM will always adhere to South African legislation and its requirements.<sup>88</sup>*

Helmsen added that 'RDM cannot deliver its products to its clients until receipt of a EUC and an export permit from the DCAC has been issued. The South African government, in terms of Clause 4.3 of the issued End-User Certificate, also maintains the right to attend to inspections of such munitions after delivery with an inter-governmental bilateral agreement.'<sup>89</sup>

Regarding its internal control processes, and that of its majority owner Rheinmetall, RDM was non-specific. Helmsen stated that:

*RDM needs to comply with stringent internal Rheinmetall compliance checks and approval procedures prior to receiving authorisation to enter into supply agreements. These compliance checks are based on international best practice and make use of international processes and systems to confirm that all information is correct and that no compliance risks will arise.<sup>90</sup>*

As to why RDM would not engage with the specifics about their exports to Saudi Arabia and the UAE, RDM simply stated that:

*In line with industry norms and requirements, RDM is not at liberty to share any information relating to agreements entered into with its clients. RDM is committed to being an ethical corporate citizen, which entails always abiding by the laws of the Republic of South Africa. As such, RDM strictly adheres to and is restricted by all relevant legislation, including export regulations, of the Republic of South Africa.<sup>91</sup>*

In essence, RDM's position is that South Africa's regulatory framework is rigorous and that the company abides by it. However, as the next chapter shows, the enforcement of this legal framework is completely inadequate. By the NCACC's own admission, they do not have the capacity to undertake the inspections that RDM mentions. They have also agreed to water down the requirements of end user certificates, at the insistence of companies like RDM and their international clients. Finally, the NCACC have long ignored information in the public domain regarding the use of South African weapons, including RDMs, in conflict zones. Given their position in the industry, RDM is intimately aware that South Africa's legal framework is not being enforced.

It is also telling that RDM made no attempt to answer whether it has ever investigated the evidence that its munitions were found at the site of the mortar attack at Hodeidah. The inference appears to be that as long as the NCACC approves their exports, RDM is unconcerned with how those exports are used, even if it is in deliberate attacks on civilians in contravention of international law.

## **HENSOLDT SOUTH AFRICA – MORE GERMAN ARMS FOR SAUDI ARABIA?**

Rheinmetall is not the only German arms company with both a deep footprint in South Africa and with links to Saudi Arabia. The German listed company Hensoldt too has become an important player amongst South Africa's arms producers.

Hensoldt was previously the defence division of aviation giant Airbus, and specialises in defence and surveillance electronics, bringing in more than 1 billion Euros in revenue in 2019.<sup>92</sup> It also enjoys strategic ties with the German state after Berlin bought 25.1 percent of the company's shares in December 2020, citing the strategic national importance of key defense technologies.

Headquartered near Munich in Germany, Hensoldt has extensive operations in South Africa and boasts that its two production facilities in Gauteng constitute the company's 'biggest international industrial footprint outside of Europe.'<sup>93</sup> In 2019, Hensoldt merged its two South African divisions,

GEW Technology and Hensoldt Optronics (formerly wholly owned by Denel), into a single entity called Hensoldt South Africa. The Hensoldt website indicates that this is the first step in growing their 'South African footprint' as part of an ambitious growth strategy.<sup>94</sup>

Hensoldt South Africa specialises in the production of sophisticated electronic warfare equipment, including high-tech cameras, sensors and radar equipment that are often attached to military aircraft and UAVs. In January 2019, Hensoldt South Africa announced that it had won a big contract to supply the German Federal Police with 'Argos II HD electro-optical gimbals' which are described as 'high-definition thermal imager and sensor suites' that contain an HD thermal imager and HDTV camera to provide assistance in surveillance, reconnaissance and long range 'target identification.'<sup>95</sup>

While the German police intended to use them on helicopters, the Argos II is 'designed for installation on helicopters, fixed wing aircraft and unmanned aerial vehicles' and has military capabilities. The Hensoldt website describes the 'main capabilities' of the Argos II as being '[s]urveillance and targeting capabilities for military, border, maritime patrol and law enforcement missions... long range target identification; accurate GEO-location of ground targets; [and] tracking of moving or static targets.'<sup>96</sup>

Given these capabilities, it is unsurprising that Germany is not the only place the Argos II system is being used. Just like other South African arms companies, including RDM, Hensoldt South Africa has pursued partnerships with Saudi Arabia. In late 2019 Hensoldt signed what it described as an 'exclusive agreement' with Saudi company Intra Defense Technologies in Riyadh. The agreement provided for the co-development of 'airborne electro optic systems' which could perform high-performance surveillance and targeting from aircrafts and UAVs a long way from their target – precisely what the Argos II system does.<sup>97</sup> This partnership is part of a broader trend of South African companies supplying electronic warfare equipment to Saudi Arabia, including equipment used for 'target acquisition.'<sup>98</sup>

Both Houthi forces and the Saudi coalition have used drones extensively to both track targets and to launch missile attacks, and the Saudi Air Force is known to use



UAVs in Yemen to track and target Houthi leaders.<sup>99</sup> On the 6th of January 2021, the media arm of the Houthi forces released footage of a UAV downed by Houthi fighters.<sup>100</sup> The Turkish-made Karayel UAV belonged to the Saudi Air Force. Video footage and photographs show the different parts of the drone, and reveal that it was carrying the Argos II optical system manufactured by Hensoldt.<sup>101</sup> As discussed above, Hensoldt manufactures these systems at their South African production facilities.

There are two possible routes that the Argos II systems could have taken to get to the Saudi Arabian Air Force. The first possibility is that Saudi Arabia procured the Karayel UAVs from Vestel - the Turkish manufacturer. In this case, the Argos II systems may have been exported by Hensoldt South Africa to Turkey and then installed on the Karayel UAVs by Vestel, before being supplied to the Saudi Air Force.<sup>102</sup>

The second possibility is that the Argos II systems were exported from South Africa directly to Saudi Arabia. Intra Defense Technologies also advertises the Karayel UAV on its website and may be supplying the Saudi Air Force.<sup>103</sup> As indicated, Intra Defense Technologies is Hensoldt South Africa's exclusive partner in Saudi Arabia on all electro-optical systems.<sup>104</sup> Thus, the Argos II systems may have been exported from South Africa to Saudi Arabia where Intra Defense Technologies, perhaps with Hensoldt's assistance, fitted it to the Karayel UAVs. This is, after all, the precise subject of their exclusive cooperation agreement. As discussed throughout this report, the export of technologies or equipment used in the manufacture of weapons is still subject to the controls and conditions in the NCAC Act.

Given that the system was being used for combat operations by Saudi forces in Yemen, it seems to be a clear contravention of the German ban on any weapons exports to



Saudi Arabia. Once again, a German company with extensive South African operations is supplying the Saudi military with weapons systems manufactured at their South African production facilities. Hensoldt appears to be following Rheinmetall's lead in expanding and increasing its presence in South Africa. At present, this allows it to access lucrative clients and markets such as Saudi Arabia, even if German law prohibits it.

## OTHER SOUTH AFRICAN WEAPONS FOUND IN YEMEN

There is compelling evidence – presented above – that South African-based RDM is complicit in human rights violations in Yemen. Not only has it consistently exported weapons systems to Saudi Arabia and the UAE, but it has also established entire munitions factories in these countries. In doing so, it has played a central role in developing the military capacity of two states that are responsible for systemic human rights violations and possible war crimes in Yemen.

Before we move on to the final chapter and assess the failure of the NCACC to monitor and to prevent these exports, it is important to note that RDM is not the only South African company that has cashed in on weapons exports to these two countries.

For example, on 5 July 2015, a Yemen TV channel broadcast footage of an unmanned aerial vehicle (UAV), or drone, shot down in Yemen. It was believed the UAV belonged to and was operated by the armed forces of the UAE. The footage identified what was likely a Seeker II UAV, with an identification plate that read: 'Made in South Africa: Carl Zeiss Optronics Pty Ltd'.<sup>105</sup> This company, like RDM, was a product of Denel's search for equity partners in the mid-2000s. Denel sold a 70 percent stake in its optronics business to the German-based Carl Zeiss Optronics GmbH in 2007.<sup>106</sup>

Denel is another example. In July 2016, it announced that the first batch of RG31 mine-resistant armoured vehicles, manufactured by Denel Vehicle Systems, had been shipped to the UAE Armed Forces.<sup>107</sup> In February 2019, Amnesty International published

a report, *When Arms Go Astray*, which pointed a finger at South Africa as one of many countries contributing to gross human rights violations in Yemen.<sup>108</sup> The report included a photograph, taken in Yemen, of a '120mm mortar system mounted on a South African RG-31 armoured vehicle'. While the weapon was being used by a local militia, Amnesty noted that the 'UAE was the only country to purchase this weapon system, and therefore must be the militia's supplier'<sup>109</sup>. This tallied with Denel's 2016 announcement about RG31 mine-resistant vehicles having been delivered to the UAE.

The *When Arms Go Astray* report also included evidence of military convoys heading towards a battle in Yemen's port city of Hodeidah – the site of the attack where the mortars appear to have come from RDM.<sup>110</sup> Two of the vehicles in the convoy were identified as South African G6 Rhinos. Denel Land Systems describes their G6 Rhino as a '155mm Self-propelled Gun-Howitzer... a battle proven, highly mobile, fully protected wheeled self-propelled gun with ultra-quick reaction and a firing range of more than 50 km.'<sup>111</sup> These vehicles had already been seen in Yemen in 2015. A report by an American think tank with close ties to the US security establishment, the Washington Institute for Near East Policy, indicated that a UAE task force had landed in Aden in August 2015 with battle tanks and vehicles, as well as 'Denel G6 155mm self-propelled howitzers [and] RG-31 Agrab 120mm mortar carriers'.<sup>112</sup>

It is clear that weapons produced in South Africa, likely by RDM and other companies, are awash in Yemen and being used by numerous different parties in that conflict. The evidence suggests that some of these have been used in attacks that target civilians. These weapons have been used directly by their intended recipients – Saudi Arabia and the UAE – and, on occasion, by their proxy forces, passed on in contravention of the required end-user certificate. Either way, the NCACC is explicitly tasked with ensuring that South Africa's weapons exports are not used to contribute to human rights violations or exacerbate conflict, and it is failing.

The next chapter probes the arms watchdog's failure to fulfil its legal obligations, and why it has bowed to the interests of arms manufacturers who have elevated profit above human rights.

**Left:** Warring parties in Yemen target key civilian infrastructure such as this bridge in Yemen's capital Sanna, which was left damaged in the wake of a Saudi-led air strike. 23 March 2016





# 4

## THE NCACC: A TOOTHLESS ARMS WATCHDOG

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Chapter 2 provided an overview of the legal framework governing the export of weapons from South Africa and the role of the NCACC. Two parts of this framework are important to recall here. Firstly, no company may export a ‘controlled item’ from South Africa without permission and an export permit from the NCACC. Controlled items include any weapons, munitions, explosives, bombs, armaments, or vehicles designed for use in war, as well as any technology or systems used in the design and manufacture of these.<sup>1</sup>

Secondly, the NCACC is required by law to consider each application to export weapons on a case-by-case basis and *must* avoid approving exports where they are likely to contribute to an escalation in conflict, to be sent to governments that systemically violate human rights, or be used for nonlegitimate defence and security needs.<sup>2</sup>

Given that these are the legal requirements, the obvious question is: why have South African weapons been regularly identified in Yemen, including at the sites of attacks on civilians? Further, how can the NCACC have lawfully approved the export of 7 billion rands’ worth of weapons to Saudi Arabia and the UAE since the war in Yemen began?

The systemic violations of human rights in Yemen and the complicity of the Saudi–UAE coalition and their proxies have been widely publicised since early on in the war. Since April 2015, the Yemeni human rights NGO Mwatana for Human Rights has published numerous reports every year that meticu-

# A POOR TRACK RECORD: THE NCACC'S FAILURES SINCE 1995

	President	NCACC chair	Country involved	Controversy
1996	Nelson Mandela	Kader Asmal	Rwanda 	Two years after the Rwandan genocide, and with the First Congo War raging, the NCACC approves the export of weapons to Rwanda, a party to the conflict.
1997	Nelson Mandela	Kader Asmal	Syria 	The United States warns it will withdraw aid from South Africa if proposed exports of weapons to Syria go ahead.
2004 to 2006	Thabo Mbeki	Sydney Mufamadi	South Africa 	NCACC annual reports are not submitted to Parliament within the timeframe outlined in the Conventional Arms Control Act, making it impossible to monitor which weapons are being approved for export and where they are going.
2008	Thabo Mbeki	Sydney Mufamadi	Zimbabwe 	News emerges that the NCACC approved the export of R3.3 in weapons to Zimbabwe in 2004 and 2005 during repressive domestic crackdowns by the Zanu-PF government. The exports appear to conflict with the roles of Mbeki and Mufamadi who are involved in mediating the political crisis in Zimbabwe.
2011	Jacob Zuma	Jeff Radebe	Yemen 	Photographs emerge of South African made Ratel armoured infantry carriers in Yemen, but the NCACC has no record that Yemen purchased these.
2014 to 2021	Jacob Zuma & Cyril Ramaphosa	Jeff Radebe & Jackson Mthembu	Yemen 	The NCACC consistently approves the export of South African weapons to Saudi Arabia and the UAE despite evidence that those countries are committing war crimes and violations of human rights in Yemen.
2020	Cyril Ramaphosa	Jackson Mthembu	Turkey & Libya 	Turkey imported weapons from RDM at the same time that Turkey was heavily involved in conflicts in Libya and Syria.

lously document attacks on civilians and the violations of international law by all parties to the conflict in Yemen.<sup>3</sup> As early as September 2015, less than a year into the conflict, the United Nations High Commissioner for Human Rights reported that attacks by coalition forces had targeted civilians, including air strikes on displaced families fleeing the fighting. It warned that the parties to the war had committed acts, 'some of which may amount to war crimes, and violations and abuses of international human rights law'.<sup>4</sup>

As explored in the previous chapter, the evidence of human rights violations in Yemen has also directly identified the role of South African weapons. There is photographic evidence of South African manufactured and shipped vehicles, drones and mortars being used in conflict situations in Yemen.

South Africa's government has also expressed concern about the situation in Yemen. In 2019, Minister of International Relations and Cooperation Naledi Pandor spoke at the UN of how the people of Yemen needed international solidarity to help end their suffering. In 2020, Ambassador Jerry Matjila, South Africa's Permanent Representative to the UN, told the Security Council that:

**'South Africa remains concerned at the alarming number of deaths exceeding 100 000 that resulted from this war [in Yemen] thus far. It has also led to widespread starvation, amidst the dire humanitarian situation which continues to worsen due to the continuing conflict. South Africa strongly urges all parties to resume political negotiations that will result in a lasting peace in Yemen and will allow for the rebuilding of the country.'**<sup>5</sup>

But if the South African government is aware of the suffering of Yemenis and wants to contribute to lasting peace in Yemen, why has it continued to approve the export of weapons and munitions factories to the very countries that have contributed to tearing it apart? Open Secrets wrote to the NCACC to find out. Its answer reveals an appalling failure to consider the evidence, a callous disregard for the people of Yemen, and a failure to fulfil its lawful regulatory functions.

## THE NCACC ON YEMEN - 'NO ONE TOLD US'

On 28 July 2020, Open Secrets submitted a list of 21 questions to Jackson Mthembu in his capacity as chairperson of the NCACC. These included broad questions on the NCACC's decision-making and information-sharing processes. However, the majority focused on the situation in Yemen and South Africa's exports to parties to the conflict. We cited some of the evidence discussed in the previous chapter, and asked the NCACC to answer the following key questions:<sup>6</sup>

### KEY QUESTIONS FOR THE NCACC

- ? What criteria and sources do the NCACC consider when deciding to grant export permits?**
- ? Has the NCACC investigated the evidence of South African weapons being used in the war in Yemen, even though South Africa does not export weapons directly to Yemen?**
- ? Is the NCACC aware of the claims that mortar bombs, apparently manufactured by RDM, were used in the August 2018 attack on Hodeidah, and has this been investigated any further?**
- ? Is the NCACC aware of the German ban on exporting weapons to states involved in the war in Yemen, and is it concerned that Rheinmetall may be using RDM in South Africa to export to Saudi Arabia and the UAE, effectively sidestepping this ban?**

Mthembu responded to Open Secrets on 18 August 2020. While some of the 21 questions were completely ignored in that response, he did go on record in response to the key questions above. On the criteria used to evaluate applications for export permits, Mthembu confirmed that these are laid out in Section 15 of the NCAC Act, and include UN Security Council resolutions, including arms embargoes; human and political rights; regional dynamics, with emphasis on conflict prevention; and risk of diversion.<sup>7</sup>

With this confirmed in writing, how would the NCACC go on to respond to all of the evidence that weapons exports to warring parties in Yemen contributed to grave violations of human and political rights, clearly were being diverted to other proxy forces, and were contributing to escalating the conflict in Yemen? The response is worth repeating here in full:

**'From the ensuing criteria it would be clear that the NCACC would rely on various South African Organs of State mandated to provide information that is analysed and refined to meet the strict requirements of s15 of the Act. The NCACC relies on Official sources for its risk assessment. Key among these entities are Department of International Relations and Cooperation (DIRCO) State Security Agency (SSA) and Defence Intelligence (DI). Therefore, what informs other countries in relation to Yemen and the possible involvement of Rheinmetall Denel Munitions (sic) of Germany [sic] with regard to using their subsidiary in South Africa to procure controlled items, while it is noted is no concern of the NCACC, unless flagged as such.'** [underline added]

**'South Africa receives queries related to South African produced and exported controlled items, through the South African Mission at the United Nations in New York. Entities that do verification and who provide evidence are being responded to without fail. This means that this office will deal with all verified claims and as per usual respond through our Mission at the UN. Therefore the Hodeidah matter has not been directed to this office. The cost and the exploration of insufficient/unsupported claims would render efforts at addressing the concern(s) or such claim(s) not feasible and not effective.'**<sup>8</sup> [underline added]

This is frankly a staggering admission of the NCACC's failure to fulfil its legal mandate, and a feeble attempt to pass on responsibility to other parts of the state. The answer appears to suggest that the NCACC may refuse to take into account evidence of grave human rights violations that is readily available in the public domain, including that which forms the basis of decision-making by other states, if it is not specifically brought to the Committee's attention by a narrowly designated group of institutions that provide it with information.

In 2019, when briefing the parties to the Arms Trade Treaty about South Africa's framework, the NCACC stated that, when scrutinising applications to export weapons, it takes into account all 'publicly available information'.<sup>9</sup> This, after all, is the only reasonable understanding of its mandate. Reports to the UN Security Council and Human Rights Council, as well as the litany of well-publicised reports by Yemeni and international NGOs, constitute publicly available information. These reports exhaustively analyse the devastation in Yemen, including the role of coalition forces there. Yet, in its correspondence to us in 2020, the NCACC tries to suggest that it can ignore all of this information if it is not brought to its attention by its foreign mission in New York, DIRCO, the SSA or Defence Intelligence.

**Such an approach makes a mockery of the legal framework and the guiding principles of ensuring that South Africa is a responsible member of the international community that does not contribute to conflict and human rights violations. In this context, it is deeply cynical for the Committee to indicate that, in the face of the world's largest conflict-induced humanitarian crises, it has not taken action simply because that crisis and the role of South African weapons is of no concern to the Committee 'until flagged as such' by specific institutions.<sup>10</sup>**

In a final irony, Mthembu's letter states that the Committee 'has not prevented South Africa from exporting conventional arms to Yemen. However, should you/anyone present evidence supporting the basis of this assertion, the NCACC would welcome such record in order to conduct its investigation.'<sup>11</sup> For one, this response again seems to present the Committee as being entirely incapable of undertaking independent inquiries, even if only to request a document or access a publicly available report. Further, while the Open Secrets letter specifically mentioned the evidence of RDM weapons at the sites of attacks in Yemen, Mthembu's response did not extend to requesting any further information in this regard.

## **AN ACCIDENTAL BAN AND A MISSED OPPORTUNITY**

The NCACC's response represents an apparent refusal to grapple with the evidence of atrocities in Yemen, and of exported South African weapons being used to commit some of those atrocities. Despite this, it was presented with an opportunity to take a firm stand and halt weapons exports to Saudi Arabia and the UAE following a diplomatic spat over a clause in the end-user certificate (EUC) that all purchasers of South African weapons are required to sign.

An EUC is a standard requirement for arms trade around the world. In it, the purchaser certifies that they will not pass the weapons on to another party without permission from the supplier country. In South Africa, it is supposed to guarantee that the NCACC knows where South African weapons will end up. The South African EUC has long held an additional clause that grant-

ed permission for South African officials to undertake inspections to ensure compliance with the EUC. It read: 'It is agreed that on-site verification of the controlled items may be performed by an inspector designated by the minister.' We asked Jackson Mthembu about the role of these inspectors, and he replied:

**'There is a Unit within the NCACC called Inspections and Audits, which is established in terms [of s9 and is accountable to the Committee, in terms of s9 (1)(a). The Object of the Inspectorate s9 (2)(a-b), that is to ensure that the conduct in Conventional Arms Control is in compliance with the Act. To ensure that Internal Regulatory Processes of the Committee are complied with. The staff complement at Inspectorate is 15 at any given time.'**<sup>12</sup>

According to arms industry insiders who spoke to journalists in 2019, clients of South Africa had in the past often deleted or amended the inspections provision, and the NCACC had allowed exports to continue.<sup>13</sup> In fact, Defence and Military Veterans Minister Nosiviwe Mapisa-Nqakula has conceded that democratic South Africa has only ever conducted one inspection of exported defence equipment – hardly a commitment to enforcing the regulatory framework.<sup>14</sup>

However, in 2017, the clause requiring on-site inspections was moved to the front page of the EUC and given greater prominence. Although it would require a far greater commitment to undertaking inspections, this appeared to be an important step towards enforcing the provisions of the Act and ensuring that South African weapons were not being passed on to a series of other actors who might use them to commit atrocities. For example, an on-site inspection might assist in finding evidence that the UAE had passed on South African armoured vehicles to militias for use in Yemen, as reported by Amnesty International and discussed in the previous chapter.<sup>15</sup>

Numerous clients of South Africa's weapons industry – notably including Saudi Arabia and the UAE – flat out refused to sign

the EUC with this clause now so prominent, alleging that it was a violation of their sovereignty. However, another possible reason is that the amendment posed a significant threat to any country that had a pattern of passing on weapons to proxy forces in places like Yemen. In February 2019, a reporter from Arab Reporters for Investigative Journalism alleged that the Saudi coalition regularly flouted end-user agreements and that this contributed to human rights violations in Yemen:

**The Saudi-led coalition has ignored that condition not only by giving these weapons to third parties in Yemen, but also because some of those parties were militias operating outside the control of the Yemeni state and army. Those weapons made their way into the hands of terror groups and caused more civilian casualties. These weapons were also found for sale in arms markets.<sup>16</sup>**

By 2019, the impasse led the NCACC to stop approving exports to these countries until they agreed to sign the EUC.<sup>17</sup> This was an important opportunity for the NCACC to take action to protect the people of Yemen. Diplomatically, South Africa did not need to announce an outright ban as Germany had done in 2018. It could simply say that it was enforcing provisions in its regulatory framework that had long been in existence and that it could not lawfully approve the export of weapons to countries who refused to abide by South Africa's legal requirements.

## **NO BIG DEAL? ARMS COMPANIES PROFIT AS THE NCACC COWERS**

The evidence shows that the NCACC ultimately chose instead to bow to pressure from arms companies to restore exports as quickly as possible. Given the importance of the Middle Eastern market to RDM and Rheinmetall, it is perhaps unsurprising that they were some of the most vocal proponents of lifting the freeze on exports to the UAE and Saudi Arabia. While other companies complained but were reluctant to be named, RDM was comfortable to go on record. Norbert Schulze, then the chief executive officer of RDM, told news agency Reuters that stocks had filled up and no more production could take place as a result of the freeze. He claimed that RDM was facing serious financial harm and that the UAE was already considering replacing RDM as its 'preferred supplier' of ammunition.<sup>18</sup>

RDM wrote to the NCACC in July 2019, urging it to take action. Initially, the NCACC held firm. Jackson Mthembu wrote to Schulze on 5 August 2019 and said, 'The NCACC is aware of the possible loss of jobs occasioned by the inability to export in the time being. However, as your organization would appreciate, compliance with regulations sometimes produces negative impact.'<sup>19</sup>

This resolve did not last long. By late 2019, it seemed that, behind closed doors, politicians had reached an agreement that would allow for the sale of weapons to Saudi Arabia and the UAE again. The NCACC's report covering the final quarter of 2019 reveals that the Committee had authorised 177 export permits worth nearly R2 billion. This included 12 armoured combat vehicles destined for Saudi Arabia and 10 for the UAE. In addition, 923 units of 'electronic equipment' were also destined for the UAE.<sup>20</sup>

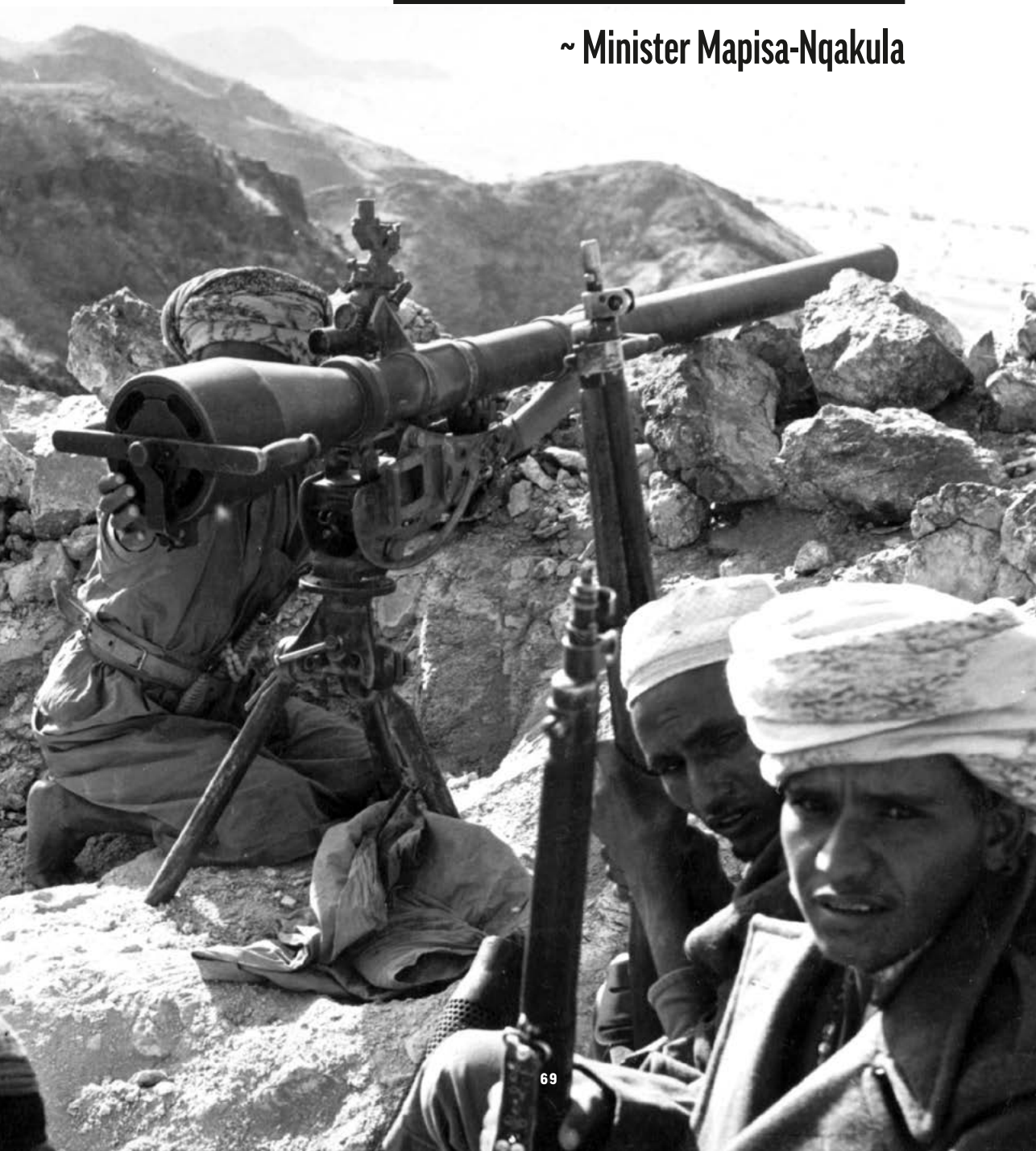
What had changed so quickly? In February 2020, it emerged publicly that South Africa's effective export freeze to Saudi Arabia and the UAE would be lifted imminently because the NCACC, instead of ensuring compliance with the EUC, had opted to amend the clause relating to inspections and end-user certificates.<sup>21</sup> Rheinmetall welcomed the news. In March 2020, Rheinmetall AG chair Armin Papperger told the company's investors:



***‘As much as this issue has become so controversial of the end-user certificate, actually we’ve been inspected once, and we’ve also conducted an inspection once. So, it’s not a big thing.’***

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**~ Minister Mapisa-Nqakula**





**It seems to be that there is some light at the end of the tunnel. The South African government agreed to again change these terms and conditions in the export regulations. The process is that we have to wait for another two or three months to bring it into the document. But we hope that in the second half of 2020 exports from South Africa will be back on track.**<sup>22</sup>

Less than two months later, on 11 May 2020, during the strict level four Covid-19 lockdown in South Africa, Defence and Military Veterans Minister Nosiviwe Mapisa-Nqakula signed off an amendment to the National Conventional Arms Regulations. Instead of on-site inspections by NCACC inspectors, the new clause in the EUC, apparently to the liking of countries like Saudi Arabia and the UAE reads, 'it is agreed that on-site verification of the controlled items may be performed, through diplomatic process'.<sup>23</sup>

There was no further explanation of what constituted 'diplomatic process' for the purposes of these inspections. However, the obvious implication was that the purchasing country would have far greater control over the process, making it significantly easier to flout agreements.

This was certainly hinted at when Mthembu briefed parliament in June 2020. On the new clause regarding inspections, he said that,

**If there is any need for an in loco inspection of arms that we have sent to any country, such an inspection will be premised on wonderful political protocols, together with the country if need arises... Such an inspection will not be an inspection that South Africa decides on its own. It will be an inspection that is agreed upon with the country in question.**<sup>24</sup> [underline added]

This deferential process and vague reference to 'wonderful political protocols' did not provide any clarity as to the process to be followed. This is a situation which suits the

powerful and left the cabinet-led NCACC looking meek and cowering at the possible demands of arms companies. We asked Mthembu to clarify what was meant by 'diplomatic process' and what implications this amendment had for the operations of the NCACC's inspectorate. This was Mthembu's response:

**The Amendment envisages the appointment of inspectors preceded by Diplomatic processes, between South Africa and the receiving Country. As indicated earlier, the appointment of Inspectors is provided for in terms of the NCAC Act (Act 41 of 2002, as amended). The Inspector is always appointed by the NCACC in South Africa, when the occasion and need of inspection arises. It is not the End User who appoints the inspector.**<sup>25</sup>

The answer provides no clarity as to what the 'diplomatic processes' would be that would 'precede' the appointment of inspectors. It is left to the public to guess why these processes satisfy the governments of Saudi Arabia and the UAE in ways that the previous threat of on-site inspections did not.

Minister Mapisa-Nqakula inadvertently but succinctly captured the lacklustre appetite of South African authorities to enforce the law on weapons exports. Speaking on the controversy around the inspections clause, she said:

*As much as this issue has become so controversial of the end-user certificate, actually we've been inspected once, and we've also conducted an inspection once. So, it's not a big thing.*<sup>26</sup>

Essentially, the minister doesn't know why countries made a fuss over inspections because South Africa doesn't do them anyway. As for human rights her answer seems to suggest she is oblivious to the consequence of weapons exports – or she thinks the issue is simply no big deal.

# THE HUMAN COSTS OF A BROKEN SYSTEM

The failure of the NCACC to fulfil its legal duties and properly scrutinise weapons exports has dire consequences. It enables South African companies like RDM to profit from a war that imposes the very worst suffering on millions of Yemenis. It perpetuates South Africa's complicity in crimes that are being committed daily. It also fundamentally undermines the vision of democratic South Africa as a responsible state that places human lives and human rights at the centre of its policy decisions. Instead, politics and profit, much like under apartheid, continue to trump all other considerations.

The consequences of the NCACC's failure both to properly apply its mind to approving exports and then to undertake follow-up inspections and investigations risks South African complicity in other conflicts, not only in Yemen. In the last year alone, the NCACC has come under scrutiny for two other apparent arms trade breaches.

In war-torn Libya, Mbombe 6 armoured vehicles were reportedly involved in the fighting surrounding Tripoli in mid-2019. These are manufactured by Ivor Ichikowitz's South African company Paramount Industrial Holdings<sup>27</sup> Paramount confirmed that Libya was subject to a UN arms embargo and that it had not exported these vehicles directly to Libya. However, it had exported Mbombe 6 vehicles to the Jordanian armed forces in 2015. Paramount Group director of communications Nico de Klerk said that this process had included approval from the NCACC and that Jordanian authorities had signed an EUC assuring that they were the end-users of the vehicles.<sup>28</sup> As we know from the above, it appears unlikely the NCACC ever sent an inspector to check.

In April 2020, a new scandal broke. Two large Turkish military cargo aircraft landed at Cape Town International Airport to drop off emergency medical supplies to assist in South Africa's response to Covid-19. It just so happened that the planes would be returning full of ammunition purchased by Turkey from none other than RDM.<sup>29</sup> RDM would not comment on the deal, saying that 'due to the nature of our business we are not allowed to disclose any information about our customers or orders'<sup>30</sup>.

Apart from questions over whether the export violated lockdown regulations in place at the time, concerns were raised that the NCACC was approving exports of munitions to Turkey when the latter was heavily involved in conflicts in Libya and Syria. Would South African weaponry end up used in these conflicts as well?

The NCACC's former chair Mthembu answered questions in parliament on these concerns and confirmed that the NCACC did not approve any exports to Libya directly: 'If there are South African manufactured arms in Libya it would have come through via some other means, not through a direct sale by us and by the NCACC'<sup>31</sup>. He added that 'countries that we interact with in good faith should not do anything that has not been agreed on.'<sup>32</sup>

The NCACC was relying on the 'good faith' of participants in war and conflict where abuse is widespread and systemic. This is clearly an inadequate response by the regulator tasked with overseeing South Africa's arms trade. However, there is little sign that South African authorities will do anything more forceful. In the same parliamentary hearings, Cyril Xaba, the chair of the Parliamentary Portfolio Committee on Defence and Military Veterans, admitted that the NCACC did not have enough resources to ensure that exported defence equipment ended up where agreed:

**Unfortunately, we do not have the capacity to monitor compliance with the conditions of sales as it relates to our area of oversight. We rely largely on the media, or to some extent whistle-blowers. I have therefore tasked the support staff to monitor the media in this regard.<sup>33</sup>**

This is a staggering admission of South Africa's inability to stop exported weapons from finding their way into the wrong hands. A body with vital oversight functions within government was turning to the media to track arms exports once these left South Africa. However, the statement also jars with Mthembu's account in the letter to Open Secrets, quoted at length previously, regarding the situation in Yemen. There, he wrote

that the Committee relies on DIRCO, the SSA and Defence Intelligence alone to flag concerns. The implication of that was that widespread media coverage of atrocities and human rights violations in Yemen were not of relevance to the NCACC unless 'flagged as such'.<sup>34</sup> Yet by Xaba's account, the Committee relies almost entirely on this kind of public reporting.

As indicated in Chapter 2, the NCACC was created to provide oversight over the arms trade in South Africa, and to ensure a rules-based and human rights-oriented approach would be entrenched and preserved. It has failed to fulfil this vision. The evidence suggests that it has neither the will nor the capacity to do so.

**As a result, South Africa today has an arms trade sector whose conduct bears a striking similarity with its apartheid past. However, it has been given the veneer of democracy and largely spun off into the private hands of large South African and international corporations that turn a profit by selling to some of the worst human rights perpetrators in the world. In some instances – as the RDM case shows – South Africa has been reduced to a dirty little international secret.**

The country, with the complicity of cabinet members, is providing a go-around for companies to enable weapons exports to war zones which are banned in their countries.











# CONCLUSION: TO SILENCE THE GUNS, FOLLOW THE MONEY

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The South African government is ambivalent about peace in Yemen. In August 2020, the department of international relations and cooperation told parliament that the parties engaged in the conflict were to be 'constantly reminded of their obligations under international humanitarian and human rights law to focus on the priority areas of the protection of civilians, humanitarian access, aid funding, strengthening of the Yemeni economy and progress towards peace'.<sup>1</sup> The South African government should start by reviewing its own commitments and obligations in terms of domestic and international law, which include obligations to avoid contributing to human rights violations abroad.

The momentary freeze on weapons exports to Saudi Arabia and the UAE in 2019 offered an opportunity for the NCACC to halt South Africa's complicity in the war crimes that have come to define the conflict in Yemen. However, within a year, the status quo and the interests of the powerful prevailed and South African weapons are again flowing to the protagonists wreaking devastation in Yemen.

**It is unconscionable that South African companies like RDM are supplying weapons of war to militaries that have systematically engaged in conduct that targets civilians and violates the rights of the people of Yemen. Organisations working on the ground in Yemen say that this conduct amounts to war crimes. The expert panel advising the UN on the conflict agrees. It is similarly egregious that Rheinmetall in Germany may be using South African soil to bypass domestic regulations that prohibit the sale of weapons directly to states like Saudi Arabia and the UAE.**

This kind of complicity is precisely the situation that the NCACC is tasked with stopping. This report highlights the necessity of urgent reform in South Africa's arms sector. Based on the evidence presented here, we believe the following actions need to be carried out to prevent South Africa from continuing to aid and abet gross human rights violations in other countries.



# 1

## **NCACC – END WEAPONS EXPORTS TO PARTIES INVOLVED IN THE YEMEN CONFLICT**

The NCACC should immediately stop approving export permits for South African weapons destined for Saudi Arabia, the UAE, or any other party to the conflict in Yemen. Where such permits have been granted, they must be immediately revoked and any weapons subject to those permissions that are still in South Africa should be prevented from leaving the country. Further, the NCACC should reverse its decision to amend its end-user certificate such that it allows for inspections to be undertaken by ‘diplomatic process’.

The NCACC has repeatedly failed to properly apply its mind to the grave situation in Yemen. Despite overwhelming evidence in the public domain about South African weapons being found in Yemen at the site of attacks on civilians, the NCACC has turned a blind eye. Worse, it has acquiesced to industry pressure from companies like RDM to undo a temporary ban on exports and even accepted changes that undermine its inspection and control powers.

In correspondence with us, the NCACC said that it would welcome relevant evidence related to these matters, should we be able to provide it. In response, we have provided a copy of this report to the NCACC. We believe it contains evidence that unequivocally requires the NCACC to stop South African weapons going to Saudi Arabia and the UAE.

# 2

## **NCACC – END YOUR SECRECY PROBLEM**

Since its inception in 1995, the NCACC has become synonymous with tardy reporting. Though required by law to table its annual report in parliament by the end of the first quarter of each year, it has failed to do so more often than not. On occasion, reports have been submitted up to two years late.<sup>2</sup> This led a member of the Parliamentary Portfolio Committee on Defence to label the NCACC as wedded to secrecy and a ‘serial defaulter’ in terms of submitting annual reports.<sup>3</sup>

This makes it difficult for civil society to monitor weapons exports in a timely manner and drastically increases the risk that weapons may be sent to conflict zones in secret, despite the risk of their contribution to human rights violations. In fact, an annual report is not sufficient, given these risks. We therefore recommend that the NCACC Act be amended to require quarterly reports to parliament from the Committee. Parliament must enforce this requirement strictly and call the NCACC to account when it fails to report timeously and accurately.

# 3

## **DIRCO - MAKE HUMAN RIGHTS CENTRAL TO FOREIGN POLICY**

South Africa's foreign policy is in a muddle. There is a profound incoherence when it comes to a stated commitment to constitutional values and their implementation. As the report shows, this incoherence is not simply to be found on paper but has a significant negative impact on human rights across the world. If the ministry and DIRCO are serious about tackling the hangover of the state capture period they need to clean house – and this includes a concrete plan to implement their stated commitment on human rights, as set out in a 2011 white paper on foreign policy. Until they do so, foreign policy towards countries such as Saudi Arabia and the UAE will be dictated by defence lobby groups and decided by their sycophants in the department of defence and parliament. And the marginalised and the poor in countries such as Yemen will suffer the consequences.

Ambassador Xolisa Mabhongo, Deputy Permanent Representative of South Africa to the United Nations, addressed a UN Security Council meeting on Yemen in October 2020. Mabhongo highlighted South Africa's concern at the humanitarian crisis caused by the war in Yemen and expressed concern 'that the surging violence risks worsening the widespread man-made hunger crisis in Yemen.'<sup>4</sup> DIRCO is thus intimately aware of the devastation caused by the war, and purports to seek its resolution. It must account for why, if that is true, it has yet to use its role within the NCACC to discourage the export of South African weapons that may fuel the conflict.

# 4

## **THE DIRECTORATE FOR PRIORITY CRIMES - A HAWKS INVESTIGATION FOR RDM**

In this report, Open Secrets has shown evidence that RDM's weapons may have been used against civilians in Yemen, including in acts that may amount to war crimes.<sup>5</sup>

It is incumbent on the Directorate for Priority Crimes Investigation – also known as the Hawks – to investigate 'priority crimes'. These specifically include war crimes and crimes against humanity. South Africa's Constitutional Court has confirmed that the Hawks have an obligation to investigate such crimes, even if they occur outside of South Africa.<sup>6</sup> In this case, the need to investigate is even stronger, given that those implicated are companies registered and operating in South Africa.

The Hawks should thus immediately investigate RDM's possible complicity in war crimes and other violations of international law in Yemen. Just like the NCACC, there can be little doubt that RDM is fully aware of how its products are used in Yemen by clients like Saudi Arabia and the UAE. This is not just because of the public knowledge of events in Yemen, but because the company's majority shareholder Rheinmetall is currently prohibited from exporting arms from Germany to the parties to the war in Yemen – precisely due to grave concerns about crimes committed there.

Should there be sufficient evidence for charges to be laid against RDM or its executive officers, the National Prosecuting Authority should immediately institute prosecution and seek the strongest penalty possible. This is a vital step in pursuing accountability and would send a strong message to companies and their directors that there will no longer be impunity for their complicity in grave human rights abuses outside of the country.

# 5

## **CIVIL SOCIETY - WE MUST STAND IN SOLIDARITY WITH THE PEOPLE OF YEMEN!**

Apartheid was never thwarted by the decisions of powerful men in smoke-filled rooms. It relied on networks of solidarity and resistance in South Africa and across the globe. Today, South Africans are called upon to show the same level of solidarity with oppressed civilians in Yemen who suffer the consequences of a war – from which others profit.

We cannot allow the superficial arguments made by arms companies and their paid spokespeople to silence our criticism of these war crimes. The defence industry's response to this report will be sharp and rely on the hackneyed assertion that stopping the sale of weapons will result in a jobs 'bloodbath' in South Africa. However, this is a lie intended to shore up profits for the bosses at these companies and their shareholders in countries such as Germany. The defence industry thrives on massive public subsidies and creates relatively few jobs given the significant public investment it receives. Further, the state can choose to shift its investment and transform the industry's facilities to more productive and peaceful uses. The speed with which two of Denel's divisions changed to designing and manufacturing ventilators to respond to Covid-19 in May 2020 is testament to these possibilities.<sup>7</sup> This is a choice the country can and should make.

Challenging the status quo will require a new kind of solidarity between worker organisations, social movements, faith groups and NGOs in countries such as South Africa and Germany to challenge the powerful. We must be led by the call for solidarity made by the people of Yemen, and respond strongly and effectively to that call. When considering foreign and domestic interests, their rights as humans should matter most to us all.

If the suffering in Yemen is to end, then corporations in countries like South Africa must be prohibited from profiteering in an unjust war. Their enablers in government and regulatory bodies, like the NCACC, need to ensure that international and domestic laws are applied, and that these practices are ended. Where they fail to do so, the full might of the law must be applied to criminally charge all those complicit in such crimes.

**Yemen today is like South Africa once was in the world: a far-off, politically complicated land in which human rights violations have become commonplace. South Africa has the responsibility to prevent what the powerful once did to its own people from being revisited on civilians in Yemen. If it fails to do so, it fails the fundamental values of its own struggle for freedom and constitutional democracy.**

**Below:** The aftermath of armed ground clashes in Taiz, Yemen, in December 2017. Children are indiscriminately targeted in the war in Yemen.



**Yemen today is like South Africa once was in the world: a far-off, politically complicated land in which human rights violations have become commonplace. South Africa has the responsibility to prevent what the powerful once did to its own people from being revisited on civilians in Yemen. If it fails to do so, it fails the fundamental values of its own struggle for freedom and constitutional democracy.**





# A TIMELINE: COMPLICITY IN THE WAR IN YEMEN

The NCACC has repeatedly failed to properly apply its mind to the grave situation in Yemen. Despite overwhelming evidence in the public domain about South African weapons being found in Yemen at the site of attacks on civilians, the NCACC has turned a blind eye.

**March 2015:** The war in Yemen escalates. A coalition of forces led by Saudi Arabia and the United Arab Emirates (UAE), with support from international allies, launch an aggressive air campaign in an effort to re-install Abd-Rabbu Mansour Hadi as president.

**September 2008:** Rheinmetall Denel Munition (RDM) is established as a joint venture by Rheinmetall and Denel.

1995

2000

2005

2015

2010

**2000:** The cornerstone of South Africa's arms trade policy, the National Conventional Arms Control Act (NCACA) is passed. The Act establishes a 'legitimate, effective, and transparent' arms control process.

**1995:** The National Conventional Arms Control Committee (NCACC) is created to regulate the South African arms industry, including the export of weapons from South Africa.

**September 2011:** Rheinmetall is involved in setting up a munitions factory in the UAE.

## September 2014: THE CIVIL WAR BREAKS OUT IN YEMEN

**September 2015:** United Nations High Commissioner for Human Rights (UNHCHR) reports that attacks by coalition forces have targeted civilians, including air strikes on displaced families fleeing the fighting. The UNHCHR warns that parties to the war had committed acts, 'some of which may amount to war crimes, and violations and abuses of international human rights law'.

**March 2016:** Then South African president Jacob Zuma attends the opening of a munition production facility in Saudi Arabia. The facility was exported and set up by RDM.

**April 2019:** Jerry Matjila, Permanent Representative of South Africa to the United Nations, tells the Security Council that '[r]egrettably we have noticed recent clashes around Hodeidah, which have been the most intense since the signing of the Stockholm agreement. We call on all the parties to refrain from further escalation.'<sup>2</sup>

**January 2021:** The South African arms trade lobby group South African Aerospace, Maritime and Defence Industry Association (AMD), announces that its NCACC 'task team' has resolved a backlog in permits. The AMD adds that '[a] number of the Arms Control issues relating to End User Certificates [EUCs] mainly to the Middle East were also resolved'.<sup>3</sup>

2016

**December 2017:** DIRCO issues a statement saying it is concerned about the situation in Yemen and condemning 'any deliberate attacks on civilians and other civilian sites'.<sup>1</sup> The statement supports calls for an immediate ceasefire.

**2 August 2018:** A double strike attack targeting Hodeidah's fishing harbour and Al-Thawra hospital kills at least 60 people and wounds more than 100 others.

**9 August 2018:** Bellingcat releases a report about the attack in Hodeidah and conclude that 'munition fragments appear to share characteristics with munitions manufactured by Rheinmetall Denel Munition.'

**April 2018:** German Chancellor Angela Merkel announces that Germany will no longer export arms to Saudi Arabia. The ban remains in place in February 2021.

2017

2018

2019

2020

**May 2020:** Under pressure from domestic arms companies, including RDM, South Africa amends the clause relating to arms exports and inspections, opening up exports to Saudi Arabia and the UAE again.

**May 2019:** It emerges that South Africa has prioritised a clause in their end user certificates requiring inspections of exported weapons. Saudi Arabia and the UAE reject the clause and exports to these countries are effectively frozen.

2021

If the suffering in Yemen is to end, then corporations in countries like South Africa must be prohibited from profiteering in an unjust war.





# NOTES:

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## CONCLUSION: TO SILENCE THE GUNS – FOLLOW THE MONEY

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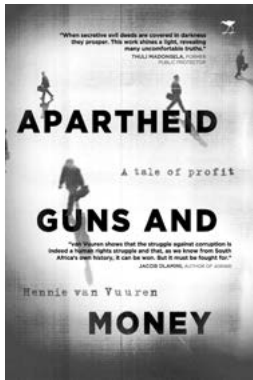
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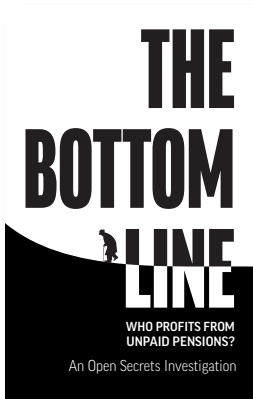
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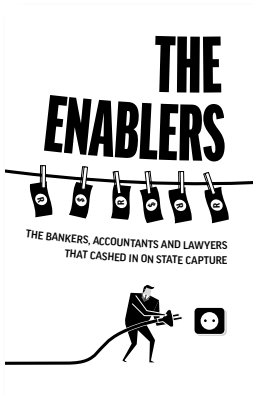
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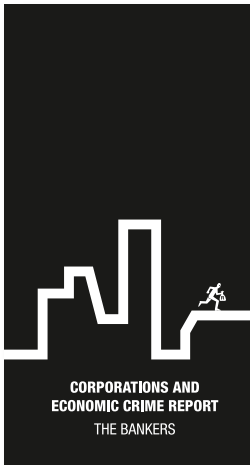
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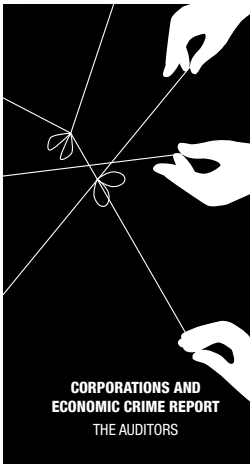
## **THE ENABLERS: THE BANKERS, ACCOUNTANTS AND LAWYERS THAT CASHED IN ON STATE CAPTURE.**

This investigative report focuses on the role of banks, accounting firms, consultants and lawyers in facilitating criminal conduct that formed part of the state capture enterprise. The report shows that the systems that enable grand corruption and state capture are global in nature, and that private sector elites are central to the problem. It is intended to provide the evidence and analysis to assist Justice Zondo and the State Capture Inquiry with this pressing task in 2020.



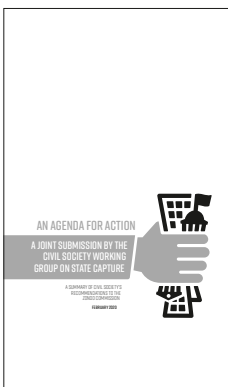
## CORPORATIONS AND ECONOMIC CRIME REPORT (VOLUME 1)

The Corporations and Economic Crime Reports (CECR) explores the most egregious cases of economic crimes and corruption by private financial institutions, from apartheid to the present day. In doing so, we aim to highlight the key themes that link corporate criminality across these periods of time, focusing on the role of the private sector, a critical blind spot in the discourse around economic crime. This first volume of the series focuses on the role of banks and other financial sector actors in corporate criminality.



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## JOINT SUBMISSION TO THE ZONDO COMMISSION: AN AGENDA FOR ACTION

This Agenda for Action is based on detailed submissions made to the Zondo Commission by organisations of the Civil Society Working Group on State Capture (CSWG) covering the widespread impact of state capture on lives of people in South Africa. Open Secrets acts as the secretariat of the CSWG. Editors: Naushina Rahim, Zen Mathe and Hennie van Vuuren.



## JOINING THE DOTS: THE LONG SHADOW OF ECONOMIC CRIME IN SOUTH AFRICA

Prepared for the first People's Tribunal on Economic Crime, this report examined continuities in economic crime and corruption in South Africa related to the arms trade, from apartheid to contemporary state capture. In doing so it highlighted the powerful deep state networks that have facilitated these crimes.



**YEMEN TODAY IS LIKE SOUTH AFRICA  
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CIVILIANS IN YEMEN. IF IT FAILS TO DO  
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