

ECAAR Wins Arms Skirmish

by Estelle Ellis in the Cape Argus, March 7, 2003

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THE CAPE High Court has ordered the government to hand over the full affordability study done before South Africa entered into the controversial arms deal.

The head of Economists Allied for Arms Reduction [in South Africa], Terry Crawford-Browne, said that this was the most important document that they wanted.

"The Department of Finance warned government of the risks of entering into the arms deal. This will give more details of what the precise risks were."

He said that the study will be important for ECAAR to prove that the Minister of Finance, Trevor Manuel, was reckless when he signed the loan agreements for the arms deal.

This allegation will be part of ECAAR's main attack on the deal. They want the court to declare the loan agreements unconstitutional.

The judge also accepted in favour of ECAAR that the Cape High Court does have the jurisdiction to hear the matter and that ECAAR does have standing. A final decision on the matter will be made in the main application.

The application asked the Cape High Court to set aside Manuel's decision to enter into foreign loan agreements and export guarantees in respect of 4 corvettes, 3 submarines, 28 Gripen fighter jets, 24 Hawk trainer aircraft and 30 light utility helicopters worth billions of rands.

ECAAR also wants the court to declare the deal null and void.

After they filed this application, ECAAR claimed they needed access to nine categories of documents to prepare for their court case.

The government refused to give them access to these documents.

They [ECAAR] filed an application for a court order. The documents they sought included: the four loan agreements, one further financial agreement, written decisions of parliament and cabinet related to the arms deal, the purchase contracts and the affordability study.

Mr Justice Andre Blignault and Mr Justice Dennis Davis ruled yesterday that ECAAR was not entitled to discovery of the loan agreements as they could use the one loan agreement in their possession to prepare an attack on all the loan agreements.

An application for a court order to force the Minister of Finance to hand over a written decision of parliament about the arms deal was refused, because it is a public document.

The judges said that the government could not be forced to hand over "the gist of a cabinet resolution" because apart from the questions of relevance and privilege the document they wanted did not exist.

The government argued that the affordability study was not relevant to the court proceedings. Judges Blignault

and Davis disagreed. They said that it was relevant to the decisions which were under attack.

The court ruled that the purchase contracts were also irrelevant for ECAAR's purposes.

Subsequent to the decisions reported above, the Cape High Court ordered the government to hand over the documents of the International Offers Negotiating Team and the Financial Advisory Team, but the government has replied that these documents are confidential and should only be given to the legal team and not to the officers of ECAAR-South Africa.

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