

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

BEFORE THE RT HON LORD JUSTICE BURNETT AND THE HON. MR JUSTICE
HADDON-CAVE

BETWEEN:

THE QUEEN
on the application of CAMPAIGN AGAINST THE ARMS TRADE
Claimant

-and-
THE SECRETARY OF STATE FOR INTERNATIONAL TRADE
Defendant

-and-
(1) AMNESTY INTERNATIONAL
(2) HUMAN RIGHTS WATCH
(3) RIGHTS WATCH (UK)
(4) OXFAM

Intervenors



ORDER

UPON hearing from Leading Counsel and Special Advocate for Claimant, Leading Counsel for the Defendant and Leading Counsel for the First to Third Intervenors and upon receiving written submissions on behalf of the Fourth Intervenor

IT IS ORDERED:

1. The Claimant's claim for judicial review is dismissed.
2. The Claimant is refused permission to appeal to the Court of Appeal.
3. The Claimant shall pay the Defendant's reasonable costs of, and occasioned by, the claim for judicial review, in the sum of £40, 000 in accordance with the costs cap imposed by Mr. Justice Gilbart by order of 30 June 2016.

Dated: 10 July 2017

By the Court

Your Ref REC/EAK/00065492/9

**IN THE HIGH COURT
APPLICATION FOR LEAVE TO APPEAL
TO THE COURT OF APPEAL (CIVIL DIVISION)**

Title of case/action: The Queen on the application of CAMPAIGN AGAINST ARMS TRADE versus SECRETARY OF STATE FOR BUSINESS INNOVATION AND SKILLS,	Action/case no. CO/1306/2016
Heard/tried before (insert name of Judge): The Right Honourable Lord Justice Burnett The Honourable Mr Justice Haddon-Cave	Court no 1
Nature of hearing Judicial Review	
Date of judgement: 10 July 2017	
Results of hearing (attach copy of order): Dismissed	
Claimant's application for leave	Refused
Reasons for decision (to be completed by the Judge): See attached reasons.	
Judge's signature: Lord Justice Burnett Mr Justice Haddon-Cave	Note to the Applicant: When completed this form should be lodged in the Civil Appeals Office on a renewed application for leave to appeal or when setting down an appeal

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

THE QUEEN
on the application of
CAMPAIGN AGAINST ARMS TRADE

Claimant

-and-

THE SECRETARY OF STATE FOR INTERNATIONAL TRADE

Defendant

-and-

(1) AMNESTY INTERNATIONAL
(2) HUMAN RIGHTS WATCH
(3) RIGHTS WATCH (UK)
(4) OXFAM

Interveners

REASONS FOR REFUSAL TO GRANT PERMISSION TO APPEAL

1. The Claimant seeks permission to appeal under CPR r. 52.6(1) and a stay of enforcement of the agreed costs (alternatively, a stay pending determination of an application for permission to appeal by the Court of Appeal).
2. We decline to grant permission to appeal or a stay since we are not persuaded that there is a real prospect that the Court of Appeal will find that the Court erred in any of the respects relied upon, and there is no other compelling reason to grant leave in this case. The Special Advocates have advanced closed grounds of appeal upon which we refuse permission on the same basis but which we do not address separately below.

Ground 1: Error of approach to the open source material and findings

3. The Claimant now accepts that it may be right to say that the Secretary of State is under no duty under paragraph 2.13 of the User's Guide to make a judgment about "every past incident" (see Judgment at [181]) and that it was "not legally necessary to engage directly with everything that had been said by others on the topic" (see Judgment at [208(8)]) – but argues that the Secretary of State was obliged to form a judgment about

a 'sufficient number' of the incidents in which breaches of IHL have been found to displace the *prima facie* evidence of a pattern of such violations and did not do so.

4. This point fails on the facts. The Open and Close evidence demonstrates that, at all material times, the Secretary of State operated a comprehensive and robust system of analysis of all reported events using "the Tracker" and sources of information not available to NGOs in order properly to inform his decisions about the Criterion 2c risk (see *e.g.* Judgment [105-120]).

Ground 2: Error in relation to the duty to consider Saudi Arabia's past record of compliance with IHL

5. The User's Guide is non-binding guidance (see Judgment [179]). The User's Guide does not require that all the suggested questions must be asked, still less that explanations are given if the particular questions are not specifically asked or investigated.
6. This point fails also fails on the facts for the same reasons as given in paragraph 4 above in relation to Ground 1.

Ground 3: Meaning of "serious violations of "IHL"

7. The Court held that the term "serious violation" *includes* "grave breaches" and "war crimes" as defined, in particular, in the four Geneva Conventions, Additional Protocol 1 and in Article 8 of the Rome Statute of the International Criminal Court (Judgment [16]).

No other compelling reason

8. In our judgment, there is no other compelling reason to grant leave in this case. That this judicial review was concerned with a very serious issue does not justify an appeal which, in essence, would require the Court of Appeal to conduct a fresh review of the thousands of pages of materials placed before us in open and closed.

Burnett LJ
Haddon-Cave J

Dated 21 July 2017