



UK Mission Geneva

UK Mission Geneva
PO Box 6
Avenue Louis Casar 58
1216 Cointrin GE

Tel: 022 918 2453
Fax: 022 918 2333

Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211
Geneva 10
Switzerland

Note Verbale No. 231

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication AL GBR 4/2020, further to the letter dated 4 June 2020 from the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 2 August 2020

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

Annex

RESPONSE OF THE GOVERNMENT OF THE UNITED KINGDOM TO COMMUNICATION AL GBR 4/2020 OF 4 JUNE 2020

From: the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

The Government of the United Kingdom takes very seriously the allegations raised in relation to the employment of Keenie Meenie Services Ltd (KMS) by the Government of Sri Lanka during the conflict in Sri Lanka.

The UK Government was not party to the agreement between the Sri Lankan Government and KMS. The Government of Sri Lanka approached KMS without the involvement of the UK Government, and the UK Government had no locus to intervene in what was a commercial contract between the two parties.

Nonetheless, as your letter notes and as contemporaneous documentary evidence demonstrates, the UK Government became increasingly concerned during the 1980s about the role of KMS in Sri Lanka, and particularly the question of whether KMS personnel were involved in military operations. In June 1986, the UK Government sought and received assurances from the Sri Lankan High Commission in London that KMS personnel had not been involved in such operations. The UK also received multiple assurances from KMS that they were not part of any operations, and that their work was confined to training only, including in September 1986.

In 1986, the UK Government advised KMS against involvement in operations, and when evidence emerged that KMS might nevertheless have been involved, the UK Government sought actively to dissuade them, strongly urging them to reconsider their activity, including through messages given with the authority of the then Foreign Secretary, the Right Honourable Sir Geoffrey Howe. Concern at the level of KMS involvement in Sri Lanka was also expressed privately by FCO Ministers to the Government of Sri Lanka, including in December 1986.

Your letter also notes that, in 2014, the UK's Foreign and Commonwealth Office (FCO) destroyed various files on Sri Lanka dating from the relevant period. Like all UK Government departments, the FCO is bound by the Public Records Act 1958,¹

¹ <http://www.legislation.gov.uk/ukpga/Eliz2/6-7/51>

and is required to review its historical files in line with that Act's requirements, before making a decision on permanent preservation.

Selection of records for permanent preservation for the records in question took place under the guidance and supervision of The National Archives (as required by the Public Records Act) and in line with the FCO's published review timetable (as described at www.gov.uk/archive-records).

The Act does not require government departments to preserve files if they are deemed to be of no long-term historical value. For instance, a file need not be permanently preserved if it contains only administrative or ephemeral content, or if it contains only information which is already in the public domain.

In addition, a government department is not required to select files for permanent preservation if they cover government functions on which the department holding the file is not the lead department (although, of course, an FCO selection reviewer might make exceptions to this principle if files relating to non-FCO functions contain significant FCO records or material of particular foreign policy significance). That is why the FCO's 1985 file entitled *Periodical reports from the Defence Adviser in Colombo* was not preserved: the basis for that decision is recorded as "MoD [Ministry of Defence] lead".

Notwithstanding this system, some Defence Adviser reports for Sri Lanka from the 1970s and 1980s have not yet been reviewed under the Public Records Act because this collection has not yet been transferred into the FCO's central archive, where the reviews are conducted. The FCO has become aware of these files as a result of a long-running project to identify, and to transfer into the FCO central archive for review under the Public Records Act, historical files held in London departments and at overseas posts. These files will be subject to the same selection criteria under the Public Records Act as outlined above. Although these files contain information on KMS, we do not believe they add anything of substance to what has already been stated in this letter.

Your letter indicates that a former KMS director is involved in Saladin Security Ltd. As that company is a member of both the International Code of Conduct Association for Private Security Providers and the Security in Complex Environments Group, we have written to both organisations to ascertain the due diligence processes they applied in relation to Saladin Security Ltd.'s membership of the respective Association and Group.

- 2. Kindly provide full details of any civil, criminal, disciplinary and/or administrative measures taken by your Excellency's Government in relation to the aforementioned allegations in compliance with its duty to investigate and prosecute, and to take effective action to combat impunity, including by carrying out effective investigations and ensuring all evidence of violations of international humanitarian law and violations and abuses of international human rights law is preserved for accountability purposes.**

In March 2020, the Metropolitan Police War Crimes Team, which is responsible for investigating war crimes, crimes against humanity, genocide and torture, and which is part of the Metropolitan Police's Counter Terrorism Command, received a referral concerning war crimes alleged to have been committed by British mercenaries in Sri Lanka during the 1980s. Following receipt of the referral, the War Crimes Team began a scoping exercise into the matter, in accordance with the Crown Prosecution Service's published guidelines for referrals of war crimes and crimes against humanity.² At this stage of the investigation, the Metropolitan Police are not able to provide further comment on the details of the referral, as the scoping exercise is ongoing.

3. **Please indicate the measures that your Excellency's Government has taken or may adopt to ensure that victims of the above-mentioned alleged abuses and violations have access to effective remedy, including their right to know the truth about these alleged abuses and violations, and receive reparation.**

During the period in question, UK law provided for universal jurisdiction over several crimes that may be relevant in respect of the allegations against KMS, including torture,³ hostage taking,⁴ and certain war crimes, including grave breaches of the 1949 Geneva Conventions and their first Additional Protocol.⁵ In addition to reporting such crimes, victims - including non-UK nationals - may seek compensation from the alleged perpetrators for loss or damage suffered as a result of such crimes through civil proceedings.

More generally, the UK Government has long supported efforts to deliver truth, accountability, and transitional justice for all alleged abuses and violations during the conflict in Sri Lanka, including those detailed in your letter.

During the civil war itself, the UK supported the European Commission's investigation into the effective implementation of certain human rights conventions in 2008 in Sri Lanka and urged the Sri Lankan Government to co-operate with the investigation. The UK also supported calls by the EU in 2007 for the introduction of a UN-backed human rights monitoring mission, and provided political and practical support to the peace process, including by urging both sides to respect the ceasefire and resume talks.

Following the end of the conflict, the UK was a main co-sponsor of the UN Human Rights Council (HRC) resolution 25/1 on Sri Lanka, which was adopted by the Council in March 2014 and established an international investigation into allegations of violations and abuses of international law on both sides of Sri Lanka's military conflict. The UK has also played a leading role in subsequent HRC resolutions, most recently resolution 40/1 which was adopted in March 2019.

² <https://www.cps.gov.uk/publication/war-crimescrimes-against-humanity-referral-guidelines>

³ <https://www.legislation.gov.uk/ukpga/1988/33/contents>

⁴ <https://www.legislation.gov.uk/ukpga/1982/28/contents>

⁵ <https://www.legislation.gov.uk/ukpga/Eliz2/5-6/52/contents>; <https://www.legislation.gov.uk/ukpga/1995/27/contents>

The UK's Minister for South Asia, Lord Ahmad of Wimbledon, emphasised the importance that the UK continues to attach to the HRC framework when he met the Sri Lankan Foreign Minister Dinesh Gunawardena in Geneva on 25 February 2020.

On 27 February 2020, and again on 30 June 2020, the UK Government made clear in statements delivered at the HRC, alongside the other main co-sponsors of the resolutions on Sri Lanka, its continued support for the relevant HRC resolutions and the principles of reconciliation, accountability, and justice for victims of conflict which are embodied in them. The UK's Foreign Secretary, the Right Honourable Dominic Raab MP, also raised the importance of accountability and reconciliation in Sri Lanka during a call with Foreign Minister Dinesh Gunawardena on 7 May 2020.

The UK Government will continue to press for truth, reconciliation, accountability, and justice for all victims of the Sri Lankan civil war, including those allegedly affected by KMS activities.

4. Please highlight the steps that your Excellency's Government is taking, or is considering taking, to ensure non-recurrence of the alleged violations, including related institutional, legislative and administrative reforms and other measures to ensure that no private military and security company violates international humanitarian law or commits human rights abuses in the country or abroad.

Raising standards in the private security industry is a particular priority of the UK Government. The UK is the home state of many market-leading private security companies (PSCs). It is also a contracting state, using PSCs to protect specific work around the world, for example in British High Commissions and Embassies. Many UK-based companies and Non-Governmental Organisations (NGOs) use PSCs in their work globally.

The UK Government has worked closely with UK industry partners and civil society to raise standards among PSCs and remains committed to raising standards in the global private security industry. At the international level, the UK has for many years engaged in the various international regulatory initiatives on PSCs. The UK was a founding signatory of the Montreux Document (2008), which reaffirms the existing obligations of states under international law relating to private military and security companies' activity during armed conflict, and the Montreux Document Forum (2013). The UK played a leading role in the drafting of the International Code of Conduct (2010), which sets out principles for security providers, and related standards, governance, and oversight mechanisms, and the launch of its oversight mechanism to monitor compliance with the Code, the International Code of Conduct Association (ICoCA) (2013).

The UK has closely supported the introduction of voluntary professional standards for PSCs working on land or at sea in complex or high-risk environments, against which PSCs can be certified by independent third party auditors. At the national level, these standards are ISO 18788⁶ (for land-based PSCs) and ISO 28007⁷ (for

⁶ <https://www.iso.org/obp/ui/#iso:std:iso:18788:ed-1:v1:en>

⁷ <https://www.iso.org/standard/63166.html>

maritime PSCs). The UK Accreditation Service accredits auditors for these standards and is a signatory to the International Accreditation Forum Multilateral Agreement.

Since 2011, the UK Government has worked with the Security in Complex Environments Group, a UK-based Special Interests Group for the Private Security Sector, on the transparent regulation of Private Security and Maritime companies, which operate in this sector.

In the domestic context, the UK Security Industry Authority, set up under the Private Security Industry Act 2001,⁸ is the organisation responsible for regulating the private security industry by, for example, operating a licensing regime for individual security operatives and a voluntary approvals scheme for security businesses.

More generally in UK legislation, the International Criminal Court Act 2001 and International Criminal Court (Scotland) Act 2001⁹ provide jurisdiction to prosecute acts of genocide, war crimes, and crimes against humanity committed by UK nationals either in or outside the United Kingdom, or acts committed by non-UK nationals on the territory of the United Kingdom. Prosecutorial authorities in the UK are also able to prosecute UK citizens for certain crimes such as murder and sexual abuse of children committed overseas.

The UK continues to encourage all States, companies, and NGOs that contract PSCs to recognise and encourage certification standards in their contracting processes. The UK also encourages Montreux Document signatory states to join the ICoCA.

On the broader question of the responsibility of businesses to respect human rights, the UK is a strong supporter of the UN Guiding Principles on Business and Human Rights, supports their provisions on access to remedy for victims of human rights abuses, and was the first country worldwide to adopt a National Action Plan to implement them. The UK Government has also encouraged companies to extend effective grievance mechanisms to their overseas operations.

⁸ <https://www.legislation.gov.uk/ukpga/2001/12/contents>

⁹ <https://www.legislation.gov.uk/ukpga/2001/17/contents>; <https://www.legislation.gov.uk/asp/2001/13/contents>