



UK Mission Geneva

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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. 061

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 12/2020, further to the letter dated 8 December 2020 from the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

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, 15 March 2021

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

Annex

RESPONSE FROM THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO COMMUNICATION AL GBR 12/2020 OF 8 DECEMBER 2020

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

The United Kingdom is concerned by the allegations of human rights abuses resulting from the arbitrary detention of Human Rights Defenders (HRDs) opposing forced evictions and land confiscation by private enterprises operating in Kiryandongo, Uganda, including by a company registered in the Cayman Islands. The UK considers that HRDs play an essential role in promoting and protecting democracy, respect for human rights, and the rule of law. They also make a huge contribution to the promotion of the rights of their fellow citizens, and further the development of their countries.

Many HRDs face growing threats and the UK works with international partners to support HRDs through organisations like Lifeline and Frontline Defenders, and through our overseas network of embassies and high commissions. The UK also supports HRDs through working to raise global standards via the multilateral system.

As the alleged abuses took place in Uganda, neither the UK nor the Cayman Islands have first-hand knowledge of the events, and considers that Uganda bears responsibility for investigating the allegations and, where appropriate, taking measures to address human rights abuses committed in its territory and/or jurisdiction, and to uphold compliance with international human rights conventions and standards.

The Cayman Islands is a UK Overseas Territory, and corporate matters are primarily an area for which the Cayman Islands is responsible. The UK is confident that the Cayman Islands meet the necessary requirements to implement UN human rights treaties that have been extended to them, such as the International Covenant on Economic and Social Rights (ICESCR), and the International Covenant for Civil and Political Rights (ICCPR).

2. Please provide any information you have about the legal domicile of the company Agilis Partners.

Agilis Partners is registered in the Cayman Islands. It is funded by a venture capital firm, [REDACTED].

3. Please highlight the steps your Excellency's Government has taken, or is considering to take, to protect against human rights abuse by Cayman Islands business enterprises, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.

The Cayman Islands is a UK Overseas Territory, and a separate legal jurisdiction from the UK. It has its own democratically elected parliament, and a high degree of self-governance. The Cayman Islands is a well-regulated jurisdiction, with a legal framework based on Common law, committed to meeting international standards, and a Constitution containing human rights provisions, which local courts can enforce directly.

The UK is ultimately responsible under international law for ensuring compliance with international human rights conventions extended to the Cayman Islands, such as the European Convention on Human Rights (ECHR) and the United Nations International Covenant on Civil and Political Rights (ICCPR). However, local institutions, such as the Cayman Islands Government and the Cayman Islands courts, have a duty to ensure that local law complies with relevant conventions and court judgments. Where there is a discrepancy between local law and relevant conventions and court judgements, we would expect the Cayman Islands to take action in the first instance, including legislating to reach full compliance. The relationship between the UK and the Cayman Islands is based upon partnership, so it is both undesirable and extremely rare for the UK to intervene directly in the Cayman Islands' affairs. Instead, the UK will first try to engage with the Cayman Islands in sharing technical capacity and expertise around human rights. Where potential gaps are identified, the UK will offer support where needed to the Cayman Islands Government to help it to address these.

Corporate matters, including legislation covering corporate entities that are registered in the territory, are for the Government of the Cayman Islands to regulate and monitor. Corporate entities that are registered in the Cayman Islands have to meet the strict legislative requirements in the Cayman Islands, which are actively enforced by local courts, police, and justice systems. There is also a system of Trust and Corporate Services Providers (TCSPs), who have a legal obligation to carry out due diligence prior to registering a company, and also for ongoing monitoring of entities that they register.

The Cayman Islands are committed to meeting international standards on tax transparency and anti-money laundering. The Cayman Islands also collects and holds information on company beneficial ownership which UK authorities can receive in almost real time. The Government of the Cayman Islands has taken a welcome step forward by committing to establish a publically accessible register of company

beneficial ownership, making it one of the first jurisdictions in the region to make such a commitment, which will help increase transparency.

The UK Government has shared the Rapporteurs' letter of 8 December 2020 with the Cayman Islands Government, and has brought the UN General Principles on Businesses and Human Rights to their attention. Now that the Cayman Islands Government is aware of this matter, they have undertaken to review their practices on businesses and human rights, including determining the most appropriate framework to ensure compliance with international best practice. The UK stands ready to support, should this be desired. Going forward, the UK will share technical expertise on Businesses and Human Rights with the Overseas Territories, including the UK's Action Plan on Implementing the UN Guiding Principles on Businesses and Human Rights. The UK is open to providing further support to the Overseas Territories with implementing the Principles should they choose to, and are able to, take this work forward.

The UK and the Cayman Islands share a common aim to promote respect for human rights. The UK continues to work with the Cayman Islands to maintain high human rights standards, for example through the annual Overseas Territories Joint Ministerial Council, technical support to increase capacity, and through the UK Conflict Stability and Security Fund project work.

- 4. Please describe the guidance, if any, that the Government has provided to business enterprises based in the United Kingdom on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts. Please indicate whether any guidance was provided with regards to the duty to obtain free and informed consent of affected communities prior to the approval of the project.**

The UK was proud to become, in September 2013, the first UN Member State to develop a National Action Plan to implement the UN Guiding Principles of Business and Human Rights. The UK Government is fully committed to implementing these Principles and we have encouraged other countries to follow our example by creating and implementing their own National Action Plan.

The UK National Action Plan was updated in 2016, in order to reflect actions taken by the UK Government in helping business to fulfil its responsibility to respect human rights¹. The UK Government believes the promotion of business and respect for human rights go hand in hand. We work to encourage and support companies to meet

¹ <https://www.gov.uk/government/publications/bhr-action-plan>

their obligations and responsibilities in the prevention of human rights abuses. The UK is also committed to ensuring the effective implementation of The Global Goals for Sustainable Development. This includes the commitment to end modern slavery and human trafficking (SDG 8.7) and to protect labour rights, and promote safe and secure working environments for all workers (SDG 8.8).

Domestically, the UK Government has introduced and updated legislation for corporate transparency about human rights topics. These include:

- The Modern Slavery Act (2015) which requires certain businesses to produce a statement setting out the steps they have taken to ensure that there is no modern slavery in their business or supply chains. In September 2019, the Government announced an ambitious package of measures to strengthen the Act's transparency requirement, including extending the duty to report on steps taken to prevent modern slavery to public bodies with a budget of £36 million or more. The UK Government also published its first Modern Slavery Statement in 2020 on steps taken to tackle modern slavery in HMG procurement and supply chains. All UK Government Departments will publish Modern Slavery Statements in autumn 2021;
- Section 172 of the Companies Act 2006, which makes it clear that, in fulfilling their duty to act in a way which they consider would be most likely to promote the success of the company, directors must think about matters which might have a bearing on that success, including the interests of the company's employees and the impact on the community of the company's operations;
- Amendments to the UK Companies Act in 2013 to require listed companies to report on material human rights impacts relevant to understanding of the business in their annual reports;
- Amendments to the UK Companies Act in 2016 to strengthen the requirement to provide a fuller framework for strategic reporting, including on due diligence arrangements where they are in place.

We believe the UK's approach strikes an appropriate balance between encouraging strong corporate behaviour on human rights, and avoiding an over-regulated approach which could potentially drive companies to take a minimalist approach to compliance; our aim is to encourage a 'race to the top'.

As a UK Overseas Territory, corporate matters are primarily for the Cayman Islands. Trust and Corporate Services Providers (TCSPs) have an obligation to carry out due diligence prior to registering a company, and also for ongoing monitoring of entities that they register. This obligation is related to measures to prevent and detect money laundering, terrorism financing, and the financing of proliferation. The TCSPs do not provide guidance to businesses on human rights, so we are not aware of any specific guidance on such community consultation that was provided to Agilis Partners.

5. Please indicate the steps that your Excellency's Government has taken, or is considering to take to ensure business enterprises domiciled in its territory and/or jurisdiction establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

The UK National Action Plan sets out a number of actions taken by the Government to promote access to remedy. Domestically, these include supporting access to remedy for human rights abuses by business enterprises through its employment tribunals for cases of labour rights, avenues for civil law claims, and specific criminal law provisions.

The UK is also a signatory to the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises ("the Guidelines"). The Guidelines are voluntary standards intended to promote responsible business conduct by enterprises based in the signatory countries. The complaints mechanism can include the examination of instances where abuses of human rights may have occurred. The UK National Contact Point (UK NCP) raises awareness of the Guidelines and operates a complaints mechanism.

As a separate jurisdiction from the UK, it is for the Cayman Islands to monitor and regulate the activities of enterprises registered there. Trust and Corporate Services Providers (TCSPs) are responsible for conducting thorough due diligence checks and monitoring of companies registered in the Cayman Islands, as described in relation to Question 4 above. The Cayman Islands Government has also advised that it will review its practices, as described in Question 3.

15 March 2021