



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. 071

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 1/2021, further to the letter dated 25 January 2021 from the Working Group on discrimination against women and girls; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on trafficking in persons, especially women and children; and Special Rapporteur on violence against women, its causes and consequences.

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, 29 March 2021

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

ANNEX

RESPONSE FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES, AL GBR 1/2021

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

The UK is fully committed to combatting child sexual abuse in all its forms. Our government's new Tackling Child Sexual Abuse Strategy drives action across every part of Government, across all agencies, sectors, charities, communities, technology companies, and society more broadly. We will relentlessly pursue abusers while placing victims and survivors at the heart of our approach. We will look to combat such crimes whether they take place at home, in the community, or online, and those who abuse children remotely from across the world should not be treated with any less seriousness than those who abuse children in person.

It is our understanding that, while Telegram was originally registered as a UK company, it is not currently registered on UK Companies House. We nevertheless remain committed to working with companies to ensure that they take the appropriate action to stop the spread of child sexual abuse material on their platform.

2. Please provide information about measures and policies that your Excellency's Government has put in place to protect against human rights abuses by enterprises domiciled in its territory, including Telegram Messenger LLP, to respect human rights throughout its operations. This includes conducting 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 UK is fully committed to implementing the UN Guiding Principles on Business and Human Rights ("UNGPs"). To set the UK's expectation on the responsibility to respect (UNGP 2), the UK has already enacted legislation to promote respect for human rights throughout the supply chains of enterprises domiciled in the UK, and it intends to enact further legislation to address online harms. It has also pursued multilateral initiatives that encourage businesses to respect human rights, including the rights of children online.

UK National Action Plan

The UK was the first country to produce, in 2013, a national action plan to respond to the Guiding Principles. The plan sets out expectations of UK businesses' conduct. These include: compliance with relevant laws and respect for internationally recognised human rights; treating as a legal compliance issue the risk of causing human rights abuses; adopting appropriate due diligence policies to identify and prevent human rights risks; and consulting people potentially affected in project design and implementation.

Within this approach, the Government has introduced and updated legislation for corporate transparency, e.g. the Modern Slavery Act (2015), supply chains transparency statements, and enhanced Companies Act reporting (2013, 2016). It has backed new tools to encourage business to account for human rights to a greater extent, e.g. the Corporate Human Rights Benchmark (an international initiative to rank corporates by their human rights performance). It has also supported human rights guidance for businesses. The UK has shared best practice of the NAP with other countries.

Section 54 Modern Slavery Act

The UK is the first country in the world to require businesses to report on the steps they have taken to tackle modern slavery. Section 54 of the Modern Slavery Act 2015 requires applicable commercial organisations to publish a modern slavery statement for each financial year of their organisation. The modern slavery statement must set out what steps an enterprise has taken during the financial year to ensure that modern slavery is not taking place in their supply chains and in their own organisation. If an organisation has taken no steps to ensure that modern slavery is not taking place, they must still publish a statement stating this to be the case. Organisations are legally required to ensure that their statement has been approved by the board, signed by a director, and is available via the homepage of their website (if they have one). This transparency requirement applies to all commercial organisations that carry on a business, or part of a business, in the UK, supply goods or services, and have an annual turnover of £36m or more.

In this way, the UK Government has required businesses to 'show and tell', in line with UNGPs 3(d) and 21. The UK Government considers that such transparency requirements incentivise human rights due diligence (UNGP 15-21), and support consultation and communication with stakeholders (UNGP 18, 20, 21). As a means to bolster such transparency, the UK Government has committed to amend section 54 in line with recommendations by an Independent Review in 2019, following extensive stakeholder consultation.

Online Modern Slavery Statement Register

On 11 March 2021, the UK Government launched an online modern slavery statement registry to make modern slavery statements available in one place, and provide a platform for organisations to demonstrate the progress they have made to prevent modern slavery. The Government registry will radically enhance transparency by enabling investors, consumers, and civil society to scrutinise the action which different organisations are taking to prevent modern slavery and monitor progress over time.

In future, it will become mandatory for organisations in scope of section 54 of the Modern Slavery Act 2015 to submit their statement to the service, as part of the proposed changes to strengthen section 54. The registry will be a key tool for the Government to monitor and drive compliance with section 54 of the Modern Slavery Act 2015.

Forthcoming Legislation on Online Harms

As part of its duty to protect human rights, the Government intends to introduce legislation on online harms, including child sexual abuse, this year. As a prelude to that forthcoming legislation, the UK published the Full Government Response to the Online Harms White Paper consultation in December 2020. This sets out in detail new requirements for companies to keep their users safe online, and includes a new duty of care to help ensure that companies take responsibility for the safety of their users. The legislation will apply to any company accessible to UK users whose services host user-generated content or allow users to interact with others, regardless of where in the world it is based. The Full Government Response to the White Paper sets out that companies will be required to take stringent action to tackle the growing and evolving threat of online child sexual exploitation and abuse and other illegal behaviour. This includes bearing down on the threat of livestreaming and taking necessary steps to target grooming and the proliferation of child sexual abuse material. Enterprises must also protect children from harmful content and activity online. The major platforms will need to set out clearly what legal content is acceptable on their platform, and stick to it. The Government expects that a prelude to compliance with those obligations will be appropriate corporate human rights due diligence.

To assist that due diligence, all companies in scope of the legislation will be required to have effective and accessible user reporting and redress mechanisms for the types of content and activity which they are required to address under the regulatory framework. Reporting and redress mechanisms will allow users to report harmful content, challenge wrongful takedown, and raise concerns that a company has failed to fulfil its duty of care.

Under the new legislation, Ofcom, the UK's communications regulator, will also be required to establish a super-complaints function and user advocacy mechanisms, to help detect issues early and address concerns. The proposed legislation will thereby

facilitate and encourage human rights due diligence by business. It will also help hold to account companies that facilitate the propagation of child sexual abuse images or act as a platform for the sexual grooming of children.

Legislation on Corporate Behaviour

Legislation regulating corporate behaviour also encourages respect for human rights and corporate due diligence, as part of mainstream corporate practice, to level the playing field and encourage a 'race to the top'. Section 172 of the Companies Act 2006 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 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 strengthen the requirement to provide a fuller framework for strategic reporting, including on due diligence arrangements where they are in place.

Multilateral Initiatives

Given the global nature of supply chains and the workforce that empowers them, the UK believes that multilateral action is essential. It has pursued a number of multilateral initiatives to encourage States and enterprises to protect and respect human rights respectively. Some examples of that action are set out below.

During the 42nd session of the Human Rights Council in 2019, the UK with Australia led efforts to renew the mandate of the United Nations Special Rapporteur on Contemporary Forms of Slavery. The UK also continues to use the Universal Periodic Review process to make constructive recommendations for every government to drive forward policies on modern slavery that will make the achievement of Sustainable Development Goal (SDG) 8.7 a reality.

We are pleased that Romania, like the UK, is a member of the WePROTECT Global Alliance (WPGA), a global movement that brings together the influence, expertise, and resources required to transform how online child sexual exploitation is dealt with worldwide. Its multi-stakeholder nature is unique in this field, with 98 countries, 46 global companies, 47 leading Non-Governmental Organisations, and eight regional organisations signed up to the initiative.

As part of its duty to protect and to help encourage online businesses to respect human rights, the UK has jointly developed a framework on online child sexual exploitation and abuse to drive collective action. These Voluntary Principles were launched by

Australia, Canada, New Zealand, the United Kingdom, and the United States, with support from a number of industry and NGO partners, in March 2020. The Voluntary Principles aim to provide a framework for businesses to prevent and combat online child sexual exploitation and abuse, and are intended to drive collective action. The Voluntary Principles cover issues ranging from combating child sexual abuse material, online grooming and livestreaming of child sexual abuse, to protecting victims, and industry transparency and reporting. They are designed to be flexible for all companies to implement, regardless of their size or platform format, and provide a strong message for companies to address the scale and nature of the online child sexual abuse facilitated by their platforms. The UK Government hopes that more will endorse and implement the Voluntary Principles, and use them as a guide for the safe design of their services in order to protect children.

The UK, together with Australia, Canada, New Zealand, and the United States, also developed Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains. Those Principles are intended to align with the UNGPs and call on all States to encourage the private sector to prevent and address human trafficking in its supply chains. These principles follow the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking in 2017, which now has over 90 endorsements.

3. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure the effective access to domestic judicial mechanisms for victims of business-related human rights abuses.

There are a range of judicial mechanisms that help to support access to remedy for human rights abuses by business enterprises both at home and overseas. They include:

- (i) Employment Tribunals which provide access to remedy for abuses of labour rights;
- (ii) Avenues to pursue civil law claims (e.g. under tort law) before UK courts in relation to human rights abuses by business enterprises, including when they occur overseas and are the result of the activity of a foreign subsidiary of a UK-domiciled company (see e.g., *Vedanta Resources PLC and another v. Lungowe and others* [2019] UKSC 20); and
- (iii) Specific criminal law provisions, including under the Bribery Act 2010, Modern Slavery Act 2015, Serious Crime Act 2007, Corporate Manslaughter and Homicide Act 2007, and the Gangmasters (Licensing) Act 2004.

4. Please indicate the steps that your Excellency's Government has taken or is considering to take to ensure that business enterprises such as Telegram Messenger LLP provide effective, operational-level grievance mechanisms, or cooperate in the provision of effective remedies through legitimate processes to the affected victims if they have contributed to adverse human rights impact.

Business enterprises are required to comply with UK law and are subject to the judicial grievance mechanisms set out above.

As to operational-level grievance mechanisms, the UK Government has:

- (i) Tasked UK Trade and Investment (UKTI) teams in the markets where they operate to advise UK companies on establishing or participating in grievance mechanisms for those potentially affected by their activities, and to collaborate with local authorities in situations where further State action is warranted to provide an effective remedy;
- (ii) Encouraged companies to extend their domestic UK practice of providing effective grievance mechanisms to their overseas operations, adapting them where necessary according to local circumstances and consulting interested parties. This also applies to dispute arbitration/mediation mechanisms through their sector of activity or collective industry organisations; and
- (iii) Supported projects through the FCO Human Rights and Democracy Programme Fund on remedy procedures in other countries, including to support to business efforts to provide, adopt, or participate in effective grievance mechanisms.

The UK also supports other non-judicial grievance mechanisms for business-related human rights abuses. A signatory to the Organisation for Economic Cooperation and Development ("OECD") Guidelines for Multinational Enterprises ("the OECD Guidelines"), the UK operates an OECD National Contact Point ("UK NCP"), a complaints mechanism that can examine instances where business-related human rights abuses may have occurred. The UK NCP seeks to mediate an agreement between the parties. But where this is not possible, a determination of whether the enterprise has acted inconsistently with the Guidelines is published and available for public dissemination. The UK Government thereby provides a neutral forum to address business-related human rights harms.

In addition, there are independent organisations that support non-judicial grievance mechanisms in the UK. They include internal company grievance procedures and arbitration, adjudication, mediation, conciliation, and negotiation. The Citizens' Advice

Bureau and the Advisory, Conciliation and Arbitration Service (ACAS) can advise on or offer those services.

29 March 2021