

Mandates of 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

REFERENCE:
AL LKA 3/2020

4 June 2020

Excellency,

We have the honour to address you in our capacities as 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; Working Group on the issue of human rights and transnational corporations and other business enterprises; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 42/9, 35/7, 36/6, 35/15, 34/19 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the role of Keenie Meenie Services Ltd. as well as UK nationals employed and/or contracted by the company, in violations of international humanitarian law and international human rights law that were allegedly committed during the armed conflict in Sri Lanka between 1984 and 1988, as well as the related lack of accountability and remedies for victims.

According to the information received:

Between 1984 and 1988, Keenie Meenie Services Ltd. (KMS), a private military and security company, provided military training and other forms of military support to Sri Lankan military and security forces, notably the Special Task Force. KMS provided its services to the then Government of Sri Lanka during a period of armed conflict between Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), during which serious violations of international humanitarian law and international human rights law were allegedly committed by both sides. While the company registered its accounts offshore and eventually its directors took up formal residence in the Cayman Islands, the company was run and staffed by British nationals and used an office in London.

From 1984 to 1988, KMS deployed personnel with varying roles and responsibilities to Sri Lanka. Over these four years, KMS personnel provided military training to approximately 120 new commandos of the Special Task Force every 12 weeks, including on the use of weapons. During this period, the Special Task Force is alleged to have committed numerous violations of international humanitarian law and

international human rights law, including: killing of civilians, summary executions, mass arrests, enforced or involuntary disappearances, burning and looting of property, and forced displacement.

While the specific role of KMS in these alleged violations is unknown, the company was increasingly active in providing military training and support to the Special Task Force. Over the years, its support expanded to other parts of the Sri Lankan military and security apparatus, and the roles it took on increasingly appear to have gone beyond strengthening operational capability to encompass senior policy-making and advice, with indications that some KMS personnel may have had some level of command responsibility at specific times.

It is alleged that by March 1985, KMS personnel were assigned senior roles in Sri Lanka's military apparatus in relation to military operations and military intelligence, and that KMS reviewed Sri Lanka's military command structure. In addition, the company had assigned an advisor to Sri Lanka's National Intelligence Bureau, which operated in parallel to the Special Task Force.

By January 1987, KMS had 38 operatives in Sri Lanka, including 17 training the Special Task Force. A KMS sniper instructor was training the army commando regiment, a KMS employee was embedded with the Joint Operations Command, and KMS was training naval land units. Half a dozen KMS military instructors had moved from Maduru Oya to Palaly, which was much nearer the frontline. In the same month, KMS began training army battalions to participate in a major operation in Jaffna later in the spring. KMS delivered training for the so-called Operation Liberation at both command and battalion level. A new KMS lieutenant colonel was stationed in the Joint Operations Command to train intelligence staff for this operation.

Additionally, the actions of KMS pilots are worth highlighting. In August 1985, while a ceasefire had been agreed between Sri Lanka and the LTTE, five KMS helicopter pilots and two fixed-wing pilots arrived in Sri Lanka. As of late 1985, KMS personnel were piloting helicopter gunships in Sri Lanka.

From late 1985, there were allegations that helicopter attacks were resulting in violations of international humanitarian law and international human rights law. It appears that KMS pilots primarily served as co-pilots. In May to June 1986, a KMS employee regularly co-piloted an armed helicopter, including during operations in which civilians were allegedly killed. In one such incident brought to our attention, on 7 June 1986, a KMS employee co-piloted a helicopter from which it is alleged that the door gunner shot at a bus suspected to carry LTTE combatants as well as civilians. The door gunner allegedly continued to fire as men, women and children fled from the bus. Local sources reported that the incident resulted in the deaths of two civilians and two others were wounded.

In other instances, a KMS employee was said to be the main pilot. It is reported that, on 20 June, a KMS employee took control of a helicopter mid-flight and taught the door gunners how to fire 1,000 bullets at LTTE combatants below them at Tondamanna, on the northern coastline, during which 12 combatants were killed.

We are not aware of any investigation launched by Sri Lankan authorities into the role of KMS during the period of armed conflict between 1984 and 1988 when it is alleged that violations of international humanitarian law and violations and abuses of international human rights law were committed.

While we do not wish to prejudge the accuracy of these allegations, we express our concern that investigations do not appear to have been carried out into KMS' activities, notably the company's direct and indirect roles in alleged violations of international humanitarian law and international human rights law committed in Sri Lanka between 1984 and 1988. We are concerned that, during this period, KMS personnel performed functions that may have entailed military command responsibility, directly participated in hostilities as helicopter gunship pilots, increased military capacity during a ceasefire, and provided military advice and training to military and security units that are alleged to have committed violations. We are further concerned about allegations that no action was taken to hold the alleged perpetrators to account and to provide access to effective remedies for victims.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
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 abuses and violations of international human rights law is preserved for accountability purposes.
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.
4. Please highlight the steps that the Government is taking, or is considering taking, to ensure non-recurrence of the alleged violations and abuses, 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary measures be taken to investigate the allegations raised above.

Please note that a letter expressing similar concerns was sent to the Government of the United Kingdom.

Please accept, Excellency, the assurances of our highest consideration.

Chris Kwaja

Chair-Rapporteur of 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

Githu Muigai

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Fabian Salvioli

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to refer to the right to a remedy and reparation which is firmly enshrined in international human rights instruments, including article 8 of the Universal Declaration of Human Rights (UDHR) and article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), the latter ratified by Sri Lanka in 1980. This right is further elaborated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/Res/60/147).

In its general comment No. 31 (CCPR/C/21/Rev.1/Add.13), the Human Rights Committee finds that States' obligations to protect and fulfil human rights extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private companies, and to take positive steps to fulfil human rights. Furthermore, in order to fulfil its obligations, a State must take appropriate measures "to prevent, punish, investigate or redress the harm caused by ... acts of private persons or entities" (para. 8). It also finds that the duty of States to make reparations to individuals whose rights under the ICCPR have been violated is a component of effective domestic remedies. "A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.... Without reparation to individuals whose Covenant rights have been violated, the obligation to provide effective remedy ... is not discharged." (para. 15-16).

Principle 1 of the updated Set of principles for the protection and promotion of human rights through action to combat impunity sets out the general obligations of States to take effective action to combat impunity (E/CN.4/2005/102/Add.1). Specifically, States have obligations to: investigate violations; take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; provide victims with effective remedies and ensure that they receive reparation for the injuries suffered; ensure the inalienable right to know the truth about violations; and take other necessary steps to prevent a recurrence of violations.

We wish to refer here to the inherent right to life, as enshrined in article 3 UDHR and in article 6 of the ICCPR. States are required to carry out thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions as outlined in principle 9 of the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65 of 24 May 1989). States are further required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences, as recalled by the Human Rights Committee (CCPR/C/GC/36, para 15).

We wish to recall the absolute and non-derogable prohibition of torture as a jus cogens norm. This is also codified in article 5 of the UDHR and article 7 of the ICCPR. Pursuant to paragraph 18 of the General Comment No. 2 of the Committee against Torture

(CAT/C/GC/2, 24 January 2008), State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors have to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors.

The obligation to investigate allegations of enforced disappearance and hold criminally responsible perpetrators, as well as certain superior officers is contained in article 6 of the International Convention for the Protection of All Persons from Enforced Disappearance, which Sri Lanka ratified on 25 May 2016. The Convention also requires states to take all necessary measures to establish competence to exercise jurisdiction over enforced disappearance when committed on its territory or when the alleged offender or disappeared person are its nationals (article 9).

As laid out in the United Nations Guiding Principles on Business and Human Rights (A/HRC/RES/17/31), States must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur. Furthermore, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

We would also like to bring to the attention of your Excellency’s Government the following provisions of international humanitarian law. Article 3, common to the four Geneva Conventions, which is applicable to situations of non-international armed conflicts and establishes fundamental rules from which no derogation is permitted, including, *inter alia*, the absolute prohibition of “violence to life and person” of persons taking no active part in the hostilities. Moreover, under common Article 1, States have an obligation to respect and ensure respect for the Geneva Conventions. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as by other States and non-State parties.

The ‘Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict’ recalls certain existing international legal obligations of States regarding private military and security companies. Applicable provisions of international law articulated therein are therefore relevant to all States regardless of whether they have pronounced their support for the Document. In this regard, we wish to highlight that ‘territorial States’ have an obligation, within their power, to ensure respect for international humanitarian law by private military and security companies on their territory. Territorial States have an obligation to enact any legislation necessary to provide effective penal

sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches. They must also bring such persons, regardless of their nationality, before their own courts, or hand such persons over for trial to another State concerned, provided such State has made out a prima facie case, or to an international criminal tribunal. 'Territorial States' have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, in accordance with their obligations under international law.