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Your Ref:

Our Ref: REC/EAK/00065492/9

Date: 9 September 2019

BY EMAIL ONLY

Dear Sirs

**Re: Campaign Against Arms Trade
Licences for the Sale or Transfer of Arms or Military Equipment to the
Kingdom of Saudi Arabia**

We write further to our correspondence with the Government Legal Department of 1 and 28 August 2019 in which we explained that we wished to provide you with information and evidence to be taken into account in the reconsideration by the Secretary of State for International Trade of the export of military equipment to the Kingdom of Saudi Arabia (“KSA”) for possible use in Yemen, further to the judgment in the Court of Appeal in *Campaign Against Arms Trade v. Secretary of State for International Trade* [2019] EWCA Civ 1020 and paragraph 3 of the Order of the Court of Appeal dated 20 June 2019. We note that the Secretary of State has confirmed to Parliament, by written answer of 3 September 2019, that no new licences will be issued pending reconsideration of the design of its process for licensing to ensure compliance with the judgement.¹

¹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-07-23/281025>

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Recent Evidence of Violations of IHL

To assist your clients' review, the Campaign Against Arms Trade ("**CAAT**") attaches to this letter further evidence regarding violations of international humanitarian law ("**IHL**") by the Saudi-led Coalition in Yemen.

This evidence dates from February 2017 (the date of the substantive hearing before the Divisional Court) until September 2019 and includes a non-exhaustive list of many of the most serious incidents in which IHL appears to have been (or has been found to have been) violated by the Saudi-led Coalition in airstrikes and other military operations in Yemen. This substantial body of evidence includes detailed findings of violation by: the UN Panel of Experts on Yemen, appointed by the UN Security Council; the newly established Group of Eminent Experts on Yemen, appointed by the UN High Commissioner for Human Rights, pursuant to a mandate conferred by the UN Human Rights Council; and investigative reports by reputable international NGOs. In many cases, findings of violation by these bodies follow extensive investigation, involving analysis of eye-witness testimony and technical analysis by experts. We understand that the Global Legal Action Network ("**GLAN**") has submitted evidence prepared by Bellingcat, which also identifies numerous serious violations of IHL by the Saudi-led Coalition.

Collectively, the available evidence (including that which we have summarised in the attached documentation and the reports by UN agencies and NGOs) provides an overwhelming body of material demonstrating a pattern of violations of IHL by the Saudi-led coalition in Yemen.

Every independent expert body which has examined the conduct of hostilities by the Saudi-led coalition in Yemen has concluded that IHL has been violated repeatedly.

This new material must be taken into account alongside the substantial body of existing evidence of violations of IHL which we placed before the Divisional Court at

the time of the hearing. As regards the new material, we draw your clients' attention, in particular, to the following:

- a. The reports of the Panel of Experts on Yemen addressed to the UN Security Council found at: <https://www.un.org/securitycouncil/sanctions/2140/panel-of-experts/work-and-mandate/reports>. These include the report for the year 2016 which was not available in OPEN proceedings at the time of the Divisional Court hearing and reports subsequently published in respect of 2017 and 2018 (in each case in January of the following year). These reports provide an account of the Panel's investigation of incidents and findings on actual or potential violations of IHL and/or war crimes on the part of the Saudi regime.
- b. The reports of the Group of Eminent Experts on Yemen submitted to the United Nations High Commissioner for Human Rights, found at: <https://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Index.aspx>. The reports of 28 August 2018 and 3 September 2019 report detail numerous incidents amounting to actual or potential violations of IHL and/or war crimes on the part of the Saudi regime. Its reports also identify serious concerns about the adequacy of JIAT investigations and the Saudi regime's accountability generally.
- c. We also draw your attention to Bellingcat's detailed investigations relying on open source information: <https://yemen.bellingcat.com/investigations>.

This evidence demonstrates that there is a clear and consistent historic and continuing pattern of breaches of IHL. There is no discernible trend of improvement. The reports indicate the killing of civilians in violation of the principles of distinction and/or proportionality as well as impermissible attacks on the protected persons and facilities, including medical personnel, as well as health and educational facilities.

As noted in the EU User's Guide: "where a certain pattern of violations can be discerned or the recipient country has not taken appropriate steps to punish violations, this should give cause for serious concern." In that regard, we further note with grave concern the grant of immunity to members of Saudi forces in Yemen by Prince Mohammed bin Salman bin Abdulaziz on 10 July 2018.

Given all of this material, our clients do not understand why Rt Hon Dr Andrew Murrison MP on 3 September 2019 voiced disagreement with the Court of Appeal's decision and sought to affirm that the UK's processes are 'among the most robust in the world'. On the contrary, the fact that this pattern of violations has persisted over a period of five years, demonstrates that any confidence your clients felt able to place in assurances the Government had obtained from the Saudi regime as regards compliance with IHL at the time of the Divisional Court hearing was seriously misplaced. The devastating consequences which arise from the use of military equipment supplied to the Saudi regime is starkly demonstrated by the incidents referred to in the annex to this letter.

In these circumstances, the Secretary of State is duty bound to refuse licences for the export of military equipment to Yemen, and to suspend existing licences for the export of military equipment. In accordance with the Consolidated EU and National Arms Export Licensing Criteria (25 March 2014), Criterion 2(b) and (c), your clients' policy is as follows:

Criterion Two

The respect for human rights and fundamental freedoms in the country of final destination as well as respect by that country for international humanitarian law.

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, the Government will:

...

b) exercise special caution and vigilance in granting licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the European Union;

c) not grant a licence if there is a clear risk that the items might be used in the commission of a serious violation of international humanitarian law.

...

In considering the risk that items might be used for internal repression or in the commission of a serious violation of international humanitarian law, the Government will also take account of the risk that the items might be used to commit gender-based violence or serious violence against women or children.

As the Court of Appeal found at [138] of its judgment: “*the question whether there was an historic pattern of breaches of IHL on the part of the Coalition, and Saudi Arabia in particular, was a question which required to be faced. Even if it could not be answered with reasonable confidence in respect of every incident of concern (which CAAT accepts, and so do we) it is clear to us that it could properly be answered in respect of many such incidents, including most, if not all, of those which have featured prominently in argument. At least the attempt had to be made.*”

That is a question which requires to be faced not only in respect of the incidents arising up until the Divisional Court’s hearing of our clients’ claim in February 2017, but also in respect of incidents following the hearing up until the present date. The totality of evidence must be examined, with the required “special caution”. Given the overwhelming nature of the evidence before the Secretary of State, the only rational conclusion available is that that there is a “clear risk” that any further exported arms “might” be used in the commission of a serious violation of international humanitarian law. As such, no new licences ought to be granted and existing licences must be suspended.

Leigh Day

We await the outcome of any retaken decision on the part of your clients. In the meantime, if your clients require any further information we remain ready to assist.

Yours faithfully

A handwritten signature in black ink that reads "Leigh Day". The signature is written in a cursive style with a large, sweeping 'L' and a long tail on the 'y'.

Leigh Day