

Supplementary written evidence submitted by Campaign Against Arms Trade

Updated Submission from Campaign Against Arms Trade to the Committees on Arms Export Controls inquiry into UK arms exports in 2019: *Further call for evidence on the 'Strategic Export Controls Annual Report 2020*

1. The Campaign Against Arms Trade (CAAT) in the UK is working to end the international arms trade. This trade has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems. In February 2021 CAAT was honoured to receive a joint nomination for the Nobel Peace Prize with our Yemeni partners, Mwatana for Human Rights.¹ The nomination is intended to draw attention to the suffering of the Yemeni people and to CAAT's Judicial Review which challenges the UK government's decision to resume arms sales to the Saudi-led coalition bombing Yemen.
2. This submission looks at arms sales to Saudi Arabia; Turkey; Hong Kong; Open Licences; Compliance and Enforcement; and makes a number of recommendations.
3. It is again disappointing that the Terms of Reference for this inquiry did not specifically mention the Court of Appeal Judgement about Military Exports to Saudi Arabia, given the significance of this development to arms export controls in the UK, and the fact that this issue is the subject of Section 4 of the 2020 Annual Report, as it was in 2019.² However, given that the TOR are inclusive of 'UK arms exports in 2020', and 'Areas of improvement and areas of concern or omission from the 2019 Report' we have seen fit to address this issue and Open Licences in our submission.
4. It is not possible to accurately investigate enforcement and compliance matters, as the Committees wish to, outside of a context where the Government has admitted that UK manufactured arms have been used in repeated violations of International Humanitarian Law in Yemen. Before the Committees focus on exports not in compliance with licensing regulations, there is a need to address the fact that the Government is issuing licenses that run contrary to international and UK law.

Saudi Arabia

5. As noted in the Section 4 of the 2020 Annual Report in April 2021, CAAT was granted permission for a judicial review of the UK government's decision to renew arms sales for use in the war in Yemen to proceed to the High Court. As detailed in our previous submission the government's conclusions that there were only a "small number" of violations of IHL committed by Coalition forces, and that these did not form a "pattern", are irrational, flying in the face of the weight of evidence to the contrary. Even "isolated incidents" of violations could constitute a clear risk of further violations.

¹<https://mwatana.org/en/>

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940273/uk-strategic-export-controls-annual-report-2019-web-accessible-version.pdf

6. The humanitarian crisis in Yemen continues unabated. Two weeks ago the World Food Programme Executive Director, David Beasley, stated ‘We’ve got 5 million people right now knocking on famine’s door, we’ve got 16 million people marching toward starvation’.³ It comes as the UK reduced aid to Yemen by 60% earlier this year.
7. At the Human Rights Council in September⁴ the Group of Eminent International and Regional Experts on Yemen reiterated its call for third States to stop providing arms and military support to the parties given the role of such transfers in perpetuating the conflict and potentially contributing to violations.
8. Speaking to the Security Council in September⁵ Hans Grundberg, UN Special Envoy for Yemen has called on ‘external actors to encourage de-escalation. Their involvement should be based on supporting a Yemeni-led political settlement.’ The UK has entrenched itself as an actor in this conflict, not only by its unwavering support to the Coalition through the transfer of arms, but by fighting the application of the rule of law - of International Humanitarian Law in particular - in its own courts. Refusing to restrict any arms exports to Saudi Arabia has contributed to a climate of impunity for violations in Yemen, and led to the deaths of at least 8,773 civilians from airstrikes by the Coalition.⁶
9. CAAT looks forward to the judicial review taking place in 2022, and pursuing a legal remedy to these violations. However as the war in Yemen reaches its seventh year in March 2022, we implore all departments involved in undertaking licence assessments - the Department for International Trade, the Foreign, Commonwealth and Development Office, the Ministry of Defence, the National Cyber Security Centre and the Department for Business, Energy and Industrial Strategy - to take heed of the calls made by the UN Group of Experts and the Special Envoy to end the transfer of arms and military support and encourage de-escalation. The fact that the UK defence industry is so reliant on arms sales to Saudi Arabia, (and its involvement in the war in Yemen in particular) is clearly at odds with such asks should be of grave concern for all parties.

Turkey

10. CAAT welcomes that following a review Turkey was removed as a permitted destination on a number of OGELs, in accordance with a statement by the then Foreign Secretary in October 2019.
11. While the report noted that additional assessments had to be undertaken resulting in longer processing times, the process by which these assessments are made and the factors taken into account in decision making were not detailed in the report. The Annual Report’s emphasis on transparency would be greater realised if more information on these decision making processes was provided.

³<https://www.theguardian.com/global-development/2021/sep/23/16-million-in-yemen-marching-towards-starvation-as-food-rations-run-low-un>

⁴<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27458&LangID=E>

⁵<https://osesgy.unmissions.org/briefing-united-nations-security-council-special-envoy-yemen-%E2%80%93-hans-grundberg>

⁶<https://yemendataproject.org/data.html>

Hong Kong

12. CAAT welcomes the arms embargo that has been placed on Hong Kong following the oral statement made by the then Foreign Secretary on 20 July 2020.

Open Licences

13. The UK Government claims to operate a ‘rigorous and robust’ arms export licensing system, and to be a leader in transparency. However one of the biggest gaps remains the open licensing system including Open Individual Export Licences (OIELs) and Open General Export Licences (OGELs). A large proportion of UK arms exports are made using the open licensing system,⁷ which allows for potentially unlimited transfers of the equipment authorised, without companies being required to report the value of the transfers or the precise equipment that is exported. Basic information, such as the total value of arms sold by the UK each year, cannot be calculated from the data provided.
14. In July 2021 Campaign Against Arms Trade published a report ‘[Open? The UK’s secret arms sales](#)’, which found that the UK has sold over £20 billion worth of military equipment and services to Saudi Arabia since 2015, almost three times higher than the £6.7 billion worth of arms sales published by the Department of International Trade in the same time period (as of July 2021). CAAT estimates that Open Licences account for the majority of the UK arms trade, making this gap in transparency even more critical.
15. During the brief period when new arms export licences to Saudi Arabia were halted as a result of the Court of Appeal ruling in CAAT’s favour in June 2019, OGELs covering Saudi Arabia and its coalition partners were suspended to new company registrations – but companies already registered were able to continue to use these licences. Thus, a large proportion of UK arms sales to Saudi Arabia, in particular the supply of spares and maintenance support for the Saudi Air Force carried out by BAE as part of UK-Saudi agreements, was able to continue uninterrupted.
16. In summary, open licences: obscure the true level of UK arms exports, in total and to different countries, creating a serious gap in transparency; make arms exports considerably easier, including to highly repressive regimes and countries in conflict; and make it easier for the government to create an illusion of restraint by halting new licences, while allowing previous long-lasting open licences to remain in place.

Compliance and Enforcement

17. A key issue with Section 8 of the 2020 report ‘Compliance and Enforcement’ is that the data on compliance levels makes no reference to specific companies, countries or regions. It is not possible to discern how these trends relate to particular users over time - data which could be anonymized and still included - or if there are greater compliance issues with respect to some

⁷This is apparent from the huge gap between arms export contract figures reported by the DIT’s UK Defence & Security Exports (formerly DSO), which amounted to £86 billion between 2010-19 and the value of Single Individual Export Licences issued over the same period (£42 billion). While some of this difference might be explained by the gap between the agreement of a sale and the issuing of a licence (which can work both ways), it is clear that a very large volume of exports is not being captured by the SIEL figures.

end-users more than others. Three hypothetical reasons for a non-compliant assessment are given, but no actual examples as taken by the ECJU Compliance Officer.

18. 12% of revisits for non-compliant assessments remained non-compliant in 2010, a 2% improvement on 2019. However the percentage of revisits that are fully 'compliant' have been dropping substantially, from 69% in 2018 to just 50% in 2020. Although the percentage of first compliance checks deemed 'compliant' has improved overall (from 40% in 2018 to 48% in 2020), these trends suggest that those with the poorest compliance continue to make serious errors despite enforcement measures.
19. A useful indication of the scale and adequacy of enforcement and compliance sanctions available would be figures on the rate of recidivism of exporters; however this data is not included in the report. The Compliance Team issued 51 warning letters during 2020 (down from 97 in 2019) for 'substantive infractions', which would appear to correspond to the 'non-compliant' criterion, leading to the suspension of three licences for repeated infractions. However, apart from these three suspensions, no further data is included on the rates of compliance for those who received a warning letter, and therefore its effectiveness is difficult to assess.
20. There were no prosecutions finalised in the courts again in 2020, although it's stated that there were several ongoing criminal investigations during this period. The 2019 Annual Report noted that in September 2019 there were 15 live investigations. From the information provided in the 2020 Annual Report it's not clear if these investigations have been concluded or are still ongoing. Either way only three prosecutions have been finalised in the courts since 2016, substantially lower than the number of prosecutions recorded in any 5 year period between 2007 - 2015.
21. The report notes that HMRC assesses all breaches of arms export controls and sanctions. It is unclear why this Section of the report makes no reference to the Consolidated Criteria despite its emphasis on non-compliance - which ultimately cannot be divorced from the procedures for assessing licence applications in the first place.
22. The lack of significant consequences for companies that are repeatedly non-compliant with export control regulations does little to deter future non-compliance by these and other companies. This increases the likelihood that exports take place that are not approved and that would not be approved by the government, potentially to undesirable actors and/or with negative consequences for conflict, human rights violations, and proliferation.

Recommendations

In light of the analysis and concerns raised above, CAAT reiterates the recommendations made in our previous submission with reference to UK arms exports. We urge the Ministry of Defence, Department for International Trade, and the Foreign, Commonwealth and Development Office to:

- Immediately end the supply of military equipment to Saudi Arabia, in line with Criteria 2c of the Consolidated Criteria and in light of the overwhelming evidence of violations of International Humanitarian Law in Yemen, in line with repeated calls from Yemeni and international civil society and from the UN Group of Eminent Experts on Yemen.

- End the promotion of, and support for, arms exports and develop industrial strategy which uses the skills locked up in the arms industry to the advantage of other sectors and the economy and security of the UK as a whole.
- Introduce a "presumption of denial" that export licences will not be issued where the equipment to go to an area of conflict or human rights violating governments.
- Ensure significant consequences for companies that are repeatedly non-compliant with regards to export control regulations.
- Provide data on the rates of recidivism for those companies who have been subject to enforcement measures by ECJU Compliance Officers, the Border Force, and the Crown Prosecution Service, and quantitative and/or qualitative data on the relationship between the Consolidated Criteria and breaches of compliance.

Open Licences

- Instate a requirement for companies operating both Single and Open Licences to provide data on the financial values and quantities of actual transfers made under these licences, and to make this information available on the Government database.
- Include long-lasting open licences, such as OIELs and OGELs, in the revocation or suspension of existing licences, particularly where the revocation or suspension relate to Criterion Two of the Consolidated Criteria.⁸
- End the issuing of Open Licences to countries engaged in armed conflict or with poor human rights records.

4 October 2021

⁸'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.'