

# Strengthening parliamentary oversight of UK Special Forces:

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Parliamentary oversight of UK Special Forces should be strengthened to enhance accountability and protect civilians. This brief recommends establishing a specialised parliamentary committee responsible for scrutinising Special Forces operations, relaxing the government’s ‘No Comment’ policy on matters regarding the use of Special Forces, and reforming legal frameworks to improve accountability and effective investigation of alleged violations.

### Introduction

The UK government states that UK Special Forces (UKSF), comprising the Special Air Service (SAS), Special Boat Service (SBS), Special Reconnaissance Regiment, 18 Signals Regiment and the Special Forces Support Group, undertake high-risk operations in support of UK interests on behalf of the Ministry of Defence (MoD).<sup>1</sup> According to researchers, UKSF were deployed in at least 19 countries between 2011 and

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<sup>1</sup> UK Government, [‘UK Special Forces’](#).

2021, making the UK one of the top four nations with the largest Special Operations Forces (SOF) footprints globally.<sup>2</sup> Although still bound by the rules of international humanitarian law (IHL), also known as the law of armed conflict, UKSF typically operate under different rules of engagement compared to other military units, even when they are deployed side by side. Furthermore, unlike all other branches of the British military, the UKSF operate without external oversight, making the UK an outlier among its allies and neighbours.

Ongoing revelations of significant civilian harm caused by UKSF operations, allegedly in violation of international law, underscore the urgent need for enhanced oversight and accountability. Some of the most troubling allegations have emerged from the conduct of UKSF in Afghanistan. The UN Assistance Mission in Afghanistan reported that between 2009 and 2012 night raids and other search operations by British, American and other special forces led to 295 civilian deaths.<sup>3</sup> According to BBC Panorama's investigations, one UK SAS unit unlawfully killed 54 people in six months, then justified these killings with claims of self-defence in official military reports. Sources inside the UKSF have since alleged that certain units operated with an 'unofficial policy... to kill wherever possible fighting-aged males on target,' even if they were restrained or posed no threat.<sup>4</sup> Although senior officers, including the Director of Special Forces, were aware and concerned by the conduct of UKSF in Afghanistan, they failed to refer any case to the Service Police.<sup>5</sup> As of the time of publication, there have been no prosecutions for alleged IHL violations committed by UKSF personnel in Afghanistan, although a public inquiry is currently underway.

Enhancing oversight of Special Forces should be a priority for the new UK government to prevent and address civilian harm, especially given the escalating levels of global conflict and high rates of deployment. Oversight would not only promote accountability for any misconduct by UKSF but also deter future violations by demonstrating that wrongdoing entails repercussions. Greater informational transparency and effective justice mechanisms are also essential for victims to access their right to redress.

Accountability is foundational to public trust in the UK military. The failure to hold accountable those responsible for IHL violations, including possible war crimes, undermines the credibility of the UK's commitment to protecting human rights and upholding international law. The perceived impunity of UKSF also erodes trust and cooperation with local communities.

Moreover, it has been argued that the current lack of oversight has also contributed to an overreliance on UKSF, with the government authorising the use of Special Forces for operations traditionally performed by regular armed forces, thereby avoiding parliamentary scrutiny.<sup>6</sup> As a consequence, UKSF risk overstretch, with heightened potential for fatigue, physical injury and stress-related disorders.

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<sup>2</sup> Murray Jones and Iain Overton, [A decade of UK Special Forces Operations examined](#), Action on Armed Violence (AOAV), May 2023; Jon Moran, [Assessing SOF Transparency and Accountability](#), Remote Control, Oxford Research Group, July 2016.

<sup>3</sup> Murray Jones, [Analysis: the 19 countries where UK Special Forces have been actively deployed since 2011](#), AOAV, May 2023.

<sup>4</sup> Independent Inquiry Relating to Afghanistan, [Memo: Allegations of EJK by UKSE](#), April 2011.

<sup>5</sup> Ibid.

<sup>6</sup> Liam Walpole, [The US Congress understands the importance of Special Forces oversight, why doesn't the UK Parliament?](#), March 2019.

Therefore, both the protection of civilians and the proper governance of UKSF resources necessitate enhanced oversight. This briefing will explain the current lack of parliamentary oversight and inadequacies of existing accountability mechanisms, highlight the UK's investigatory obligations under international law and propose policy recommendations after comparing the regulatory frameworks of British allies.

## **Lack of accountability and oversight**

The UKSF's lack of accountability can be attributed to two systematic shortcomings: the absence of external (i.e. parliamentary) oversight and the failure of internal accountability mechanisms, including within the MoD.

### **Current lack of parliamentary oversight mechanisms**

The Special Forces are the only piece of the UK's defence, security, and intelligence apparatus not subject to any form of parliamentary oversight.<sup>7</sup> While the Armed Forces and other defence bodies generally are accountable to the House of Commons Defence Committee, the Joint Committee on National Security Strategy (which oversees the National Security Council) and the Intelligence and Security Committee (which oversees the intelligence agencies), the UKSF are exempt from supervision. Although there is said to exist a constitutional convention requiring the Prime Minister to consult Parliament before authorising the deployment of British forces, the Special Forces are regarded as an exception and the decision to deploy UKSF is not subject to the same level of consultation.<sup>8</sup>

In addition, for at least thirty-six years, the UK government has adhered to a 'no comment' policy with regards to UKSF, and the MoD routinely refuses to give Parliament information regarding UKSF operations, even when asked by MPs for basic details.<sup>9</sup> Consistent with this stance, the Freedom of Information Act 2000 provides public access to information held by governmental authorities but makes an explicit exception for special forces along with the intelligence agencies in Section 23(3).

### **Inadequacies of existing internal accountability mechanisms: A case study of UKSF in Afghanistan**

In the absence of external oversight, UKSF are corporately accountable to the Ministry of Defence, which may launch internal investigations into alleged misconduct, and individually accountable under the service justice system. However, internal accountability mechanisms are insufficient at best and ineffective at worst. Documents disclosed during High Court proceedings in July 2020 show that when senior officials within UKSF were notified of the over-use of lethal force in Afghanistan, despite concerns about the 'casual disregard for life,' there were failures to report up in the chain of command or refer incidents to the Royal Military Police (RMP). Even when the Director of Special Forces ordered an internal review into the 'tactics,

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<sup>7</sup> Abigail Watson, [The Dangers of the UK's Blanket No Comment Policy](#), RealClear, July 2017.

<sup>8</sup> Claire Mills, [Military action: Parliament's role](#), House of Commons Library, April 2024.

<sup>9</sup> Louis Platts-Dunn and Rupert Schulenburg, [The UK Government's "Long-Standing Policy" on Special Forces Operations: A review 1940-2020](#), AOA, March 2021.

techniques and procedures' deployed on night raids, the terms of reference 'did not direct [MoD officials] to investigate whether the post-operational paperwork was correct.'<sup>10</sup> Instead, implausible official reports were taken at face value.

Moreover, there is extensive evidence of systematic attempts to cover up wrongdoing within UKSF. These practices range from the 'destruction of evidence and coaching of witnesses' to the fabrication of post-operational paperwork to conceal criminal activity with implausible explanations, which are credulously accepted.<sup>11</sup> In fact, during a previous investigation, a UKSF server containing crucial data pertaining to suspicious operations was wiped immediately before it was seized. This followed months of negotiations during which the UKSF denied and delayed external access to the server.<sup>12</sup> More recently, UKSF blocked relocation applications submitted by Afghan Special Forces personnel, who fought alongside UKSF and may have witnessed war crimes committed by UKSF members.<sup>13</sup>

Given the track record of internal cover-ups and the repeated reluctance of UKSF to cooperate with investigators, it is unsurprising that previous investigations into UKSF have been unfruitful. Under Operation Cestro, the RMP investigated four killings in Loy Bagh, a village in Helmand, southwestern Afghanistan. While three soldiers were referred to the Service Prosecuting Authority, the investigation resulted in no prosecutions. Similarly, in 2014, the RMP launched Operation Northmoor to examine allegations of executions carried out by UKSF, but the investigation closed in 2019 with no charges pressed. The MoD stated that no evidence of criminality was found but RMP investigators interviewed by the BBC disputed this statement.<sup>14</sup>

Following High Court disclosures, the UK government established in December 2022 an independent statutory inquiry into alleged unlawful activities by UKSF in Afghanistan between 2010 and 2013, chaired by Lord Justice Sir Charles Haddon-Cave. The inquiry's updated terms of reference include consideration of the adequacy of the MoD's response to concerns and the RMP investigation of allegations.<sup>15</sup> In March, the inquiry's Phase 1 Deliberate Detention Operations (DDO) hearings concluded after the examination of core evidence. With numerous phases still left in the inquiry, the MoD has already been accused of stalling proceedings by not putting enough resources into meeting the inquiry's deadlines.<sup>16</sup> This ongoing inquiry marks a step toward greater transparency and accountability given it is in part public, chaired by a senior judge and holds the power to summon witnesses. The inquiry is essentially a fact-finding mechanism and is not set up to determine liability. Hence, there remains a need to establish formalized accountability mechanisms to ensure crimes are investigated and prosecuted.

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<sup>10</sup> Sam Raphael, [UK Special Forces War Crimes: The Key Documents](#), Unredacted, February 2024.

<sup>11</sup> Doug Faulkner & Hannah O'Grady, '[Afghanistan inquiry hears senior officers hid SAS killings](#)', BBC, October 2023.

<sup>12</sup> AOV, '[Scrutinising allegations of UK Special Forces' extra-judicial killings: why was crucial evidential data deleted from SF servers?](#)', December 2023.

<sup>13</sup> Hannah O'Grady, Rory Tinman, Joel Gunter, and May Bulman, '[Special forces blocked UK resettlement applications from elite Afghan troops](#)', BBC Panorama, February 2024.

<sup>14</sup> Hannah O'Grady and Joel Gunter, '[SAS unit repeatedly killed Afghan detainees, BBC finds](#)', BBC Panorama, 12 July 2022.

<sup>15</sup> Independent Inquiry Relating to Afghanistan, [Revised Terms of Reference](#), September 2023.

<sup>16</sup> Joshua Rozenberg, '[MoD accused of SAS inquiry delays](#)', A Lawyer Writes, 26 April 2024.

## Myth, misuse, misconduct

With the televisionisation of the Iranian embassy siege in London in 1980, the reputation of UKSF became powerfully associated with images of stealth and daring. UKSF's mythical status in the British psyche was cemented over the following decade by government developing a strategy of not commenting on UKSF operations and declining to answer questions. This enabled UKSF to operate largely in the shadows but left them vulnerable to serious questions being raised about ill-conceived deployments and allegations being made about patterns of misconduct. (It also left UKSF members deployed on unacknowledged or denied missions without effective protection.)

Considerable concern was voiced, for example, over the use of the SAS to train Libyan special forces under the rule of former leader Muammar Gaddafi.<sup>17</sup> In 2019, questions were raised in Parliament over the deployment of UKSF in Yemen to support troops employing child soldiers.<sup>18</sup>

Allegations of the killing of civilians or those *hors de combat*, or use of excessive force, have dogged UKSF for decades. In 1995 the European Court of Human Rights found that the UK had violated the right to life in the SAS killing of three unarmed IRA members in Gibraltar.<sup>19</sup> More recently, five serving SAS members were detained as part of an investigation into the alleged murder of a suspected fighter in Syria.<sup>20</sup>

In these circumstances, internal accountability mechanisms have to date proved insufficient, particularly given conflicts of interest. UKSF are 'self-protective, hermetic, and loyal.'<sup>21</sup> Fundamentally, officers have the incentive to prevent the disclosure of information in protection of their own reputations and careers, and that of their comrades. For instance, in April, during an inquest into an alleged unlawful killing by an SAS soldier in Northern Ireland in 1986, the MoD came under scrutiny regarding its prior knowledge of a video documenting the incident.<sup>22</sup> Officials are dissuaded from raising concerns in order not to invite unwelcome public scrutiny. Hence, to prevent improper use of UKSF capability, to ensure accountability for previous violations and prevent future civilian harm, UKSF should be subject to external oversight.

## Legal mandate

A failure to investigate alleged violations committed by military forces and hold those responsible to account not only hinders affected civilians from accessing their rights but also potentially breaches the UK's obligations under international humanitarian law, international human rights law, and international criminal law.

Under international humanitarian law, the UK has obligations to investigate suspected violations and to prosecute individuals responsible for grave breaches of the 1949 Geneva Conventions and Additional Protocol I of 1977. This includes extrajudicial killings allegedly committed by UKSF in overseas operations.

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<sup>17</sup> Daily Telegraph, '[SAS trains Libyan troops](#)', 11 September 2009.

<sup>18</sup> Mail on Sunday, '[UN launches investigation after MoS exposé reveals British special forces are fighting on same side as child soldiers in Yemen civil war](#)', 31 March 2019.

<sup>19</sup> [McCann & Others v the UK](#), 21 ECHR 97 GC. Judgment, 27 September 1995.

<sup>20</sup> Guardian, '[Five SAS soldiers arrested in UK on suspicion of alleged war crimes in Syria](#)', 5 March 2024.

<sup>21</sup> Murray Jones, '[How the Context of Helmand and the Culture to UKSF Could Lead to This](#)', AOAV, July 2022.

<sup>22</sup> AOAV, '[MoD face scrutiny over SAS shooting video in Francis Bradley inquest](#)', April 2024.

The study on *Customary International Humanitarian Law* compiled by the International Committee of the Red Cross explicitly notes a state's obligation to 'investigate war crimes allegedly committed by their nationals or armed forces... and, if appropriate, prosecute the suspects.'<sup>23</sup>

Enhancing the accountability of UKSF is also a precondition of fulfilling international law obligations rooted in victims' right to remedy, which relies on proper investigations and impartial judicial processes. Victims' right to remedy is enshrined by numerous international treaties, for example, Article 2 of the International Covenant on Civil and Political Rights. Moreover, transparency and access to information are key elements of satisfaction – an important pillar of reparation – for victims of serious international law violations.<sup>24</sup>

In terms of international criminal law, Article 17 of the Rome Statute of the International Criminal Court establishes the principle of complementarity, which requires states to genuinely conduct investigations and prosecutions into alleged crimes 'to preclude the Court's jurisdiction.' Given the UK is a party to the Rome Statute and passed the International Criminal Court Act 2001 to give domestic effect to its obligations under the treaty, the Prosecutor of the ICC could initiate investigations and prosecutions into the UKSF if the UK fails to do so independently. Becoming the subject of an ICC investigation could seriously damage British credibility at international forums and delegitimize the UK's longstanding call to promote international rule of law.

### **Comparative analysis of allied states**

Given that they share the desire for tactical security in special forces operations, UK allies have faced similar challenges with overseeing their special forces. However, many nations have made notable improvements, especially the US and Australia, to enhance external and systematic oversight, leaving the UK an outlier amongst its allies. The track records of allied nations in strengthening accountability demonstrate the feasibility of enhancing external oversight without compromising military effectiveness. Moreover, given the close cooperation on the ground between UKSF and allied special forces, it would be beneficial to increase operational cohesion by aligning oversight practices.

In the United States, congressional oversight aims to ensure Special Operations Forces (SOF) are accountable to the public and comply with legal obligations. The Subcommittee on Emerging Threats and Capabilities of the Senate Committee on Armed Services can examine SOF by conducting hearings, requesting reports, and conducting independent investigations into operations.<sup>25</sup> Senators are able to scrutinise alleged misconduct with the committee's power to call witnesses, request documents, and ask questions directly to SOF leadership, then determine if an investigation is necessary. Moreover, the committee confirms the appointment of high-level Department of Defense and military officials, is able to ensure SOF leaders comply with hearings and allows the Senate properly to exert influence over the SOF.

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<sup>23</sup> ICRC, '[Prosecution of War Crimes](#),' IHL Database: Customary IHL, Rule 158.

<sup>24</sup> UN General Assembly, [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](#), December 2005.

<sup>25</sup> Hamza Bozkurt et al., [Accountability and Oversight of UK Special Forces](#), University of Essex & All-Party Parliamentary Group on Modern Conflict, June 2023.

In the House of Representatives, the Subcommittee on Intelligence and Special Operations of the House Committee on Armed Services has similar authority. Given the close cooperation between US SOF and UKSF, these congressional mechanisms provide potential models for enhancing parliamentary oversight. Forming standing bodies within the legislative branch uniquely enables appropriate democratic scrutiny, involving public accountability in regulatory processes.

In Australia, the publication of the Brereton Report in 2020 marked a turning point in special forces accountability, illustrating the importance of public access to information. After a detailed investigation, an inquiry team headed by Major-General Paul Brereton published details of 39 unlawful deaths of civilians and persons *hors de combat* caused by the Australian Defence Force (ADF) Special Operations Task Group between 2005 and 2016.<sup>26</sup> Consequently, the government issued public apologies and the Afghanistan Inquiry Reform Plan, which called for an independent study of the ADF, alternative confidential reporting mechanisms for allegations of serious operational incidents, and other structural reforms. The Brereton Report demonstrates how publicly available information generates political will to enhance accountability mechanisms, indicating the importance of transparency, in stark contrast with the UK's 'No Comment' policy.

### **Policy recommendations**

To protect civilian rights, prevent future violations of international humanitarian law and human rights, and ensure the proper use of UKSF, greater oversight and accountability are needed. The Haddon-Cave Inquiry into UKSF operations in Afghanistan is due to make recommendations in time on the adequacy of existing accountability mechanisms, but the MoD has already acknowledged serious shortcomings.

Ceasefire recommends that, in addition to strengthening internal accountability mechanisms and supporting the effective investigation of past alleged violations by UKSF, the UK government should:

1. Establish a parliamentary select committee dedicated to Special Forces issues (for example, formed from members of the Joint Committee on National Security Strategy and the Intelligence and Security Committee).
2. Relax the 'No Comment' policy to enable ministers to release unclassified information on the staffing, funding and strategy of the UKSF and to answer questions in Parliament on UKSF operations as deemed appropriate.
3. Reform the UK legal framework to allow for greater transparency and independence concerning investigations regarding UKSF operations.

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<sup>26</sup> Australian Government Defence, [Afghanistan Inquiry Report](#) (Public Release Version), 2020, Executive Summary, p 29.

### **Ceasefire Centre for Civilian Rights**

The Ceasefire Centre for Civilian Rights is an international initiative to develop civilian-led monitoring of violations of international humanitarian law or human rights; to secure accountability and reparation for those violations; and to develop the practice of civilian rights.

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