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Note Verbale No. 084

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 2/2021, further to the letter dated 26 January 2021 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on discrimination against women and girls.

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, 16 April 2021



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

Annex

RESPONSE OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

To communication AL GBR 2/2021 OF 26 January 2021 from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right to food; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the human rights to safe drinking water and sanitation; and the Working Group on discrimination against women and girls.

Thank you for your letter of 26 January 2021 to the Foreign Secretary regarding a registration and verification exercise in al-Hol and al-Roj camps located in north east Syria, as well as calls for repatriation of all individuals currently in north east Syria. You rightly highlight the seriousness of this situation and the many complicated humanitarian, security, and legal considerations that the UK Government continues to seek to address and notes with the utmost concern.

The UK will always comply with applicable international law, and expects the same from others. The UK carefully considers other actors' compliance with their own obligations and responsibilities before engaging with them.

As you have articulated, the context is extremely complex. From the UK alone, over 900 people have travelled to engage with the conflict in Syria and Iraq, against the clear advice of the UK Government. Of these, approximately 25% have been killed in the conflict, while just under half returned to the UK during the early stages of the conflict. Many of the others, along with thousands of other individuals from across the globe who travelled to join Daesh, of which large numbers are now in detention, are in prisons or in camps for internally displaced persons (IDP) where their liberty is curtailed. Detention facilities and IDP camps are run by a non-state actor, who is facing a significant, and at times overwhelming, challenge. That acute challenge cannot be divorced from the immensely challenging context of the ongoing insecurity and instability, including those caused from the ongoing threat from Daesh, and the vast volumes of individuals that were detained at the fall of Baghouz and the end of the physical caliphate. That non-state actor now has responsibility for ensuring the

humane treatment of the huge volume of those individuals in its custody, in accordance with its international humanitarian law (IHL) obligations.

We agree that this is a uniquely complex issue involving a broad range of people who have been involved or affected in different ways, and have a range of complex sets of circumstances. The UK Government is particularly sympathetic to the plight of British unaccompanied minors and orphans in Syria, and we will seek to facilitate the return of those children to the UK where feasible, subject to national security concerns, on a case-by-case basis. As the Foreign Secretary has previously stated, safely facilitating the return of orphans and unaccompanied British children, where possible, is the right thing to do. In line with this policy, the UK Government has already facilitated the return of a number of orphaned and unaccompanied British children to the UK.

The UK Government's priority is to ensure the safety and security of the UK. The adults remaining in the conflict zone include some of the most dangerous individuals, who chose to stay to fight, or otherwise support Daesh. They pose a greater threat to UK national security than individuals who returned earlier in the conflict. Where individuals do return to the UK, they will be investigated and, where there is evidence that crimes have been committed, they should expect to face prosecution.

We welcome your remarks about the need for fair trials and meaningful accountability. In this regard, the UK remains committed to seeing justice and accountability achieved through prosecution for crimes committed in the name of Daesh. Nevertheless, we disagree with the conclusion in the communication that no justice and accountability can be achieved in the region. Such prosecutions are complex and clearly should take place in the most appropriate jurisdiction. In our view, that will usually be in the region where the crimes took place and where victims and evidence are located. The UK continues to work closely with international partners to address the threat posed by Daesh fighters and to seek to establish an effective mechanism that can bring those who have fought for Daesh to justice for their crimes. The UK's position in relation to the death penalty is well known and well established, that we oppose it under all circumstances. Any trials that are conducted must be fair, and there must be full respect for due process.

It is essential that we do not make judgements about the national security risk which someone poses solely based on their sex or age, but instead should do so on the full facts of their actions, behaviours, and the ideology they may subscribe to. Women who travelled to join Daesh can, and in many cases do, pose as significant a risk to our national security as returning male fighters. Particularly, as Daesh came under increased military pressure, it broke with its earlier ideology and encouraged women to take up combat roles. All requests for consular assistance to return to the UK, irrespective of age or sex, are considered on a case-by-case basis, taking into account all relevant circumstances. This includes, but is not limited to, national security considerations and the threat identified in relation to the individual concerned.

The UK Government disagrees with the assertion made in the communication that British Nationals (or indeed any other individuals) located in north east Syria are within the UK's jurisdiction. We do not agree that a State's jurisdiction, with regard to international human rights law, can be founded in "de-facto or constructive jurisdiction". In particular, it is not clear from the communication the extent to which the statements in respect of jurisdiction are founded on a factual or legal basis, nor the extent to which the implied obligations for national governments are extended in the manner the Joint Communication set out.

The safety and security of the facilities and wellbeing of those detained referenced in your letter is ultimately the responsibility of the detaining authority, in this case, the 'Autonomous Administration of North and East Syria' (AANES) and the Syrian Democratic Forces (SDF). This includes ensuring that any operation carried out for registration, data-collection, and relocation adheres to their legal obligations and responsibilities as a non-state actor and as a detaining authority.

The humanitarian and security situation in north east Syria is extremely challenging. We expect all parties to the Syrian conflict to respect their obligations and responsibilities towards civilians under the applicable international law regimes that apply, including IHL – this includes providing the necessary access for humanitarian organisations to reach those in need. We also agree with the fundamental point that that all detention must have a clear basis in international or domestic law and comply with all requirements and standards under the applicable domestic and international law, wherever an individual is detained. Given the continuing non-international armed conflict, our view is that IHL applies and the SDF and AANES are bound by Common Article 3 to the Geneva Conventions of 1949.

While the above sets out the UK's current position, we are acutely aware of the current situation for those in al-Hol and al-Roj. The UK remains concerned regarding the recent reporting regarding al-Hol and the apparent deterioration in the situation, and continue to monitor the situation closely. In particular, we note that there has been a decline in the security situation in the annex and the main camp, including violence against NGO representatives and other humanitarian actors. This risks adversely impacting the delivery of humanitarian aid, if safe access for humanitarian workers cannot be sustained. We have repeatedly raised our concerns about humanitarian access and supply across Syria, including in the north east, in bilateral meetings and in multilateral fora such as the Humanitarian Task Force in Geneva, and at the UN Security Council, where we did so most recently on 25 February¹. Particularly in the context of COVID-19, we continue to encourage authorities to work with relevant humanitarian organisations, where possible to improve conditions and plan and take necessary precautions to prevent the spread of COVID-19.

The Global Coalition as a whole has invested more than \$4 billion to ensure that our partners on the ground and in the region are better trained and equipped than Daesh. As part of the Coalition efforts to prevent the resurgence of Daesh, the UK has provided support and funding to a range of initiatives across the region. The UK remains at the forefront of the humanitarian response to the Syria Crisis, spending over £3.5 billion since February 2012, to help people in need within Syria and refugees in neighbouring countries; pledging at least £300 million to the Syria Crisis at the 2020 Brussels Conference for Syria. UK aid is also provided to those in acute need in IDP camps in north east Syria, including Al Hol, funding the provision of life-saving supplies. In financial year 2019/20 this included 428,000 medical consultations and over 19,000 food rations, and providing over 4,000 people with sexual and gender-based violence services. UK support also provided clean drinking water to over 195,000 people and access to education to over 38,000 pupils. The UK has also provided support to delivery partners, in response to COVID-19, across Syria. This

¹ <https://www.gov.uk/government/speeches/renewing-cross-border-humanitarian-access-in-syria>

has included funding water, sanitation and hygiene interventions which help to mitigate the impact of the virus.

Please see below responses to the specific questions you raised in your correspondence.

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

The UK Government disagrees with the assertion that British Nationals located in north east Syria are within the UK's jurisdiction under international human rights law. The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority. This includes ensuring that any operation carried out for registration, data-collection, and relocation adheres to their legal obligations and responsibilities as a non-state actor.

2. Please provide any additional information and/or comment(s) you may have on the above-mentioned transfer of families to the newly extended camp in Roj and on the legal basis for their transfer and detention. Please provide any information you may have on the measures your Government has taken to maintain contact and ensure their well-being since the transfer.

The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained is the responsibility of the detaining authority.

The UK has no permanent consular or diplomatic presence within Syria from which to provide assistance. However, all requests for consular assistance, including requests to return to the UK irrespective of sex or age, are considered on a case-by-case basis, taking into account all relevant circumstances. This includes, but is not limited to, national security considerations. In considering any such consular request we would be mindful of the fact that the detaining authority has the final say on matters relating to those in their jurisdiction. We would also not take action that could put our staff, the detaining authority's personnel, those working in the camp, or those detained at any greater risk in trying to meet a request for assistance.

3. Please clarify whether your Government was informed about the registration, data-collection and relocation exercise and its purpose.

This is not a matter for the UK Government. The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority.

4. Please explain whether your Government has been informed by the authorities carrying out this exercise about the next step following their relocation to the other camp.

The UK Government is unaware at present of the detaining authority's future plans following any relocation that may have taken place. The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority.

5. Please explain whether your Government was in any way involved in requesting this exercise, or if the data collected or assessments made were communicated to your Government.

The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority. Consequently, it is not for the UK Government to decide whether to transfer individuals, but rather the decision is for the AANES.

6. Please explain what data-protection measures are available in your national legal system to protect against the exploitation and use of such data collected, stored and used by other State actors with whom data was shared as well as non-state actors against your nationals.

The following sets out the basis on which data is handled within the UK for law enforcement purposes and the general legal frameworks that are available in the UK. The processing of genetic data, or biometric data, uniquely to identify an individual is covered within Part 3 section 35 of the Data Protection Act 2018 (DPA 2018). Processing for Law Enforcement (LE) purposes must comply with the data protection principles outlined in Part 3 of the DPA 2018. The first data protection principle (section 35) states that processing for LE purposes must be lawful and fair. In addition, sensitive personal data may only be processed for LE purposes on the basis of an Appropriate Policy Document (APD) which explains compliance with law enforcement data protection principles and policies on the retention and erasure of this data. Processing such sensitive data must also be based either on the consent of the data subject in accordance with section 35(4) or on the grounds of being strictly necessary for law enforcement purposes and on a Schedule 8 condition in accordance with section 35(5). In addition to these measures, the legislation gives individuals the right to seek remedies, such as compensation, in court if they suffer damage as a result of contravention of the data protection legislation.

Additionally, any data transferred internationally is subject to the safeguards provided by the data transfer mechanisms that serve as a legal basis for the transfer under Part 3, Chapter 5 of the DPA 2018. Transfers may be made on the basis of a) an adequacy decision; b) appropriate safeguards; or c) a derogation mechanism (used for special circumstances). These transfer mechanisms assess the existing safeguards in place within the destination country and determine whether they meet the necessary

standards, and therefore whether sufficient protections are provided. All international UK law enforcement transfers must be transferred using one of these mechanisms.

7. Kindly also explain how the collection of biometric data has complied with medical ethics, the adequate provision of information and with people's right to informed consent.

The UK Government is unable to respond to this question. It is a matter for the AANES as the detaining authority.

8. Please provide information on the actions taken by your government to protect the rights of children from your country being held in Al-Hol and Roj camps to prevent irreparable harm to the lives, health and security.

The UK Government disagrees with the assertion made that British Nationals, including children, located in north east Syria are within the UK's jurisdiction under international human rights law. The safety and security of the facilities and wellbeing of those detained are ultimately the responsibility of the detaining authority, in this case, the AANES.

As the Foreign Secretary has said,² the Government will try to help any British unaccompanied minors and orphans in Syria. We work with all partners, in Syria and in the UK, to facilitate the return of unaccompanied or orphan children, where feasible. Each case is considered on an individual basis, subject to national security concerns. The best interests of the children in question are a primary consideration. In order to protect the identity of those children who have been returned, and to avoid harming any future operation that may take place, we are unable to comment on individual cases.

9. Please provide information available on specific measures taken to protect women and girls against acts of gender-based violence they may face within detention facilities and in the camps and to ensure their access to health services, specifically in relation to their reproductive health.

The safety and security of the facilities and wellbeing of those detained are ultimately the responsibility of the detaining authority, in this case, the AANES.

The UK continues to provide humanitarian support across Syria. Our support in north east Syria is focused on reaching those in most need, providing vital, life-saving supplies such as food, water, shelter, and healthcare, as well as helping communities recover from life under Daesh rule, for example supporting farmers and businesses. We are also providing healthcare and Water, Sanitation and Hygiene (WASH) support to help mitigate the threat of COVID-19. Across north east Syria, in financial year 2019/20, UK-funded partners have aided the humanitarian effort, providing over 428,000 medical consultations and over 19,000 food rations, and providing over 4,000

² <https://hansard.parliament.uk/Commons/2019-10-15/debates/53a175b2-72b6-4d48-b63e-0a7d162defac/CommonsChamber>

people with sexual and gender-based violence services. UK support also provided clean drinking water to over 195,000 people and access to education to over 38,000 pupils. Further activity by our partners has provided child immunisation in areas neglected during Daesh occupation, nutritional supplements for children and pregnant women, and support to primary health centres, trauma care, and mental health work.

10. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure access to an effective remedy, including through domestic judicial mechanisms, for your nationals being held in Al-Hol and Roj camps who may be victims of human rights abuses, including trafficking in persons.

The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority.

The UK Government disagrees with the assertion made that British Nationals located in north east Syria are within the UK's jurisdiction. The UK Government does not make determinations of whether persons presently situated outside the UK are victims of human trafficking, or to arrange for persons outside the UK who claim to be victims of trafficking to be brought to this country so that a determination can be made here of whether they are victims of trafficking. This is a longstanding policy, and is in line with the UK's international legal obligations.

The UK Government nevertheless takes into account allegations of trafficking if these are raised in the context of a request for consular assistance from a British National detained in north east Syria. All requests for consular assistance to return to the UK, irrespective of age or sex, are considered on a case-by-case basis, taking into account all relevant circumstances.

11. Please provide any information you may have about the basis for the transfer of families from Al-Hol to Roj, and the measures your Government has taken to maintain contact and ensure their well-being since transfer.

The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority.

The UK has no permanent consular or diplomatic presence within Syria from which to provide assistance. However, all requests for consular assistance, including requests to return to the UK irrespective of sex or age, are considered on a case-by-case basis, taking into account all relevant circumstances. This includes, but is not limited to, national security considerations. In looking to consider any such consular request we would be mindful of the fact that the detaining authority has the final say on matters relating to those in their jurisdiction. We would also not take action that could put our staff, the detaining authority's personnel, those working in the camp, or those detained at any greater risk in trying to meet a request for assistance.

12. Please explain the measures that your government might have taken to ensure that the rights of your citizens mentioned in this communication were respected in this exercise.

The continued detention, transfer, or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES. The safety and security of the facilities and wellbeing of those detained are the responsibility of the detaining authority.

We expect all parties to the Syrian conflict to respect their obligations towards civilians under the applicable international law regime.