



PERMANENT MISSION OF NORWAY

Verbal note no. 37/2021

The Permanent Mission of Norway to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, Special Procedures Branch, and, with reference to the latter's facsimile transmission AL NOR 1/2021 dated 26 January 2021, has the honour to transmit the Norwegian Government's response – ref. 21 335, dated 24 March 2021.

The Permanent Mission of Norway to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights, Special Procedures Branch, the assurances of its highest consideration. *selo*

Geneva, 26 March 2021



OHCHR
Office of Procedures Branch

Geneva

Special Procedures Branch
Office of the High Commissioner of Human Rights

Your ref.:
AL NOR 1/2021

Our ref.:
21 - 3335

Date:
24.03.2021

Joint Communication from Special Procedures Concerning a Registration and Verification Exercise at the Al Hol and Roj camps

The Norwegian Government has the honour to refer to your letter dated on 26 January 2021, and welcomes the opportunity to engage with the Special Procedures of the Human Rights Council on the matters brought up in the Joint Communication. The issues at hand are important and deserving of careful consideration. The Government is grateful to the Special Procedures for bringing them to our attention.

The Government would also like to take this opportunity to emphasise that Norway attaches great importance to the work of the Human Rights Council, and highly values the mandates and work of the Special Procedures of the Council, including reporting and country visits.

The Norwegian Government is concerned about the situation in the camps in northeast Syria, and is particularly worried about the children living in these difficult conditions. The Norwegian Ministry of Foreign Affairs is providing financial support through its humanitarian partners to fund a range of activities which benefit the inhabitants of the camps.

In the areas of education and child protection, partners are providing learning centres for non-formal education, youth life skills programmes, temporary learning spaces and early child care development centres to ensure that children have safe spaces for learning. In addition, critical support for child protection is being provided to children at risk. This includes training on safe identification and referral as well as case management services for children of all ages. To support children's mental well-being, partners have been providing psycho-social support to children as well as training for parents on positive support and parenting without violence. In

the wake of the rise in security incidents in the Al Hol camp, information has been provided to children and their families on how to keep safe.

In response to challenges posed by harsh winters in the camps, winterisation kits have been distributed to support families through 2020/21. As a step in keeping children and their families safe and preventing the spread of COVID-19 in the camp since the outbreak of the pandemic in 2020, partners have provided information on waterborne diseases, importance of handwashing and social distancing, safe waste disposal, correct use of sanitation facilities and the role of children in raising awareness. Hygiene kits have been distributed and safe water supplied through regular water deliveries into the camp, and storage, monitoring and testing of water. Communal kitchens for the use of camp residents have been built. Health centres have been rehabilitated and health services provided through mobile health teams. Legal assistance and information on issues such as civil documentation are made available to the camp residents as well as assistance in tracing missing persons.

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

Observations regarding jurisdiction

As a preliminary observation, the Government would like to address the issue of jurisdiction. Some of the questions raised by the Special Procedures presuppose that Norway has jurisdictional competence under human rights conventions with respect to Norwegian nationals in camps located in northeast Syria. This is also suggested in the Special Procedures' remarks on pages 13 to 16.¹

The interpretation of the human rights conventions regarding jurisdiction suggested by the Special Procedures, is not one with which the Government agrees. It is the Government's firm view that individuals in the camps do not fall within Norway's jurisdiction.

States parties to human rights conventions have a duty to protect the rights of persons within their jurisdiction. A state's jurisdictional competence under human rights conventions is primarily territorial. Other bases of jurisdiction are exceptional and require special justification.² Established treaty body practice has recognised that this may be the case mainly when a state has effective control over an area outside its national territory or exercises public powers such as authority and responsibility in respect of the maintenance of security; where individuals

¹ Cf. e.g. page 13, on which the Special Procedures argue that "States have a duty to act with due diligence and take positive steps and effective measures to protect vulnerable individuals, notably women and children, located outside of their territory where they are at risk of serious human rights violations or abuses, and where their actions or omissions can positively impact on these individual's [sic] human rights".

² In keeping with the essentially territorial concept of "jurisdiction", the European Court of Human Rights has, with respect to the European Convention on Human Rights accepted only in exceptional cases that acts or omissions of Contracting States performed, or producing effects, outside their territories may constitute an exercise of jurisdiction by them within the meaning of Article 1; see, inter alia, *Banković para. 67*; *Al-Skeini and Others v. United Kingdom* [GC], no. 55721/07, 7 July 2011, para. 131; and *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012, para. 72.

abroad are under the physical control of the state's agents operating outside the territory; or where the state effectively exercises authority or control over individuals abroad. States parties to human rights conventions do not have a positive obligation to secure the human rights of their nationals solely based on nationality when they have left the state's territory.

Norway does not have effective control over or exercise any public powers on Syrian territory, including the camps in northeast Syria. Moreover, Norway does not exert any form of authority or control over Norwegian nationals in the camps. Consequently, Norwegian nationals in the camps in northeast Syria do not fall under Norway's jurisdiction and Norway has no positive obligation under human rights conventions to protect their human rights.

The Government notes that the Special Procedures suggest that contact with camp authorities and interventions regarding foreign nationals in the camps reveal "the exercise of de facto, or constructive jurisdiction over the conditions of their nationals held in camps" (page 15). This seems to imply an approach to extra-territorial jurisdiction in which duties of protection are owed to individuals outside a state's territory whenever states have the ability to do so, on the basis of contextual factors such as contact with authorities or interventions with respect to other nationals. The Government underlines that there is no legal basis for establishing jurisdiction solely based on the possibility for a state to act. Moreover, such a criterion would lack any limiting ability, could lead to wholly arbitrary results with respect to states' obligations to protect the rights of individuals outside a state's territory and would have potentially far-reaching consequences for states parties to human rights conventions.

The Special Procedures recall that the Special Rapporteur on the promotion and protection of human rights while countering terrorism considers the return and repatriation of foreign fighters and their families from conflict zones "as the only international law-compliant response" (page 16). The Government would like to stress, with reference to the above observations on jurisdiction, that Norway is not under an obligation under international law to repatriate Norwegian nationals from camps in northeast Syria or from elsewhere.

Observations regarding consular assistance

Norwegian authorities repatriated five orphans in 2019, and two children along with their mother in 2020. Both cases were initiated by requests for consular assistance. We are following the situation of the four Norwegian women and their four children remaining in Al Hol and Roj. None of the remaining Norwegian nationals in the camps have asked for consular assistance. Norwegian authorities cannot take action within the consular framework on behalf of a national without their involvement or consent. Parents are responsible for their own children. They also have the right to decide where their child should live or stay. Therefore, with respect to children, no consular actions can be taken without consent from their parents or guardians.

(Question 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.)

We do not have any information on the legal basis for the transfer of the detainees and their children. We refer to the observations made regarding consular assistance in the answer to question 1 above. As none of the remaining Norwegian nationals has asked the Norwegian Government for consular assistance, we have not been in contact with the detained women or the camp authorities.

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

The Norwegian Government was not informed about the registration, data-collection and relocation exercise or its purpose.

(Question 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 Norwegian Government has not been informed about the next steps following the relocation to the other camp.

(Question 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 Norwegian Government was in no way involved in requesting SDF to carry out biometric data collection in Al Hol or Roj, nor has any biometric data collected been communicated to Norway.

(Question 6. Please explain what data-protection measures are available in your national legal system to protect against the exploitations 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 Government refers to its answer to question 5 above. As the Norwegian Government was not involved in the biometric data collection and the party responsible for the collection of biometric data is not established in Norway, Norwegian legislation concerning data protection measures is not deemed relevant.

(Question 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 Government has no information on the procedure by which the biometric data was collected and therefore has no information on whether it complied with medical ethics and with people's right to informed consent.

(Question 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 Government refers to its observations regarding jurisdiction in the answer to question 1 above. The children of Norwegian nationals being held in camps in northeast Syria are not subject to Norway's jurisdiction. Accordingly, the Government is not under an obligation to protect their human rights.

We further refer to the observations regarding consular assistance. None of the remaining Norwegian nationals has asked for consular assistance for themselves or their children. Parents are responsible for their own children. They also have the right to decide where their child should live or stay. Therefore, no consular action can be taken on behalf of the children, without the consent from their parents.

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

Through financial support of Norway's humanitarian partners the Norwegian Ministry of Foreign Affairs is funding a range of activities which benefit the inhabitants of the camps. Reproductive health is incorporated in the health services provided by partners in the camps. In the activities linked to protection, detection of gender based violence (GBV) and referrals for residents to further services are integrated in the approach. Further, protection staff receive training in GBV-related issues and children, young adolescents and their caregivers are provided with information related to GBV, including early marriage, verbal and physical abuse and harassment as well as awareness of resources and partners able to provide support in the camp.

(Question 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 Government refers to its observations regarding jurisdiction in the answer to question 1 above. Individuals being held in camps in northeast Syria are not subject to Norway's jurisdiction. Accordingly, the Government is not under an obligation to ensure access to an effective remedy.

(Question 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 the transfer.)

The Government does not have any information on the basis for the transfer of the detainees and their children. We refer to the observations made regarding consular assistance in the answer to question 1 above. As none of the remaining Norwegian nationals has asked the Norwegian Government for consular assistance, we have not been in contact with the detained women or the camp authorities.

(Question 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 Government refers to its observations regarding jurisdiction in the answer to question 1 above. As Norwegian nationals being held in camps in northeast Syria are not subject to Norway's jurisdiction, Norway was and is not under an obligation to ensure that their rights were respected in the mentioned exercise.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Lajla Jakhell', is written over the printed name.

Lajla Jakhell

Director General, Services Department