



Ministry for Foreign Affairs
Director-General for Legal Affairs

The Special Rapporteurs and
Working Groups signatories to
the Joint Communication
AL SWE 1/2022

Office of the High Commissioner
for Human Rights
Palace of Nations
CH-1211 GENEVA 10
Switzerland

Communication from Special Procedures

Reference: AL SWE 1/2022

Mesdames and Sirs,

1. I have the honour of referring to your letter of 1 February 2022 in which the Swedish Government is invited to submit certain observations regarding the situation “of a number of boys and men” holding Swedish citizenship “currently detained in North-East Syria”. In response to the invitation, I have the privilege, on behalf of the Swedish Government, to submit the following.

2. Initially, the Government wishes to clarify that the situation in Syria, including in the northeast of the country, is an issue of grave concern and remain a high priority for the Government. The humanitarian needs after the ravages perpetrated by Daesh are still extensive.

3. The Government furthermore notes that a communication concerning the situation in northeast Syria was submitted to Sweden by a number of Special Rapporteurs and Working Groups in January 2021 (hereinafter “the 2021 communication”). The Government wishes to reiterate its gratitude to the Special Rapporteurs and Working Groups for once again raising awareness of the humanitarian situation in northeast Syria.

1. Jurisdiction under international human rights law

4. In its response to the 2021 communication, the Government found it necessary to focus on the question of jurisdiction under international human rights law, and more specifically the lack of Swedish extraterritorial jurisdiction connected to the situation for individuals in northeast Syria.

5. While not wishing to underestimate the legitimate concerns that are raised concerning the situation in northeast Syria, the Government holds that the question of extraterritorial jurisdiction is fundamental also with regard to the present communication.

6. Accordingly, the Government refers to its response to the 2021 communication, on 26 March 2021, in which it clarified that the exercise of jurisdiction in accordance with relevant human rights instruments is a necessary condition for a State to be held responsible for acts or omissions, and furthermore held that Sweden cannot be attributed such jurisdiction with regard to individuals in northeast Syria. The arguments presented in this regard in the observations of 26 March 2021 remain equally valid to the situation described in the present communication.

7. The Government notes in particular that it is referred to the concept of “functional jurisdiction” in the communication. However, the Government wishes to emphasise that this concept lacks relevant support in international human rights law. Accordingly, the Government reiterates its position that extraterritorial jurisdiction should remain an exception based on the concept of effective control and in line with principles that can be derived from the case-law of the European Court of Human Rights.

8. As the Government interprets the communication, it is also implied that the question of extraterritorial jurisdiction in the present case must be assessed in the light of a State’s involvement through “sub-contraction or direct facilitation of liberty deprivation”. The Government does not contest the notion that any such involvement, leading to the fulfilment of the effective control criteria, could justify an attribution of extraterritorial jurisdiction. However, as will be further clarified below, any Swedish involvement in northeast Syria is not of such nature that it could lead to the attribution of extraterritorial jurisdiction.

2. Additional observations

9. The Swedish aid in Syria is governed by Sweden's Regional Strategy for the Syria Crisis and the strategy for Sweden's humanitarian aid. Through these strategies, Sweden finances a number of organisations operating inside the country and in neighbouring countries. These organisations implement humanitarian and resilience programmes in communities in need, focusing on areas such as water, sanitation, health, education, livelihoods, etc. The humanitarian support is based on humanitarian needs and the humanitarian principles of humanity, neutrality, independence and impartiality. Targeting aid to specifically improve conditions for Swedish citizens or persons connected to Sweden would be in contravention of these core humanitarian principles.

10. A number of the organisations supported by Sweden are conducting projects in northeast Syria. Some of these actors also operate in the many camps for internally displaced people in northeast Syria. However, the funding is in no way linked to detainees or the ethnic, national or religious affiliation of camp residents, but instead strictly based on the humanitarian needs, as identified by needs assessments carried out by impartial, independent and neutral humanitarian organisations.

11. The Government has repeatedly emphasised that Swedish children should be brought to Sweden if and when possible. The Government has carried out intensive consular work focusing on this issue. After having repeatedly asked the question to the Autonomous Administration of North and East Syria (AANES), we have received no indication that there are Swedish boys (minors) being held in prisons and detention centres in northeast Syria.

12. Representatives from the Ministry for Foreign Affairs have conducted a limited number of visits to the area with a focus on consular matters related to children with a connection to Sweden. Staff from the Ministry for Foreign Affairs and others have co-operated with the AANES, on those occasions when the latter has expelled Swedish women. Several children have also been able to travel to Sweden under controlled and safe conditions. In Sweden, the children are taken care of by, *inter alia*, social services in order to receive appropriate care and the women are being investigated for possible crimes.

3. Summary

13. The Government wishes to reiterate its gratitude to the signatories of the communication for raising awareness of the situation in northeast Syria.

14. While the Government maintains its position that Sweden cannot be attributed jurisdiction under international human rights law in relation to individuals connected to Sweden in northeast Syria, the Signatories of the communication can rest assured that the Government will continue its work to improve the humanitarian situation in the region.

15. Finally, the Government wishes to clarify that it remains at the disposal of the Special Rapporteurs and relevant Working Groups, should any further information be requested.

Please accept, Mesdames and Sirs, the assurances of my highest consideration.

A handwritten signature in blue ink, consisting of a large 'C' followed by several loops and a long horizontal stroke.

Carl Magnus Nesser
Ambassador, Director-General for Legal Affairs