



UK Mission
Geneva

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Note Verbal No. 100

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 its' response to communication UA GBR 7/2022, further to the letter dated 8 June 2022 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 and the Special Rapporteur on trafficking in persons, especially women and children.

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 High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 19 April 2023.

Special Procedures Branch
Office of the High Commissioner for Human Rights



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United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communication UA GBR 7/2022 of 8 June 2022 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 and the Special Rapporteur on trafficking in persons, especially women and children.

Thank you for your letter of 8 June 2022 to the Foreign Secretary concerning the alleged arbitrary detention and inadequate detention conditions of Mr. Letts. We apologise for the delay in responding.

Where an individual has an authorised representative, we will engage with them on the specific case and any issues they raise but as you will appreciate, we do not otherwise routinely comment on individual cases. The response below therefore responds to the issues and themes you raise in your letter rather than the specific circumstances of the named individuals.

As you have stated in your communication, the Foreign, Commonwealth and Development Office (FCDO) have provided responses dated 16 April 2021 and 27 April 2022 (AL GBR 2/2021 and AL GBR 1/2022) in response to two communications related to this issue. We set out our position on these issues again as part of this response.

The UK continues to provide humanitarian support across Syria. UK aid in North East Syria is focused on reaching those most in need, providing vital, life-saving assistance and supporting conflict-communities to build resilience and re-establish livelihoods. It is essential that humanitarian agencies can safely access and deliver assistance to those in need in Syria.

The UK Government has advised against all travel to Syria since 2011. The United Kingdom has no consular presence within Syria from which to provide assistance. This makes it difficult to provide direct help to British nationals located there, but we carefully consider how we can support every British national that asks for our help. We are committed to considering every request for consular assistance on a case-by-case basis, taking into account all relevant circumstances.

The UK Government disagrees with the assertion made in the communication that the UK's use of the deprivation power is arbitrary. The British Nationality Act 1981 (BNA 81) provides the Secretary of State (Home Secretary) with powers to deprive a person of their citizenship. Section 40(2) allows the Secretary of State to deprive any person of British citizenship, should they deem it conducive to the public good to do so. Deprivation on such grounds can be used where individuals pose a threat to national security, or have been involved in war crimes, serious and organised crime, and unacceptable behaviour such as extremism or glorification of terrorism, unless to deprive would render them stateless. All decisions to deprive are made in accordance with the 1961 UN Convention on the Reduction of Statelessness. These decisions are not arbitrary. They are taken in accordance with the BNA 1981 and are consistent with the requirements of UK domestic and international law.

Deprivation is a powerful tool that is used against the most dangerous individuals. Removing an individual's British citizenship is a weighty decision and for that reason, it is a matter reserved for the Secretary of State. Any decisions to deprive individuals of their citizenship are based on all available evidence and not taken lightly. Cases are decided on an individual basis and the facts of a case will lead the Secretary of State to use whichever power she considers most appropriate to best protect the UK and address the risk posed by an individual.

In your letter, you suggest that you have strong grounds to believe that the deprivation of individuals detained in North East Syria were done so arbitrarily. The UK courts have examined whether there is evidence of the deprivation power being used arbitrarily. The Special Immigration Appeals Commission (SIAC) concluded in the case of *R3 v SSHD [SC/150/2018]* that there was '*no evidence that the power to deprive [an individual of British citizenship] has been used arbitrarily*'. Equally, there has not been a finding that the deprivation power has been exercised arbitrarily in any case challenged before the courts.

We note the points raised in relation to due process in the context that an individual should be able to understand the reasons why their nationality has been withdrawn and has access to an avenue through which they may challenge the deprivation decision. Following the Secretary of State's decision to deprive an individual under section 40(2) BNA 1981, the Secretary of State for the Home Department will serve notice of the deprivation decision and the reasons for the decision in line with section 40(5) BNA 1981. An individual who is deprived of British citizenship, has a right of appeal against the deprivation decision under section 40A(1) of the BNA 81 or under section 2B of the Special Immigration Appeals Commission (SIAC) Act 1997. If appeals are brought under section 2B of the SIAC Act, any such hearings are not held in secret, but given the nature of the evidence before the courts in such cases, parts of the hearing are held in closed session. During any closed parts of proceedings, a Special Advocate is appointed to act in the interests of parties excluded from those proceedings. The effect of the European Court of Human Rights' decisions in *Chahal v United Kingdom (1996) 23 EHRR 413* and *A and others v United Kingdom [2009] ECHR 301* is that Article 6 of the ECHR ("Article 6", which confers the right of access to the courts) is not infringed by a closed material procedure, provided that appropriate conditions are met¹. The UK Government adheres to those conditions and other procedural safeguards to ensure the appeal process is fair and appropriate.

¹ For a brief summary of those conditions, see *Bank Mellat v Her Majesty's Treasury (No. 1)* [2013] UKSC 38 (19 June 2013) at para 5

You also raise concerns in relation to those detained in Syria in pursuing an effective appeal. We should make clear that the UK Government has not undertaken any actions to place individuals outside the jurisdiction and, as a matter of principle, the European Court of Human Rights (ECtHR) has recognised the relevance of the fact that a person has left the jurisdiction of their own motion.² Further, the UK Supreme Court found (*R (on the application of Begum)* [2021] UKSC 7) that fairness may mean a case needs to be stayed until the individual is able to play an effective part in the proceedings.

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

1. Please provide any additional information and any comment you may have on these allegations.

We do not routinely comment on individual cases.

The UK Government does not agree that it is subject to any positive obligation to act in this context and in particular notes that British Nationals (and indeed any other individuals) located in North East Syria are not within the UK's jurisdiction whether for the purposes of the European Convention on Human Rights or of any other instrument of international human rights law to which the UK is a party mentioned in your communication.

Responsibility for detention and camp facilities and the wellbeing, detention, transfer or prosecution of detainees is ultimately a matter for authorities under whose jurisdiction the individuals are detained, in this case the AANES.

2. Please provide information on the measures taken by your Excellency's Government to prevent the arbitrary deprivation of nationality and other fundamental rights, including the right to life and the right to health of Mr. Letts.

We do not routinely comment on individual cases. The UK does not agree that decisions on deprivation of citizenship status are taken arbitrarily. Such decisions are made in accordance with the 1961 UN Convention on the Reduction of Statelessness and the BNA 1981 and are consistent with the requirements of UK domestic and international law.

As we have set out in more detail in our responses to your previous mandates, supporting vulnerable populations in North East Syria is an integral part of the FCDO's Syria humanitarian programme, and we continue to support vulnerable populations with vital, life-saving assistance in Internally Displaced Person (IDP) camps, settlements and communities.

²See §60 K2 v. United Kingdom (appln no. 42387/13, unreported, 9 March 2017)