

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 43/4, 44/5 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killings of journalists and human rights defenders Mr. Besmillah Adel, Mr. Yusuf Rashid, Mr. Yama Siawash, Mr. Elias Daei, Ms. Malalai Maiwand, Mr. Rahmatullah Nikzad, Mr. Yama Siavash, Mr. Mir Wahid Shah Amiri and Mr. Shafiq Zabih.

According to the information received:

Case of Mr. Besmillah Adel

Mr Adel was a journalist and the Managing Director of Sada-e Ghor Radio. In 2017, he founded the "Voice of Ghor" radio station, broadcasting Islamic, cultural, educational, political and entertainment programs. The radio station was the only media outlet that was extensively covering issues related and relevant to Ghor people.

On Friday 1 January 2021, whilst travelling from Firuzkoh, the capital of Ghor province, to Tigha Timur, Mr Adel was assassinated by unknown gunmen in Dahan-e Akhta khana.

Mr. Adel had previously been attacked by unknown gunmen on 7 and 10 November 2020. These attacks had been reported to the security officials of Ghor province, but no investigation is reported to have taken place.

According to a statement from the National Directorate of Security (NDS), a member of the Ghor Provincial Council was accused of the killing of Mr. Adel. On 14 January 2021 however, the accused individual was reportedly killed during a confrontation with the Special Force of the NDS whilst they were trying to arrest him. However, other reports indicate that the individual was arrested, tortured and killed on the spot without any confrontation.

According to the information we received, Mr. Adel's family have been provided with some financial support since his killing.

Case of Mr. Rahmatullah Nikzad

Mr. Rahmatullah Nikzad was the Head of the Journalist's Union in Ghazni Province and a well-known reporter for Al-Jazeera-TV and the Associated Press.

On 21 December 2020, Mr Nikzad was shot by unknown gunmen in the Khowaja Hakim district of Ghazni province. No group or individual has claimed responsibility for the killing.

One individual has reportedly been arrested in connection with the killing of Mr Nikzad, and the case is most likely still under investigation. The Government have provided Mr. Nikzad's family with financial support in the form of "Ekramia", an amount paid as condolence.

Case of Ms. Malalai Maiwand

Ms. Maiwand was a woman human rights defender and a reporter for Enekas Radio and Television Network. She worked with several human rights organisations and press agencies, including BBC Media Action. She was also an active member of the Afghanistan Journalist Committee, the Directorate of Women Affairs in Jalalabad, and an outspoken women's rights defender, exposing the challenges faced by female journalists in carrying out their work.

On 10 December 2020, Ms. Maiwand and her driver were killed by unknown gunmen in front of her house as she was leaving to go to work. ISIS has claimed responsibility for her assassination.

According to the information we received, an individual was arrested in connection with the killing of Ms. Malalai and confessed to the crime. The investigation into her killing is ongoing still. The authorities have provided Ms. Maiwand's family with some financial support, and have also pledged to relocate her family to a safe location.

It was further brought to our attention that Ms. Maiwand's mother, who was also an activist, was killed by unknown gunmen. The owner of Enekas, Ms. Maiwand's employer, was previously kidnapped and subject to ransom in 2018.

Case of Mr. Elias Daei

Mr. Elias Daei worked as a reporter for Radio Azadi and also as a correspondent for Radio/Liberty/Radio Free Europe.

On 12 November 2020, Mr. Elias Daei was killed by the explosion of a magnetic improvised explosive device (IED) in his car on Boost road, Lashkargah.

Prior to his killing, Mr. Daei had approached the provincial government authorities and the provincial office of the national human rights institution to report threats he had received, allegedly from "powerful" people.

An individual has reportedly been arrested by the NDS in connection to the killing. The case remains under investigation. Mr. Daei's family have received some financial support ("Ekramia") from the authorities following his killing.

Case of Mr. Yama Siavash

Mr. Yama Siavash was a human rights defender and formerly a prominent Tolo News anchor, well known for his reporting on corruption, but was forced to resign from the TV network due to pressure he received following an interview with the former Minister of Borders and Tribal Affairs.

On 7 November 2020, whilst on their way to work, Mr Siavash and two of his colleagues were killed in an IED explosion targeting his company's vehicle in Makroryan 4, PD9.

The information provided by the authorities as to the status of the investigation has reportedly been conflicting. It remains unclear whether any individual has been apprehended in relation to the killing.

Case of media workers from Khorshid Tv Network

On 30 May 2020, a bus carrying staff from the Khorshid Television Network was attacked by an IED explosive. The attack occurred near the Gol – Sorkh intersection in Kolola Postha (PD4), killing two reporters, Mir Wahid Shah Amiri and Shafiq Zabih, and wounding six other staff members of the TV network.

It is reported that the individual cases mentioned-above is not an exhaustive list of targeted killings of journalists and human rights defenders. The past few months have seen a reported rise in insecurity for human rights defenders and journalists who have been increasingly subjected to premeditated and deliberate targeting in many locations across Afghanistan.

In addition to the killings of the journalists mentioned above, we have also learnt of the following murder:

Case of Mr. Yusuf Rashid

Mr. Yusuf Rashid was the Executive Director and one of the founders of the Fair and Free Election Foundation of Afghanistan, one of the leading election monitoring bodies in Afghanistan. Mr. Rashid was well known for his advocacy for democracy in the country. Mr. Rashid had previously held various positions in the civil society sector. He notably worked as a Senior Researcher during the amendment and ratification of Afghanistan's Constitution in 2003, and also served as a civil society representative in the recruitment committee, selecting commissioners for the country's Independent Election and Election Complaints Commissions.

On 23 December 2020, whilst driving to his office, both Mr. Rashid and his driver, who was also his cousin, were shot dead by unknown gunmen in the district of Tanai Kot' Kabul (PD7).

The family of Mr. Rashid were reportedly not provided with detailed information regarding the circumstances of his killing. The authorities reported that they had arrested three people in connection to the killing. At the time of sending this communication, the investigation into the killing of Mr. Rashid was still ongoing.

It is reported that the second Vice-President publicly stated that the killers should be executed once the investigation is completed, which has raised some additional human rights concerns. According to the information received, no financial support has been provided to the family of the victims.

Without prejudging the accuracy of the allegations, we express our utmost concern about the killings of Mr. Besmillah Adel, Mr. Yama Siawash, Mr. Elias Daei, Ms. Malalai Maiwand, Mr. Rahmatullah Nikzad, Mr. Mir Wahid Shah Amiri and Mr Shafiq Zabih, which appear to be directly connected to their work as journalists and human rights defenders and carried out with the clear objective of silencing them and intimidating others. The sharp increase in the targeted killings of journalists and human rights defenders appears to be a concerted effort to attack media freedom, create a chilling effect, stop the denunciation of human rights violations and curtail debate on the issues of public interest, including the peace process.

We are also seriously concerned by alleged reports that a suspect in the case of Mr. Adel may have been tortured and extrajudicially killed whilst under the control of the security services. We emphasise that all individuals have a right to life and that the obligation to investigate alleged violations of the right to life and to hold perpetrators to account applies in all cases.

We further express concern at remarks from the Vice-President that the killers of Mr. Rashid should be executed.

We are particularly concerned at the reported lack of effective investigations into these killings, which perpetuate a cycle of violence as perpetrators feel emboldened to commit further offences without fear of punishment. We urge the authorities to open full and thorough investigations into all killings of journalists and human rights defenders. Proper investigation, prosecution, fair trial of those accused, and adequate compensation for the families of the victims, are indispensable to ensure justice and dissuade further attacks.

We welcome the establishment by the Government of a Joint Committee on the Safety of Journalists and a Joint Committee on the Protection of Human Rights Defenders, but remain concerned that journalists, human rights defenders and civil society activists are living in a climate of fear with heightened risks. We strongly urge the Government to enhance the work of the Joint Committees and to take additional concrete action to ensure the safety of journalists and human rights defenders, including special measures for women journalists.

Aware of the current challenging environment in Afghanistan, we would be pleased to have an opportunity to meet with your Government to provide our support and discuss further action to alleviate the threats faced by journalists and human rights defenders. Meanwhile we would appreciate your response on the following issues. In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation carried out in relation to the abovementioned extrajudicial killings. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that alleged perpetrator(s) have been identified, please provide full details of any prosecutions undertaken so far and any remedy and financial compensation afforded to the victims' families.
4. Please provide information into the investigation into the threats faced by Mr. Adel and Mr. Daei prior their killings and any steps taken to provide them with protection. If no investigation had taken place or no steps taken, please explain why.
5. Please confirm whether action has been taken to relocate the family of Ms. Maiwand in a safe location.
6. Please provide information on the measures to ensure the safety of journalists and human rights defenders so that they can pursue their work free from threats and intimidation. Please include information on how threats reported by journalists and defenders are dealt with and the policies and measures in place to provide them with protection if needed.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate

a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In relation to the above facts and concerns, we would like to draw your attention to the following human rights norms and standards:

The above mentioned allegations appear to be in contravention of articles 6, 19 and 22 of the International Covenant on Civil and Political Rights which was acceded by Afghanistan on 24 January 1983 that guarantee the rights of every individual to life, to freedom of opinion and expression and freedom of association, respectively.

In its General Comment 6, paragraph 3, the Human Rights Committee noted that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts and to prevent arbitrary killings by their own security forces. In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by private persons or entities, which includes the duty to take appropriate measures to prevent, investigate, prosecute and punish those responsible and repair the damage caused by private persons or entities (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

Moreover, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establish the obligation of States to conduct a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (Principle 9), and to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions (Principle 4).

Furthermore, we make reference to resolution 12/16 of the Human Rights Council, which calls upon States to investigate effectively threats and acts of violence, including terrorist acts, against journalists, and to bring to justice those responsible to combat impunity.

We underscore the need to prevent targeted attacks and ensure security of the journalists by protecting and promoting the right to freedom of opinion expression, as enshrined in Article 19 of the ICCPR. We recall that the Human Rights Committee has affirmed that “States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”. (General Comment 34 para. 23) Attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. (id.) Journalists and those who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities. “All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” (id.) Under no circumstance, can an attack on a person, because of

the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 of the ICCPR.

Similarly, in General Comment 36, the Human Rights Committee observed that the duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence including human rights defenders (see also para. 53 below) and journalists. States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

We would further like to refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents (A/HRC/41/36, paragraph 38), which observes that the jurisprudence on the implementation of the due diligence principle and its operationalization by police forces point to consideration of several elements including:

- a) Whether there are credible threats that are objectively verifiable; in other words, whether they are supported by reference to a range of sources of information;
- (b) Whether the perpetrators have the intention to implement their threats, whether they are in a position, including physical proximity, and have the capabilities to carry out the threats;
- (c) Whether the risk is immediate, meaning continuing and soon;
- (d) Whether the identity of the victim places the victim in specific situations of vulnerability or risk;
- (e) Whether there are patterns of violence against groups of individuals by virtue of their identities.

The report calls on states to review and, if needed, strengthen policies and procedures to ensure that security agencies and other relevant actors are meeting their due diligence obligation to protect the right to life of those who may be targeted by States and non-State actors for their peaceful expression and activities, both online and offline (para 89 (h)).

In relation to the death penalty, we highlight that the death penalty cannot be reconciled with full respect for the right to life. The ICCPR, permits retentionist States to continue applying the death penalty. However, this "dispensation" for States parties should not be construed as a justification for the deprivation of the life of individuals, albeit lawfully sentenced to death, and does not make the execution of a death sentence, strictly speaking, legal. Furthermore, only full respect for the most stringent due process guarantees distinguishes capital punishment, as possibly tolerated under international law, from an arbitrary execution. The Human Rights Committee has repeatedly stated that the imposition of the death penalty in a manner that is contrary to another provision of the ICCPR also violates the right not to be arbitrarily deprived of one's life, as stated under article 6 of the ICCPR.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- and article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.