

## Mandate of the Working Group on Arbitrary Detention

Ref.: AL IND 22/2021  
(Please use this reference in your reply)

21 December 2021

Excellency,

I have the honour to address you in my capacity as Working Group on Arbitrary Detention, pursuant to Human Rights Council resolution 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the claim for compensation of **Marie-Emmanuelle Verhoeven, a French national, for her alleged arbitrary detention between February 2015 and July 2016.**

Ms. Verhoeven is a French national who was arrested in New-Dehli, in February 2015, pursuant to a Red Corner Notice issued against her in respect of her alleged involvement in an alleged case in Chile. She is currently residing in France and has filed a civil lawsuit in the Honourable Delhi High Court on 24 July 2018, seeking compensation and damages for her alleged arbitrary detention.

According to the information received:

Ms. Verhoeven visited India for spiritual reasons in 2011, 2012 and 2013. On 16 February 2015, Ms. Verhoeven entered India from Nepal on the basis of a valid visa issued by the Embassy of India in France. She was arrested in Uttar Pradesh, on the basis of an Interpol Red Notice issued at the request of the Chilean Government and brought to Delhi on 21 February 2015. By an order dated 24 February 2015, the Additional Chief Metropolitan Magistrate (ACMM) directed the provisional arrest of Ms. Verhoeven under Section 34B Of the Extradition act of 1962. She was remanded to judicial custody until 10 March 2015 and was detained at Tihar Jail.

Ms. Verhoeven was allegedly deprived of her consular rights during the first four months of her detention. She was unable to communicate with the French Embassy who was not granted permission to visit her. Ms. Verhoeven also had difficulties communicating with her family and friends. It is alleged that for sixteen months, her lawyer and the French Embassy were her only contacts with the outside world. In particular, it is reported that, following her father's death, she had to make a request the Court to be allowed to call her mother and was only permitted a three-minute phone call.

Ms. Verhoeven was reportedly subjected to continued harassment and threats by the prison authorities. Additionally, there have been repeated attempts to isolate Ms. Verhoeven to prevent her from communicating with the outside world. On 31 January 2016, Ms. Verhoeven was assaulted by another inmate without any intervention by prison authorities. Despite Rule 28(7) of the Delhi Jail Manual, which provides that detainees "should be kept apart", she was kept in a ward of 35 women during the first eight months of her detention in Tihar

Jail. She was then moved in a cell of 15 people before spending the last six months of her detention with two other individuals, in a cell meant to hold a single person.

Ms. Verhoeven was also allegedly deprived of medical treatment and hospitalization when she fell ill while in detention, in September 2015. Despite her request to the Court seeking permission for medical treatment and hospitalization at the All India Institute of Medical Sciences, the Court reportedly did not consider her application. According to her current doctor and results of her posterior medical exams, she had contracted the dengue while in detention.

On 21 September 2015, the Delhi High Court ruled that Ms. Verhoeven's detention was illegal. Despite having received the judgment on the same day, the authorities at the Tihar Jail did not release Ms. Verhoeven. On 22 September 2015, while she was detained in Tihar Jail despite the Court's judgment, Ms. Verhoeven was informed by the authorities that officials of the Indian Ministry of External Affairs personally went to Tihar Jail and ensured that she was provisionally re-arrested pursuant to an ACMM order dated 22 September 2015.

Ms. Verhoeven has filed a Habeas Corpus Writ Petition before the Supreme Court of India where she argued, *inter alia*, that she should have been released on 21 September 2015, after the Delhi High Court rendered a decision to that effect. In its judgment of April 2016, the Supreme Court of India, without responding to that argument held that a binding extradition treaty between India and Chile existed and upheld Ms. Verhoeven's arrest and detention on the basis of the *Note Verbale* of the Chilean Government, dated 21 September 2015.

In regard to the disputed existence of an extradition treaty between India and Chile, it is submitted that the extradition treaty was retroactively applied to the case of Ms. Verhoeven. Further, it is asserted that Ms. Verhoeven's re-arrest on 22 September 2015 was based on a *Note Verbale* issued by the Embassy of Chile in New Delhi and was therefore without legal basis. Finally, it is argued that should India have observed Interpol's 30 May 2015 request that it erase and delete all files concerning her, she would have been released immediately. It would thus appear that Ms. Verhoeven's detention was without legal basis.

On 26 July 2017, the ACMM discharged Ms. Verhoeven and she returned to France the next day.

Without prejudging the accuracy of these allegations, we express concern that the detention of Ms. Verhoeven during 17 months, if confirmed, may have been arbitrary, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, which protect the right to liberty and security of person and prohibit arbitrary detentions. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. The prohibition of arbitrary deprivation of liberty is part of treaty law, customary international law. It constitutes a *jus cogens* norm and is fully applicable in all situations. We also express

concern at the allegations of poor conditions of detention which Ms. Verhoeven was subjected to, of denial of requested medical attention, of denial of consular rights, and abusive restrictions of family contact, which further contravene several important rights to medical care, to consular assistance and to contacts with family, as codified in the Standards Minimum Rules for the Treatment of prisoners, revised in 2015 as the “Mandela Rules”.

In connection with the above allegations 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.

We are issuing this appeal in order to safeguard the rights of abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.<sup>1</sup>

As it is our responsibility, under the mandate 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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and detention of Ms. Verhoeven.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of threats by officers at the Tihar jail. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of India.
4. Please provide a precise explanation as to why on 21 September 2015, the Delhi High Court ruled that Ms. Verhoeven’s detention was illegal, and in spite of that decision, the authorities at the Tihar Jail did not release her.
5. Please explain in particular the legal ground for re-arresting Ms. Verhoeven on 22 September 2015 on what appears to be the sole basis of a note verbale issued by the Chilean Embassy in Dehli; and the role in this regard, of the visit to the prison of officers from the Indian Foreign Ministry;
6. Please provide information about the reason(s) why in spite of Interpol’s request on 30 May 2015 to destroy and erase all records concerning her arrest pursuant to its red notice, Ms. Verhoeven was maintained in detention;

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<sup>1</sup> Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1

7. Please provide information concerning the reported restrictions to family contacts that were imposed upon Ms. Verhoeven, and in particular following the death of her father;
8. Please provide information on measures adopted by your Excellency's Government to ensure the effective right of persons not to be arbitrarily detained and to effective remedy for human rights violations, including their right to compensation. If no such measures exist or if, in this case, they were not implemented, please explain why, and how this is compatible with the international human rights obligations of India.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

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

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

Miriam Estrada-Castillo  
Vice-Chair of the Working Group on Arbitrary Detention

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this context, we would like to refer to article 9 of the UDHR, prohibiting arbitrary detentions, and article 9 of the International Covenant on Civil and Political Rights (the "Covenant"), enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.

The international law on deprivation of liberty prohibits States from detaining any individual without a valid order to that effect. Article 9 of the Covenant prohibits the detention of individuals without a legal basis. Similarly, rule 7 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") establishes that no individual should be detained in a prison without a valid commitment order. Principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles") echoes this prohibition by requiring that any form of detention be ordered by or subject to the control of a judicial or other authority.

Under article 36 of the Vienna Convention on Consular Relations, detained foreign nationals have the right to communicate with and access consular officers of their country. Conversely, officers of their country have a right to communicate with and visit their nationals being detained by another state. These consular rights are also protected under rule 62 of the Mandela Rules and principle 16 of the Body of Principles as well as on rule 2 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok rules). In addition to the right to communicate with their consular officers, detainees have a right to communicate with their family and the outside world, under principle 19 of the Body of Principles rule 58 of the Mandela Rules as well as rule 26 of the Bangkok Rules.

Furthermore, we would like to stress that the law on detention varies according to the type of detention. Specifically, article 10 of the Covenant requires the segregation and separate treatment of individuals not yet convicted from those already convicted. Rules 11 and 112 of the Mandela Rules further provide that untried individuals shall be kept separate from tried individuals, and shall sleep singly in separate rooms. Rule 113 of the Mandela Rules requires that untried prisoners sleep alone in separate rooms. Principle 8 of the Body of Principles also stresses the need for individuals not yet convicted to be kept separate from those convicted. Rule 56 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders emphasizes the particular risk of abuse that women face in pretrial detention and provides that the authorities shall adopt appropriate measures to guarantee women's safety.

Regarding detainees' medical health, rule 24 of the Mandela Rules safeguards detainees' right to access necessary health-care services, without charge, and rule 25 specifically provides that a detainee may request a second medical examination or

opinion, subject only to reasonable conditions related to security and good order. Rule 118 further makes clear that untried detainees must be allowed to be visited and treated by their own doctor if there are reasonable grounds for such request and if they are able to pay the expenses incurred. Same guarantees are established on the test of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok rules)

Finally, article 9 of the Covenant and principle 35 of the Body of Principles respectively establish a right to compensation for any individual who has been unlawfully detained or who has suffered damages as a result of the authorities' breach of any of the principles contained in the Body of Principles.