

**Mandates of the Special Rapporteur on the situation of human rights in Afghanistan; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers**

Ref.: AL OTH 22/2023  
(Please use this reference in your reply)

31 March 2023

Mr. Khan Muttaqi,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Afghanistan; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 51/20, 43/4, 43/16 and 44/8.

In this connection, we would like to bring to your attention information we have received concerning the arbitrary detention of Mr. Behboudi, an international journalist, human rights defender, and documentary-maker focusing on issues such as mass migration, women and minority rights and the co-founder of the independent news website Guiti.

According to the information received:

Mr. **Mortaza Behboudi** has dual Afghan and French citizenship.

On 5 January 2023, Mr. Behboudi travelled to Kabul for the purpose of reporting and was taken by the Taliban authorities on 7 January, 48 hours after his arrival as he was about to collect his press accreditation from the *de facto* Ministry of Information and Culture. Mr. Behboudi was arrested by officials affiliated with the Ministry of Interior on his way to the Ministry of Information and Culture outside Kabul University and taken to the PD3 police station. He was held in the police station for 11 days.

At the time of arrest, no arrest warrant was presented, and no reason was given to him for his arrest. Later, Mr. Behboudi was accused of espionage.

On 19 January, Mr. Behboudi was transferred to a prison held by the Directorate General of Intelligence (GDI), close to Gulbahar centre. On 13 February he was moved to Share Naw prison 40 and he has been held there since then.

Although family members are allowed to visit Mr. Behboudi, his contact with his family was very limited at the beginning of his detention (until 25 February). For example, on 26 January, he was allowed to call his wife just for one minute. On 13 February, his family was allowed to see him but not talk to him.

Mr. Muttaqi

Mr. Behboudi has not been allowed to access any legal representation while in custody. He had not been allowed to see a doctor for over two months until he first saw a doctor on 16 March. The doctor diagnosed that he was stressed, anxious, and in need of medication.

On 6 February, Deputy Minister of Information and Culture and spokesperson for the *de facto* authorities Mr. Zabihullah Mujahid, in an interview with the Voice of America, confirmed the detention of Mr. Behboudi, but without providing details of his case including charges. He however noted that Mr. Behboudi was doing fine and that he was treated well.

Without prejudging the accuracy of the above information, we wish to express our grave concern about the alleged arbitrary arrest and detention of Mr. Behboudi, which appears to be linked to his work as a journalist and human rights defender. We also express concerns about the lack of information regarding the reason and legal basis for his arrest, the legal reason for his detention, and his lack of access to a lawyer.

We are issuing this allegations letter in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 information on the factual and legal grounds for the arrest and detention of Mr. Behboudi.
3. Please indicate whether an arrest warrant was presented and specify any measures taken to ensure his right to an effective legal assistance of his choice and to communicate with his families, the right of his lawyer to exercise the legal profession without threats, intimidation, or harassment and how these measures are compatible with international norms and standards and the principles of legality, necessity, proportionality and non-discrimination.
4. Please provide information on the measures taken to respect the protection needs of Mr. Behboudi, and in particular as regards his state of health, access to essential medicines, medical treatment and other basic services, and any other measures to prevent serious and irreparable damage to his life and personal integrity and that he has access to special health care, medications and other relevant medical treatment.

5. Please provide information on current measures in place to protect the work of human rights defenders, journalists, and media workers in the country. In this regard, please kindly provide specific details of any measure or public engagement by the *de facto* authorities aimed at ensuring that human rights defenders, journalists, and media workers can freely carry out their work without fearing harassment, threats, or any form of violence by the *de facto* law enforcement or state institutions or acts of reprisals for cooperating with the United Nations.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from *de facto* authorities 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.

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 you to clarify the issue/s in question.

Please accept, Mr. Muttaqi, the assurances of our highest consideration.

Richard Bennett

Special Rapporteur on the situation of human rights in Afghanistan

Irene Khan

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

## **Annex**

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

In connection with the above alleged facts and concerns, we would like to remind you that any authority exercising effective control over parts of the Afghan territory and/or persons has the obligation to abide by Afghanistan's international commitments including treaties and human rights agreements.

We would like to specifically draw your attention to the obligations of Afghanistan under the International Covenant on Civil and Political Rights (ICCPR), particularly in relation to articles 7, 9, 10, 14, and 19.

Article 7 (ICCPR): No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

Article 9 (ICCPR): (a) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law; (b) anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; (c) anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement; (d) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful; (e) anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10 (ICCPR): 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person;

2: (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3: The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14 (ICCPR): 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 19 (ICCPR): 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

We would also like to refer to 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 articles 1, 2 and 6.

Article 1 (HRD Declaration): Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2 ((HRD Declaration): 1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia , by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 6 (HRD Declaration): Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.