

Mandates of the Special Rapporteur on the situation of human rights in Afghanistan; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right to education and the Special Rapporteur on the situation of human rights defenders

Ref.: AL OTH 9/2024
(Please use this reference in your reply)

21 February 2024

Dear Mr. Muttaqi,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Afghanistan; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right to education and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 54/1, 51/8, 54/14, 53/7 and 52/4.

We would like to bring to your attention information we have received concerning the alleged arbitrary deprivation of liberty, followed by acts tantamount to enforced disappearance of the human rights defenders Mr. **Ahmad Fahim Azimi** and Mr. **Siddiqullah Afghan** in Kabul by members of the *de facto* authorities. According to the information received, there was no reason given for their deprivation of liberty, and they appear to be arbitrarily detained. Mr. Ahmad Fahim Azimi is a human rights defender and activist for girls' education. He is the head of the Better Thinking Center, and the director of the Digital Citizen Lab in Afghanistan. Mr. Siddiqullah Afghan is a human rights defender and the financial officer of the same organization.

According to the information received:

Mr. Ahmad Fahim Azimi and his colleague Mr. Siddiqullah Afghan have been reportedly imprisoned by the *de facto* General Directorate of Intelligence. On 17 October 2023, they were arrested from the Kart-e-Chahar market area of the third district of Kabul, at 4 p.m. for allegedly inciting and persuading women and girls against the *de facto* authorities.

According to information received, Mr. Azimi and Mr. Afghan were imprisoned in the 089 Directorate of Taliban Intelligence, previously known as the 040 Directorate. The fate and whereabouts of Mr. Azimi and Mr. Afghan remained unknown for 27 days after their detention, an act tantamount to enforced disappearance. On 14 November 2023, their families were eventually allowed to meet them for the first time and then once per week. The visiting time allowed during their captivity in the above-mentioned directorate was only 5–10 minutes. On 26 December 2023, they were reportedly transferred to Pul -e - Charkhi Prison. Since then, the family visit takes place once every 15 days for 50-90 minutes.

Without prejudging the accuracy of the above information, we wish to express our grave concern about the alleged arbitrary deprivation of liberty, followed by acts

Mr. Muttaqi
Kabul, Afghanistan

tantamount to enforced disappearance of Mr. Azimi and Mr. Afghan for simply being advocates for education and supporting girls access to education, and for exercising their legitimate rights in accordance with international human rights law.

We are concerned about the lack of information regarding the factual and legal basis for their detention and ongoing deprivation of liberty. The reported outright and consistent failure by the *de facto* authorities to ensure due process guarantees and judicial safeguards, provide accurate information to their families, their representatives or persons with a legitimate interest immediately after their deprivation of liberty, regarding their well-being, whereabouts and conditions of deprivation of liberty, are constitutive of gross human rights violations under international law.

We reiterate that the concealment of the fate and whereabouts of the disappeared persons, as well as the failure or refusal to adequately acknowledge a deprivation of liberty by the *de facto* authorities are constitutive of acts tantamount to enforced disappearance, regardless of the duration of the deprivation of liberty or concealment concerned. When persons deprived of liberty are not adequately acknowledged, their rights are placed in a legal limbo, a situation of total defencelessness. Acts tantamount to enforced disappearance put the detainee outside of the protection of the law, deny the person's legal existence and prevent the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms. In this sense, it is worth recalling that the prohibition of enforced disappearance has attained the status of *jus cogens*.

In this regard, we call on the *de facto* authorities to take the necessary measures to protect the lives and well-being of all individuals in captivity. We wish to recall that the *de facto* authorities should recognize the specific types of harm that these individuals could suffer. Inadequate or substandard conditions of detention can be a factor contributing to deaths and serious bodily injury while being held captive, and when such conditions are wholly inadequate, they can constitute greater risk to life and long-term irreparable damage.

We are issuing this allegation letter in order to safeguard the rights of the abovementioned individuals 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 deprivation of liberty of Mr. Azimi and Mr. Afghan.

3. Please indicate whether the two individuals and their families were informed about the reasons for their deprivation of liberty, and whether accurate information regarding their fate, whereabouts and well-being was immediately provided to their families.
4. Please provide information on the measures taken to effectively remove any undue restrictions to the free communication of the persons deprived of their liberty with their families, legal representatives and persons with a legitimate interest, whether in writing or over the phone.
5. Please provide information on the measures taken to investigate the reported act tantamount to enforced disappearance to which Mr. Azimi and Mr. Afghan were subjected to over 27 days; identify those responsible, prosecute and sanction them. If no investigation was undertaken, please explain the reasons.
6. Please provide information on current measures in place to protect the work of human rights defenders, including education advocates. 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 freely carry out their work without acts of intimidation or reprisals.

We would appreciate receiving a response within 60 days. Past this delay, this communication 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 prevent any irreparable harm to the life and personal integrity of Mr. Azimi and Mr. Afghan, to halt the alleged violations and prevent their reoccurrence 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 would also like to inform you that after having transmitted the information contained in the present communication to the *de facto* authorities, the Working Group on Arbitrary Detention may also transmit cases 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the statement and/or 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 statement and/or press release will indicate that we have been in contact with the *de facto* authorities to clarify the issues in question.

Please be informed that a copy of this letter has also been sent to the Permanent Mission of the Islamic Republic of Afghanistan in Geneva. Please note

that communications transmitted to *de facto* authorities do not in any way imply the expression of any opinion concerning the legal status of any territory, city or area, or of its authority.

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

Richard Bennett

Special Rapporteur on the situation of human rights in Afghanistan

Matthew Gillett

Vice-Chair on Communications of the Working Group on Arbitrary Detention

Aua Baldé

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Farida Shaheed

Special Rapporteur on the right to education

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the general provisions of the Universal Declaration on Human Rights, read alone and in conjunction with the right to non-discrimination (article 2), particularly the right to be recognized as a legal person (article 6), the right to an effective remedy (article 8), the prohibition of arbitrary detention (article 9), the right to freedom of opinion and expression (article 19) and to peaceful assembly and association (article 20).

We would also like to emphasize that the prohibition of enforced disappearances has attained the status of *jus cogens* under international law and the corresponding obligation to investigate under international law. In addition, we recall that, under certain circumstances, acts tantamount to enforced disappearance perpetrated by non-State actors in the context of a widespread or systematic attack against any civilian population amount to crimes against humanity.

Moreover, the Guiding Principles for the Search for Disappeared Persons¹ of the Committee on Enforced Disappearances stipulate that the search for the disappeared should respect human dignity (principle 2), be considered as a continuing obligation (principle 7) and be conducted on the basis of a comprehensive strategy (principle 8). The Guiding Principles further establish that the search should be carried out safely (principle 14) and be independent and impartial (principle 15).

¹ [Guiding principles for the search for disappeared persons | OHCHR](#)