

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of human rights while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 27/1, 35/15, 34/21, 31/3 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the reported **detention of Mr. Mesut Vardak, Mr. Önder Akkuşçi and Mr. Yunus Demirci, and the ongoing house arrest of Mr. Sami Yavuz and Mr. Yılmaz Aytan, as well as the potential risk of deportation of all five individuals to Turkey, which would put them at risk of serious human rights violations, including torture and other cruel inhuman or degrading treatment or punishment, and threats to their lives.**

According to the information received:

Mr. Aytan, Mr Akkuşçi, Mr. Yunus Demirci (Turkish nationals), and Mr. Vardak (Afghan national) are all teachers at the Afghan Turk Cag educational (ATCE) NGO, an educational institution that because of its imputed links to the Hizmet/Gulen Movement, classified as a terrorist organization by Turkey under the assigned names Gülenist Terror Organisation (Fethullahçı Terör Örgütü, FETÖ) or Parallel State Organisation (Paralel Devlet Yapılanması, PDY) since 11 December 2015. Mr. Yavuz (Turkish national) is a businessman whose children attend the same educational institution.

Mr. Aytan, Mr. Akkuşçi, and Mr. Yavuz are all holders of UNHCR asylum seeker certificates.

On 12 December 2017, at around 07.30 a.m., local Afghan State agents arrested the four teachers while on their way to their place of work in Kabul. The

intelligence officers were armed, with some dressed in plainclothes and others wearing military uniforms. They covered the heads of the four teachers with bags before transporting them to a private villa in the Qalae Fatulalh district of Kabul where they held them in detention.

At 10.00 a.m., on the same day, Mr. Sami Yavuz and his wife Ms. Zehra Yavuz were detained while leaving their residence. They were apprehended by fifteen security officers in four jeeps positioned outside of their residence. The security officers were armed and dressed in plainclothes, and presented themselves as officers from the Intelligence Directorate. They took the Yavuz couple, their security guard and their driver into custody, allegedly for interrogation purposes, and transferred them to the same villa, at Qalae Fatulalh district in Kabul. It is reported that this private villa had high walls and iron doors, with security outside.

The arrest was allegedly carried out based on a list of 19 names provided to the Afghan authorities by the Turkish government. The individuals on the list are requested to be arrested and eventually transferred to Turkey, even though the two countries have no extradition agreement.

Around 12.30 p.m., Ms. Zehra Yavuz, the security officer and the driver were released, as their names did not appear on the above-mentioned list.

After Ms. Zehra Yavuz's release, her husband's lawyer went to the place of detention and introduced himself as the detainee's lawyer. This resulted in the immediate secret transfer of all five detained individuals to another location in the vicinity. Their whereabouts were kept secret and they had no access to legal counsel or medical care.

Around 15.30 p.m., on the same day, the security forces raided Afghan-Turk School, where several of the detained individuals were employed, without any warrant and searched the Girl High school, their dorms, and other buildings and rooms within the school campus. They reportedly intended to arrest several other teachers, including the principal of the school; however, they were prevented from doing so by protesting students, parents, media, civil society and some members of parliament.

The general administration of the ATCE NGO filed a complaint on that same day to the local police authority, immediately after realizing that the four teachers were abducted and went missing.

On 17 December 2017, at about 10.30 a.m., after being held incommunicado for five days, Mr. Yunus Demirci, Mr. Mesut Vardak and Mr. Önder Akkuşçi were released by the intelligence services, as the Ministry of Interior could not find any

evidence of any wrongdoing or crime based on their investigation. However, they have not been entitled to take proceedings before an Afghan court to contest the lawfulness of their detention.

At 9.30 a.m. that same day, the Afghan National Directorate of Security (NDS) transferred Mr. Yilmaz and Mr. Yavuz to the Ministry of Interior for interrogation. At 8.30 p.m. they were accompanied to the residence of Mr. Yavuz in Kabul, where they were placed under house arrest.

Both Mr. Yavuz and Mr. Yilmaz remain under house arrest and are currently guarded by police officers at the door and outside the building 24 hours a day, until a final decision is made by the authorities. In addition, the police has confiscated the passports of Mr. Yilmaz, Mr. Yavuz and all their family members as a “condition” of release from custody and placement under house arrest.

While we do not wish to prejudge the accuracy of these allegations we are concerned that the deportation of Mr. Yunus Demirci, Mr. Mesut Vardak, Mr. Önder Akkuşçi, Mr. Yilmaz and Mr. Yavuz may result in serious violations of their human rights to liberty, security, integrity and fair trial, and threaten their lives, in contravention to the Universal Declaration of Human Rights (UDHR, articles 3, 5, 9, 10 14, 19 and 20) and the International Covenant on civil and political rights (ICCPR, articles 6, 7, 9, 13, 14, 19 and 22) ratified by Afghanistan on 24 January 1983. Furthermore, incommunicado detention can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment and would constitute a violation of articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Afghanistan ratified on 1 April 1987.

In addition, their deportation would be in contravention with the fundamental international protection principle of non-refoulement, enshrined in several key human rights treaties. We would like to draw your Excellency’s Government’s attention in particular to article 33 of the 1951 Convention on the Status of Refugees, article 7 of ICCPR, and article 3 of CAT. The latter provides that, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

We are also concerned at the risk for these individuals to be further subjected to secret detention, which amounts to enforced disappearance, at various stages of the process of arrest and/or in the context of the eventual expulsion or deportation.

We would also like to refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council

resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the deprivation of liberty of the five individuals, and how these measures are compatible with the above-mentioned international norms and standards
3. Please indicate if legal guarantees were provided to them to ensure access to a fair procedure, such as access to a lawyer, their family and a doctor among others.
4. Please provide further information as to how in-depth individual assessments are carried out, which would allow authorities to accurately identify the protection needs of migrants.
5. Please provide information on any safeguards in place and measures taken to avoid deportation, or forcible return of these individuals, in particular those holding an asylum seeker certificate, to countries where their personal security, integrity and lives may be at risk.

While awaiting your reply, we respectfully urge that individuals are not forcibly returned to countries where they may be at risk of being subjected to torture or other ill-treatment or of losing their lives, without a proper assessment of the risks they may face in respect of their rights under international human rights law. We also urge that, in the absence of any accusation, to immediately and unconditionally release the individuals who remain in custody.

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 responsible of the alleged violations.

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

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment