

OPENING HEARING 2 NOVEMBER 2021**EXPERT WITNESS STATEMENT OF HAYDEE DIJKSTAL**

On behalf of the family of journalist Yama Siawash

1. My name is Haydee Dijkstal and I am Barrister at 33 Bedford Row Chambers in London practicing international criminal and international human rights law before international criminal tribunals, and before international and regional human rights courts and mechanisms.
2. On 7 November 2020, Afghan journalist Mr Yama Siawash was targeted and killed in an attack in Kabul, Afghanistan. He was killed by a car bomb which exploded shortly after Yama entered the vehicle. I have been instructed to act as international counsel for the family of Mr Yama Siawash, which includes his parents and siblings.
3. It is noted that in addition to Yama's work as a journalist and TV presenter, his father is a journalist and owner of Armaghan e Melli newspaper in Afghanistan, and his three brothers are all also journalists.
4. As counsel for the Siawash family, I deliver this testimony on behalf of, and on the instructions of, the family of Mr Yama Siawash to raise the situation of Yama's murder, how his killing is part of a pattern of killings of journalists and members of the media in Afghanistan, and how the challenges the Siawash family encountered when seeking genuine and transparent justice measures fit within the wider context of impunity for crimes against journalists in Afghanistan.
5. This testimony is based on information and materials from the family about Yama's career as a journalist and TV presenter in Afghanistan, the threats and pressure he received as a result of his work, and his killing. It is also based on information from the family as to steps they have taken to seek justice for Yama's killing and challenges they have faced, as well as, reports from the United Nations, human rights organisations and other publicly available information on the wider context of attacks on journalists in Afghanistan and impunity for these crimes.

Yama Siawash's work as a journalist in Afghanistan

6. Yama Siawash was well-known in Afghanistan for his work reporting on issues of politics and governance in Afghanistan. Yama became best known for his role as a journalist and TV presenter at Tolo News. As noted by his father, Yama was “born into a family of journalists” and was surrounded by media and journalism during his youth and throughout his career. His family describes how Yama loved his work as a journalist and how his goals aimed at seeking the truth on difficult topics for the people of Afghanistan. For example, his sister says that Yama “spoke about serving his people and raising their voice to the world through journalism”, and sought to give “hope for the oppressed and poor people of Afghanistan.” His brother explains that Yama “believed in the right to truth and was committed to using journalism to expose the truth and serve his country.”
7. In Afghanistan, Yama was particularly known for his criticisms of Government policies and his willingness to press and confront Government officials during TV interviews. As a journalist and TV presenter on the television program Farahkhabar, he posed tough questions and challenged his guests on controversial political issues and developments in Afghanistan. His guests included Government officials and other prominent figures. His family shared how journalism allowed him to reveal the truth. For example, his brother describes that through his style of journalism Yama sought to use “his voice to shed light on the realities of the country.”
8. The family explain that due to the popularity of his show and the challenging conversations he prompted, Yama's show made a significant impact in Afghanistan. His interviews were widely followed by not only the public, but also the Government and other influential groups in Afghanistan. The impact and influence of Yama's journalism was demonstrated by the fact that his interviews resulted in Government officials' dismissals.¹
9. The family also report that Yama's work resulted in ongoing threats against him as well as pressure and confrontations against him and his employer by prominent individuals in Afghanistan seeking to stop his work as a journalist and TV presenter. Senior officials were hostile to Yama and opposed his journalism, and in some instances, physically acted out in anger against Yama. The family state that it was apparent to them that Yama's work was increasingly putting him under real threat and danger. This was confirmed when a local NGO

¹ See, for example, video: <https://www.youtube.com/watch?v=ZefVMimc6xo>.

on free press and protection of journalists contacted Yama to warn him about his safety due to his work, and advised him to leave the country for his protection. His brothers state that Yama understood the risks of continuing his work as a journalist, but was dedicated to exposing corruption and other controversial issues in Afghanistan.

10. In 2016, Yama's family explain that he felt pressure to resign due to his work as a journalist. The family further report that despite his resignation, they still felt that his safety and life were at risk if he stayed in Afghanistan, and it was therefore decided that he would leave Afghanistan for a few years in order to allow for the threats and pressure to subside and for the situation to change such that he could safely return to Afghanistan. Towards the end of 2019, the family describe how Yama's love for his country and desire to serve his people motivated him to return to Afghanistan, and towards the end of 2019, Yama returned with the hope that enough time had passed to allow him to safely return home.

The killing of journalist, Yama Siawash

11. Yama was killed on the morning of 7 November 2020. Upon returning to Afghanistan, the family describe how the Government-owned central bank repeatedly approached and recruited him outside the normal recruitment process, and how he eventually accepted the position of media advisor for the bank. He had recently started the position on the day he was killed.
12. On 7 November, Yama was collected in a Government-owned vehicle. At about 7:35am, when Yama entered the vehicle, 2 kilograms of military grade RDX explosives, which were embedded within vehicle, were remotely detonated.² Because the car bomb exploded after Yama entered the vehicle, the explosion occurred very close to the Siawash family home and was heard by the members of the family who ran to the scene of the explosion.
13. Yama's father and brothers describe arriving quickly to the scene of the explosion and seeing a burning car and a lifeless body, and then finding Yama's body at the scene. They describe how the power of the explosion caused Yama's body to fly several meters from the explosion, and that they found him with his leg detached from his body, and his eyes open. They

² See, for example, United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 26; and Annual Report 2020, Afghan Journalists Safety Committee, pp. 2, 9.

describe their devastation and the deep pain from finding his body and together collecting his remains.

14. Each of the family members' accounts make clear that Yama was integral to their family, and how the loss of Yama when he was killed severely impacted their family life; turning their world upside down and causing great emotional distress and grief. They also describe how their mental pain and suffering was further compounded by fear that other members of the Siawash family might be targeted - both as journalists and due to their efforts to seek justice and accountability for Yama's murder. It resulted in the family no longer feeling safe in Afghanistan.

Yama's targeted killing as part of the wider context of violations against journalists in Afghanistan

15. The attack on Yama was deliberate and targeted. Information about the remote detonation of 2 kilograms of military grade RDX explosives embedded in the Government-owned vehicle demonstrates that deliberate steps were taken to target and attack the passengers of the vehicle.³ This is particularly true considering that the vehicle, including its GPS, was in the control of the Government within a secure and surveilled parking lot before the explosion. The explosives were remotely detonated soon after Yama entered the vehicle, with the two other passengers having been in the car and driving for a longer period to specifically pick up Yama; indicating that he was the target of the attack.
16. Given the threats, pressure and hostility Yama received as a result of his work, the family strongly feel that Yama was targeted because of his ongoing and well-known profile as a journalist and TV presenter, and for his work in journalism to raise controversial issues. His brother states that although "Yama believed that enough time had passed that he would be safe in Afghanistan again", the family now feel that "once a critic or a dissident is viewed as a threat, they will always be considered a threat, no matter passage of time." The family believe that it was Yama's work as a journalist, and his exercise of his right to free expression through his work, that led to him being targeted and murdered.

³ See, Kabul University attackers "blew themselves up" to mask their identities: Saleh, atnnews, 9 November 2020. See also, United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 26; and Annual Report 2020, Afghan Journalists Safety Committee, pp. 2, 9. See also, Afghanistan vehicle bomb kills former TV presenter, The Guardian, 7 November 2021; Afghanistan violence: Former TV presenter Yama Siawash killed, BBC, 7 November 2021; Former Afghan TV presenter killed in explosion in Kabul, Aljazeera, 7 November 2020.

17. It is noted that the attack which took Yama's life was not a random occurrence or an isolated act, but can be considered part of a pattern of attacks and targeted assassinations of journalists and members of the media in Afghanistan, particularly from 2018 to 2021. His targeted killing is part of an escalated series of attacks against journalists in the final months of 2020 which has been described by one NGO to be part of a "bloody campaign of targeted killings of journalists" which "started with the fatal attack against Yama Siawash."⁴
18. The pattern of threats, targeting and killing of journalists in Afghanistan has been widely documented by NGOs, international organisations and Governments as a consistent threat. In a February 2021 report, the UN Assistance Mission in Afghanistan stated that "Afghanistan is one of the most dangerous countries in the world for journalists;" documenting that in the period between 1 January 2018 and 31 January 2021, 33 members of the media were killed in Afghanistan.⁵ The list of those journalists, TV presenters and media staff killed, including Yama Siawash, demonstrates the consistency and frequency in which members of the media are targeted, attacked and killed "in reprisal for their work."⁶
19. The year 2020 marked a dramatic increase in attacks against journalists;⁷ particularly in the final months of 2020, and in the same period when Yama was killed.⁸ This increase was documented, for example, within the Annual Report of 2020 by the Afghan Journalists Safety Committee which stated that the "dramatically increased levels of direct attacks and assassinations of journalists at the end of 2020 has created widespread panic among media outlets and journalists across Afghanistan,"⁹ and "indicat[es] a strategic campaign of terror against journalists and media workers."¹⁰ Notably, this documentation considered the journalists killed in attacks, but did not include attacks, which amplify these numbers, whereby journalists were threatened or survived attack "by various groups such as government officials, Taliban, Daesh and warlords."¹¹

⁴ Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

⁵ United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 7.

⁶ See, for example, Number of journalists murdered in reprisal for reporting nearly doubles, Committee to Protect Journalists, 19 December 2018. See also, RSF's 2018 round-up of deadly attacks and abuses against journalists – figures up in all categories, Reporters Without Borders, 14 December 2018; and Afghanistan Ranked The Most Dangerous Country For Journalists In 2018 As Peace Talks Progress, Civicus, 12 February 2019.

⁷ See, Afghan Journalists Stepping Down Amid Threats, Violence, Intimidation, Gandhara, 4 February 2021.

⁸ US Department of State, Bureau of Democracy, Human Rights and Labor, 2020 Country Reports on Human Rights Practices: Afghanistan, p. 2. See also, Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

⁹ Annual Report 2020, Afghan Journalists Safety Committee, p. 1.

¹⁰ *Id.*, at pp. 1, 3.

¹¹ Annual Report 2020, Afghan Journalists Safety Committee, p. 3.

20. Notable are the multiple sources of the threats. Reports document how journalists are threatened, targeted and attacked from “all sides”¹² with “[j]ournalists fac[ing] the threat of harassment and attack by ISIS-K, the Taliban, and government-linked figures attempting to influence how they were covered in the news.”¹³

Obstacles and challenges to pursuing justice for Yama’s killing

21. Despite taking immediate steps to seek justice domestically in Afghanistan, the Siawash family encountered obstacles and challenges to their request for the Government to undertake a genuine and transparent investigation into the perpetrators of Yama’s death.

22. The family requested the Government transparently share, or at least discuss, with the family information which might reveal those most responsible, including CCTV and surveillance records, and GPS data. The family raised that important information to assist a genuine investigation was accessible to the Government, or could be obtained from other sources. However, the family encountered what they felt were contradictory statements from the Government as to any evidence and investigation, and a lack of willingness by the Government to openly discuss and be transparent about the state of any inquiries, not only with the public,¹⁴ but particularly with the family.

23. It was not only the family which raised the inability to meaningfully engage with the Government or be assured of a transparent and genuine investigation, but also civil society and the media, which shared concern about the credibility and transparency of purported inquiries into Yama’s death.¹⁵ Concerns raised included lack of cooperation from the

¹² See, “Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan, Human Rights Watch, 2015, p. 1.

¹³ US Department of State, Bureau of Democracy, Human Rights and Labor, 2020 Country Reports on Human Rights Practices: Afghanistan, p. 19. See also, “Stop Reporting or We’ll Kill Your Family”: Threats to Media Freedom in Afghanistan, Human Rights Watch, 2015, p. 1; and Afghan Journalists Safety Committee, AJSC Six Month Report 2019, p. 1.

¹⁴ See, for example, video of President Ghani on questions of the investigation into Yama’s killing: <https://www.facebook.com/watch/?v=796083750997485>.

¹⁵ See, for example, Govt Institutions Provide Conflicting Reports on Kabul Attack, ToloNews, 14 December 2020; Ambiguity Continues Around Probe into Attack on Yama Siawash, ToloNews, 12 December 2020; Calls Mount for Details of Attack on Yama Siawash, ToloNews, 9 December 2020; Probe Delayed into Attack on Yama Siawash, 2 Others: Documents, ToloNews, 8 December 2020; Kabul Attack: Media Not Convinced as Govt Shares CCTV Footage, ToloNews, 25 November 2020; Govt Agencies Yet to Give Details of Attack on Yama Siawash, ToloNews, 24 November 2020; Security Agencies Refuse to Give Information about Kabul Attack, ToloNews, 23 November 2020; Central Bank Denies Information on Kabul Attack: Journalists, ToloNews, 21 November 2020; Yama Siawash’s Father Seeks Probe in Attack on His Son, ToloNews, 18 November 2020.

Government-owned bank on requests for information relevant to the attack.¹⁶ CCTV shared with the media led journalists to voice that the selective footage “does not provide convincing answers to their legitimate questions.”¹⁷

24. These concerns resulted in civil society repeatedly raising the on-going impunity in Yama’s case. For example, the Afghan Journalists Safety Committee raised Yama’s case to note that although “the government assured Siawash’s family, the general public and the media that progress in the investigation into his killing was underway”, the Government has failed to share information with any of these parties.¹⁸ In January 2021, activists and residents throughout the country “signed a petition calling for a thorough probe into the attack” on Yama,¹⁹ and Human Rights Watch noted that in the same month protests were held “in Kabul over the government’s failure to investigate the killing of journalist Yama Siawash.”²⁰ In July 2021, Human Rights Watch raised that the Government’s consistent failings in investigating attacks on journalists “were highlighted in the case of Yama Siawash.”²¹ The organisation’s report stated that “[a]lthough government officials promised a thorough investigation, no details of any investigation have been made public.”²²

25. The family look to many of these same concerns, along with the Government’s lack of transparency and unresponsiveness to the family, as having led them to skepticism. This included when the Government claimed that 11 members of the Taliban were arrested in connection with the murder, but the process lacked transparency. Yama’s father said “[w]e cannot understand why the government will not be transparent with us and this has raised my suspicions.” It caused distrust, similar to that expressed within the media and in civil society, about whether the Government and judiciary in Afghanistan genuinely wished to and were able to find the truth of who is most responsible for Yama’s death.

26. The difficulties of the Siawash family in getting answers and seeking justice for Yama’s killing were taken despite their fear of further attacks against their family. The family explained the fear of reprisal they felt while seeking justice. For example, one member of the

¹⁶ Kabul Attack Probe Team Faces Lack of Cooperation by Central Bank, ToloNews, 16 November 2020; Probe Team Still Waiting for CCTV Footage of Siawash’s Vehicle, ToloNews, 26 January 2021; Probe Team Still Waiting for CCTV Footage of Siawash’s Vehicle, ToloNews, 26 January 2021; Security Agencies Refuse to Give Information about Kabul Attack, ToloNews, 23 November 2020.

¹⁷ Kabul Attack: Media Not Convinced as Govt Shares CCTV Footage, ToloNews, 25 November 2020.

¹⁸ Afghan Journalists Safety Committee, Annual Report 2020, p. 9.

¹⁹ Dozens Sign Petition Calling for Probe into Attack on Siawash, ToloNews, 23 January 2021.

²⁰ Afghanistan: Targeted Killings of Civilians Escalate, Human Rights Watch, 16 March 2021.

²¹ Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

²² Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

family said “we felt that the people who have assassinated [Yama] will stand against us for sure and they will try to kill each and every one of our family members as we raise our voice demanding justice.” This fear disrupted their lives and led to their displacement from Afghanistan.

27. After feeling that the Afghan Government had failed to thoroughly and genuinely investigate the attack, and with their fear that pushing further for transparent justice in Afghanistan would put the family at additional risk, they decided to seek justice internationally before international mechanisms and courts.

The wider context of impunity for attacks and killings of journalists in Afghanistan

28. Just as the attack which took Yama’s life is part of the pattern of attacks on journalists in Afghanistan, the inability of his family to access a genuine and transparent judicial remedy or to seek the truth mirrors the pattern of impunity associated with violence against journalists in Afghanistan.

29. A culture of impunity for attacks and killings of journalists has been widely reported. For example, in 2021, the United Nations Assistance Mission in Afghanistan stated that “[i]n 9 out of 10 cases” concerning the killing of journalists or human rights defenders in Afghanistan, “impunity for such violations and abuses is total” and “prevails.”²³ The Afghan Journalists Safety Committee has described a “lack of serious investigation by the government regarding the killing of journalists,”²⁴ and Human Rights Watch has “doubt[ed] the Afghan government’s capacity and willingness to bring alleged perpetrators to justice” ... “[b]ased on [its] research in the Afghan justice system.”²⁵ It led the Afghanistan Independent Human Rights Commission, Human Rights Watch and other organisations in June 2021 to call on the United Nations to establish an international fact-finding mission to investigate the on-going, and escalating, attacks against journalists.²⁶

30. Following the events in Afghanistan in August 2021, which saw a change in national authorities, the ability of the Siawash family, and other families of murdered journalists in

²³ United Nations Assistance Mission in Afghanistan, Special Report: Killing of Human Rights Defenders, Journalists and Media Workers in Afghanistan, 2018-2021, February 2021, p. 4.

²⁴ Afghan Journalists Safety Committee, Annual Report 2020, p. 9.

²⁵ Q&A: The International Criminal Court and the United States, Human Rights Watch, 2 September 2020.

²⁶ AIHRC Calls for International Fact-Finding delegation to Inquiry Crimes against Civilians, didpress.com, 30 October 2021; and Arrest of Afghan Journalists Highlights Larger Concerns, Human Rights Watch, 30 July 2021.

Afghanistan, to access genuine justice within the Afghan judicial system is in further question. This is supported by the recent decision of the International Criminal Court Prosecutor which seeks to resume the ICC investigation into crimes committed in Afghanistan after concluding that “there is no longer the prospect of genuine and effective domestic investigations.”²⁷

31. The challenges the Siawash family confronted with seeking justice domestically, combined with questions of whether a functioning independent and impartial judicial system exists in Afghanistan after recent developments, leaves the family feeling that justice for their family, and other families of murdered journalists, is not possible in Afghanistan.

I confirm that the facts stated in this witness statement are true to the best of my knowledge.

Date and Place: 31 October 2021, London

Name witness and signature: Haydee Dijkstal



²⁷ See, Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, ICC Press Release, 27 September 2021; and Situation in the Islamic Republic of Afghanistan, Request to authorise resumption of investigation under article 18(2) of the Statute, ICC-02/17-161, 27 September 2021.