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CITY BAR

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**STATEMENT CONDEMNING THE MURDER OF MUMTAZ SHERZAI
IN AFGHANISTAN AND CALLING ON THE INTERNATIONAL COMMUNITY
TO DEMAND TALIBAN COMPLIANCE WITH INTERNATIONAL LAW**

The New York City Bar Association (“City Bar”) condemns in the strongest possible terms the recent brutal murder of Afghan professor and former prosecutor Mumtaz Sherzai.¹

I. Mumtaz Sherzai’s Murder

On July 15, 2022, Mumtaz Sherzai went missing from his home in the Matun district of the city of Khost, in Khost province in southeast Afghanistan.² Sherzai was a former National

¹ More than 150 years old, the New York City Bar is an organization of over 23,000 members in New York City and elsewhere throughout the United States, and in more than 50 countries around the globe. Its members include judges, prosecutors, defense counsel, government lawyers, and public interest/non-governmental organization practitioners, as well as legal academics and attorneys representing nearly every major law firm and corporation in the United States. The City Bar has a long and distinguished history of promoting the rule of law and human rights, including the rights of legal professionals to fulfill their professional obligations. The City Bar’s Task Force on the Independence of Lawyers and Judges assisted with this Statement.

The City Bar’s most recent statements concerning events in Afghanistan, including the assassination of judges, prosecutors and court staff (April 2020); the Taliban takeover of the Afghanistan Independent Bar Association (May 2022); a jointly-issued statement to the United Nations concerning the worsening human rights crisis and the need to protect Afghan judges and lawyers (June 2022); and the need for safe passage of at-risk Afghan nationals (August 2021) can be found [here](#), [here](#), [here](#) and [here](#). (All websites cited in this letter were last visited on August 4, 2022.)

² See Afghanistan: Taliban torture and kill former prosecutor/law professor, abduct children (IAPL Monitoring Committee on Attacks on Lawyers, July 20, 2022) (“IAPL”), <https://defendlawyers.wordpress.com/2022/07/21/afghanistan-taliban-torture-and-kill-former-prosecutor-law-professor-abduct-children/>; Tweet by Punk31 (July 17, 2022) (available at IAPL, *supra* n.2) (“Punk31”); Detail of Terrorism Update – Afghanistan: Taliban killed a for[mer] NDS prosecutor in Khost Province (South Asia Terrorism Portal, July 18, 2022) (“Terrorism Update”), <https://www.satp.org/terrorism-update/taliban-killed-a-for-nds-prosecutor-in-khost-province#>; Tweet by Khalil Minawi (July 16, 2022) (“Minawi”) (available at IAPL, *supra* n.2); Tweet by Kabir Haqmal (July 16, 2022) (“Haqmal”), pic.twitter.com/PKhvSrt6uQ; University Lecturer Allegedly Tortured to Death in Southeastern Afghanistan (Middle East North Africa Financial Network (“MENAFN”)/Khaama Press, July 17, 2022) (“MENAFN”), <https://menafn.com/1104543576/University-Lecturer-Allegedly-Tortured-To-Death-In-Southeastern-Afghanistan>. (All websites cited in this statement were last visited July 29, 2022.)

Directorate of Security (“NDS”) prosecutor and a professor at Khost University.³ The following day, on July 16, Sherzai’s remains were found in the Tani district, near the Khost province airport.⁴ His bruised and bloodied body bore obvious signs of beatings and severe torture, which are presumed to be his cause of death.⁵ Sherzai is survived by his wife and their three-year-old daughter.⁶ He was the sole breadwinner for his extended family.⁷

II. Sherzai’s Targeting as a Former Prosecutor and as a Professor

Regrettably, Sherzai’s murder is by no means an isolated instance. Both his service as a former prosecutor and his employment as a law professor at the time of his death rendered him highly vulnerable as a target of the Taliban. As a federal prosecutor with the NDS in the Afghan government before the mid-August 2021 Taliban takeover, Sherzai was responsible for investigating and prosecuting cases involving domestic and international terrorism, as well as other national security-related crimes.⁸ Like hundreds of other former prosecutors across the country,

³ See, e.g., Terrorism Update, *supra* n.2; Punk31, *supra* n.2; MENAFN, *supra* n.2; Tweet by Fazalrabi fazli (July 16, 2022) (“Fazalrabi”), pic.twitter.com/4Obsjm5S2i; Minawi, *supra* n.2.

⁴ See Minawi, *supra* n.2; Terrorism Update, *supra* n.2; Tweet by Fletcher Afghan Evacuation & Resettlement Group (July 18, 2022) (“Fletcher”), pic.twitter.com/fRAdBardfh; Haqmal, *supra* n.2; IAPL, *supra* n.2; University Lecturer Allegedly Tortured to Death in Southeastern Afghanistan (Khaama Press, July 17, 2022) (“Khaama”), <https://www.khaama.com/university-lecturer-allegedly-tortured-to-death-in-southeastern-afghanistan-473983/>; Afghanistan: Taliban torture and kill former prosecutor/law professor (Practice Source, July 2022) (“Practice Source”), <https://practicesource.com/afghanistan-taliban-torture-and-kill-former-prosecutor-law-professor/>; MENAFN, *supra* n.2; Fazalrabi, *supra* n.3.

⁵ See IAPL, *supra* n.2; Khaama, *supra* n.4; Terrorism Update, *supra* n.2; Practice Source, *supra* n.4; Punk31, *supra* n.2; Fazalrabi, *supra* n.3; MENAFN, *supra* n.2.

⁶ See IAPL, *supra* n.2; Khaama, *supra* n.4; Practice Source, *supra* n.4.

⁷ See IAPL, *supra* n.2. A report on social media indicates that members of Sherzai’s family have been abducted and that their fate is unknown. That same social media source indicates the Taliban is now occupying the family’s home. See, e.g., IAPL (at tweet by Zubaida Akbar), *supra* n.2.

⁸ See, e.g., IAPL, *supra* n.2; Fletcher, *supra* n.4; Terrorism Update, *supra* n.2; Punk31, *supra* n.2.

Sherzai feared Taliban retribution⁹ and was seeking to be evacuated to safety.¹⁰ Most of the former prosecutors who have not escaped Afghanistan are in hiding.¹¹ Moreover, even before mid-August 2021, federal prosecutors regularly fell victim to the Taliban and other insurgent forces.¹²

Sherzai's post-August 2021 work as a law professor also made him a target. For example, in one of the most recent high-profile cases involving the persecution of an Afghan legal professional, the Taliban arrested Faizullah Jalal, a prominent professor of law and political science at Kabul University. When Jalal was snatched from his Kabul home on January 8, 2022, the international community was seized with fear for the professor's life. His release by the Taliban, unharmed, mere days later has been attributed to the swift and vocal worldwide

⁹ See generally, e.g., Afghan Prosecutors Are Concerned, Saying That They Live in Hiding (Hasht-e Subh Daily, Oct. 5, 2021) (also referring, *inter alia*, to the assassination of prosecutor Mehrabuddin Raha in early Fall 2021, and quoting prosecutor stating that he knows five prosecutors who have been assassinated between mid-August 2021 and early October 2021) ("Hasht-e Subh"), <https://8am.af/eng/afghan-prosecutors-are-concerned-about-their-safety-saying-that-they-live-in-hideouts/>; Afghanistan's Former Prosecutors Hunted By Criminals They Helped Convict (RadioFreeEurope/RadioLiberty (Gandhara), Sept. 21, 2021) (referring, *inter alia*, to the revenge killings of three prosecutors – Ahmadi Shah, assassinated in Nangarhar province on August 26, 2021; another prosecutor assassinated in Farah province on August 27, 2021; and a former prosecutor, Nusrat Ullah, who was assassinated on September 12, 2021) ("RFE/RL Gandhara"), <https://gandhara.rferl.org/a/afghan-prosecutors-targeted/31471145.html>; Female Afghan prosecutors detained in self-prison (Khaama Press, Sept. 22, 2021) ("Khaama Press"), <https://www.khaama.com/female-afghan-judges-detained-in-self-prison-9676676/>; My nightmares came true: ex-prosecutor of Afghan women's abusers (The Guardian, Jan. 17, 2022) ("The Guardian"), <https://www.theguardian.com/world/2022/jan/17/my-nightmares-came-true-ex-prosecutor-of-afghan-womens-abusers>; Afghanistan: Former female prosecutors in hiding to escape retaliation (Times of India, Sept. 22, 2021) ("Times of India"), <https://timesofindia.indiatimes.com/world/south-asia/afghanistan-former-female-prosecutors-in-hiding-to-escape-retaliation/articleshow/86422897.cms>; Afghanistan's female lawyers are on the run from men they prosecuted (BBC News, Oct. 6, 2021) ("BBC News"), <https://www.bbc.com/news/world-asia-58742581>; Taliban Used Children to Plant Bombs. Now it's Hunting Female Prosecutor Who Investigated (Newsweek, Sept. 16, 2021), <https://www.newsweek.com/taliban-puts-bounty-female-prosecutor-who-fought-children-forced-plant-bombs-1629318>; His relatives are being 'hunted' in Afghanistan. He's trying to bring them to California (San Francisco Chronicle, Oct. 19, 2021), <https://www.sfchronicle.com/california/article/His-relatives-are-being-hunted-in-16542987.php>; Prosecutor who put Taliban behind bars fears for his life as UK 'turns its back' on Afghans (The Independent, May 7, 2022), <https://www.independent.co.uk/asia/south-asia/taliban-afghanistan-uk-resettlement-scheme-b2071241.html>.

¹⁰ See Fletcher, *supra* n.4; see also, e.g., New York City Bar Association Statement: At-Risk Afghan Nationals Must Be Given Safe Passage (New York City Bar, Aug. 18, 2021) (urging support for expedited evacuation and streamlined resettlement of at-risk Afghans, including prosecutors, and emphasizing, *inter alia*, that women legal professionals are in greatest peril), <https://www.nycbar.org/media-listing/media/detail/statement-for-afghan-refugee-visa-expedition>.

¹¹ See, e.g., Hasht-e Subh, *supra* n.9; RFE/RL Gandhara, *supra* n.9; Khaama Press, *supra* n.9; The Guardian, *supra* n.9; Times of India, *supra* n.9; BBC News, *supra* n.9.

¹² See, e.g., Statement of New York City Bar Association Condemning Continuing Assassinations of Prosecutors, Judges, and Court Staff in Afghanistan (New York City Bar, April 7, 2020), <https://www.nycbar.org/media-listing/media/detail/city-bar-condemns-assassinations-of-prosecutors-judges-and-court-staff-in-afghanistan>; Hasht-e Subh, *supra* n.9 (observing that "the assassination of prosecutors is nothing new" and that "[d]ozens of prosecutors have been assassinated in recent years").

condemnation of the Taliban's action. But for that global outcry, the professor likely may have met a very different fate.¹³

III. Protections for Sherzai Under International Law

Sherzai's murder highlights the Taliban's grave violations of basic principles and precepts of international law in Afghanistan. These principles and precepts are designed to protect all members of the legal profession.¹⁴

Specifically, international law recognizes the unique role that lawyers play in any society. Because lawyers serve as the guardians of justice for all, international law accords lawyers special protections.¹⁵ For example, the U.N. Basic Principles on the Role of Lawyers ("U.N. Principles on Lawyers") provide that clients' positions and causes are not to be attributed to their counsel.¹⁶ In other words, a lawyer is obligated to make the best case possible for a client. But no matter who the client is and no matter what the client's position or cause may be, that position or cause is not attributable to the lawyer personally. In short, lawyers – and prosecutors in particular – are not to be persecuted because of the role they play in the justice system.

The U.N. Guidelines on the Role of Prosecutors ("U.N. Guidelines on Prosecutors") recognize that prosecutors in particular "play a crucial role in the administration of justice"¹⁷ as "representatives of the public interest."¹⁸ In other words, "the people" are a prosecutor's "client."

¹³ See generally Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association at n.13 (New York City Bar, May 6, 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>.

¹⁴ The discussion which follows highlights the international protections applicable to Sherzai as a prosecutor and a lawyer. However, even more fundamentally, like all human beings, Sherzai was entitled to "the right to life, liberty and the security of person." See Universal Declaration of Human Rights, Art. 3 (1948), <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>. He was likewise entitled to be free from torture. *Id.*, Art. 5. Similarly, the Universal Declaration establishes that "[e]veryone has the right to work," including "free choice of employment." *Id.*, Art. 23(1). The Universal Declaration further provides that "[n]o one shall be arbitrarily deprived of his property." *Id.*, Art. 7(2); see also *id.*, Art. 12 (providing that "[n]o one shall be subjected to arbitrary interference with his . . . family, [or] home"). Lastly, the Universal Declaration specifically states that "[e]veryone has the right to an effective remedy" for violations of human rights. *Id.*, Art. 8.

¹⁵ See generally United Nations Basic Principles on the Role of Lawyers (Sept. 7, 1990) ("U.N. Principles on Lawyers"), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>; United Nations Guidelines on the Role of Prosecutors (1990) ("U.N. Guidelines on Prosecutors"), <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>; see also United Nations Basic Principles on the Independence of the Judiciary (Sept. 6, 1985), Principles 2, 4, & 11, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

¹⁶ See U.N. Basic Principles on the Role of Lawyers, Principle 18 (stating that "[l]awyers shall not be identified with their clients or their clients' causes as a result of their functions").

¹⁷ See U.N. Guidelines on the Role of Prosecutors, Preamble.

¹⁸ See U.N. Guidelines on the Role of Prosecutors, Para. 11.

As such, on behalf of the people, prosecutors are obligated to “[play] an active role in criminal proceedings,” including “the investigation of crime” as well as the “institution of prosecution.”¹⁹ Prosecutors’ positions and interests in service to their clients – “the people” – are separate and distinct from the prosecutors’ own personal positions and interests. The two are not to be confused or conflated.²⁰

The U.N. Principles on Lawyers further provide that governments are to “ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”²¹ Similarly, as to prosecutors in particular, the U.N. Guidelines on Prosecutors specify that governments shall “ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, [or] improper interference.”²² Further, “[w]here the security of lawyers is threatened as a result of discharging their functions,” the U.N. Principles on Lawyers state that the lawyers “shall be adequately safeguarded by the authorities.”²³ To the same end, the U.N. Guidelines on Prosecutors stipulate that “[p]rosecutors and their families shall be physically protected by the authorities . . . [whenever] their personal safety is threatened as a result of the discharge of prosecutorial functions.”²⁴

As both a lawyer and a prosecutor, Sherzai was entitled to all of these protections. Here, however, the Taliban failed to protect Sherzai from intimidation, hindrance, harassment, and interference and to safeguard his physical security.

III. Resolution and Call to Action

The New York City Bar Association mourns and condemns the beating, torture, and murder of Sherzai – violence undertaken for no apparent reason other than that Sherzai fulfilled his professional duties as a prosecutor and a lawyer. The City Bar calls on the Taliban to make prompt and full restitution to Sherzai’s family and, in the future, to honor all applicable international obligations, including the U.N. Guidelines on the Role of Prosecutors and the U.N. Basic Principles on the Role of Lawyers. Acceptance in the global community of nations requires no less. The eyes of the world are upon Afghanistan, and the Taliban are squarely under the microscope.

The City Bar also issues a call to action to the international community. Specifically, the City Bar calls on the U.S. government, the European Union, and all governments worldwide, together with the United Nations, to exert their considerable leverage to bring maximum pressure

¹⁹ See U.N. Guidelines on the Role of Prosecutors, Para. 11.

²⁰ See U.N. Basic Principles on the Role of Lawyers, Principle 18.

²¹ See U.N. Basic Principles on the Role of Lawyers, Principle 16.

²² See U.N. Guidelines on the Role of Prosecutors, Para. 4.

²³ See U.N. Basic Principles on the Role of Lawyers, Principle 17.

²⁴ See U.N. Guidelines on the Role of Prosecutors, Para. 5.

to bear on the Taliban and to demand Taliban compliance with international law. Further, the City Bar calls on all governments and the United Nations to recognize the vital role that judges, prosecutors, and lawyers play in any society, as well as the grave danger that the Taliban pose for those prosecutors and other legal professionals who remain in Afghanistan. Governments and the United Nations must take all measures necessary to protect their safety and that of their families. Lives literally hang in the balance.

The New York City Bar stands steadfast in its solidarity with our brave and beleaguered colleagues, the Afghan judges, prosecutors, and lawyers. You will not be forgotten. You are a shining beacon of inspiration to us all.