



His Excellency President Hamid Karzai
Kabul
Afghanistan

5th November 2007

BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

Your Excellency,

Re Juant

I am writing to you in my capacity as Chair on behalf of the Bar Human Rights Committee of England and Wales with respect to the cases of the Juant defendants which have recently been brought to my attention. The Bar Human Rights Committee is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial.

It is our understanding from the information provided to us that seven members of the Juant family were tried before the Gershk District Court in February 2006 in relation to an alleged murder. They were present in court during the three day trial but were not permitted to call any defence witnesses to testify in their case. The prosecution on the other hand called 31 witnesses. None of the defendants were legally represented during the trial. They were all convicted and sentenced to terms of imprisonment and two of the defendants (Hajj Asif Juant and Pervez Juant) were sentenced to death. The Supreme Court granted a review of the convictions on the basis of an insufficient and inadequate investigation and the case was remitted to the Provincial Judge Abdul Wahid Afghani. In fact no further investigation or active review was carried out and three months later Judge Afghani sent the case back unchanged. Following this on 28 May 2007 (7 6 1386) the Supreme Court delivered final judgment in the case confirming the convictions and sentences including the two death sentences. At no time after the initial trial were any of the defendants present or aware of the dates or times of any hearings.

We do not need to remind you of the guarantees provided by the Afghanistan Constitution that the state will adhere to the rule of law and ensure fundamental freedoms and rights of the people (Preamble to Constitution 2004, Article 8). It would appear from the brief summary of the proceedings in these cases that they are in violation of the rule of law guarantees and in particular in breach of fair trial rights

guaranteed by the Constitution and by international treaties ratified by Afghanistan, which the state has undertaken to observe (Article 7 Constitution).

Article 31 of the Constitution guarantees that a person on arrest may seek an advocate to defend his rights or case of which he is accused. The accused upon arrest has the right to be informed of the attributed accusation and to be summoned to the court within the limits determined by law. In criminal cases the state is required to appoint an advocate where a person cannot afford to pay for their own representation. This article has been plainly violated in the present cases as none of the defendants were provided with any legal representation at the trial. Nor were they informed of any of the subsequent proceedings which took place. Moreover Article 14 of the ICCPR (of which Afghanistan is party) requires the following minimum safeguards in a criminal trial none of which would appear to have been adhered to in this case:

- To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.
- 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.
- 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. (see also Articles 10 and 11 Universal Declaration of Human Rights)

As regards the two defendants who have been sentenced to death, Article 23 of the Constitution provides that no one shall be deprived of life except by provision of law. As the convictions in these cases were obtained in breach of Article 31 of the Constitution it follows that to enforce the death sentence in these cases would be in breach of Article 23. In this context we are also aware of the manner in which persons sentenced to death have been executed in Afghanistan in recent months. We understand that recently 15 of 16 men who were sentenced to death were shot summarily by a road side (one managing to escape). This is plainly in violation of international law standards of human dignity and arbitrary deprivation of life as guaranteed by Article 24 of the Afghan Constitution and Article 6 ICCPR.

The breach of such fundamental rights as guaranteed by the Afghan Constitution in this case requires immediate action to protect these defendants. Further, as President any sentence of capital punishment is conditional upon your approval under Article 129 of the Constitution. Accordingly we respectfully submit that in exercise of your powers under Article 64(18) of the Constitution that you take steps to pardon the sentences in this case which have been obtained in violation of these defendants' rights.

Yours sincerely,

Mark Muller QC
Chair