

7 October 2021

His Excellency Mr. António Guterres

Secretary-General

United Nations

United Nations Secretariat

New York, NY 10017

Your Excellency,

We write to you on behalf of the International Institute for Justice Excellence to express grave concern over the risk to legal professionals in Afghanistan following the country's takeover by the Taliban. Afghanistan's already beleaguered judiciary and law enforcement apparatus has been rendered non-functional since it came under Taliban control and the threat to judges, lawyers, prosecutors and human rights defenders is particularly acute.

The legal profession is vulnerable, now more than ever, to intimidation and harassment. This harrowing trend is at a time when rights activists and legal professionals are most needed to ensure that fundamental freedoms and due process are upheld. The country's female lawyers are on the run from men they prosecuted, legal officials have been killed in targeted revenge attacks, and jurists are in hiding. Afghanistan's legal professionals must be given the full protection afforded to them under international law and Islamic law, and their right to life, liberty and security must be guaranteed. Such norms ensure that judges and lawyers are able to perform their functions without intimidation, harassment or fear of sanction.

Risk to Legal Professionals in Afghanistan

A spree of assassinations targeting Afghanistan's legal community has coincided with the Taliban's rise to power. In January 2021, two female judges of the Supreme Court of Afghanistan were killed in Kabul on their way to work. A month later, another judge was shot dead in an ambush in the eastern city of Jalalabad. Over the last few months, several prominent members of Afghan civil society including judges, doctors, activists, religious leaders, and journalists, perceived as threats and ideological opponents to the Taliban, have been assassinated in horrific attacks. The Honorable Qazawatmal Abdul Haseeb Ahadi, a judge of the Supreme Court of Afghanistan, has reported receiving grave threats from the Taliban and is in desperate need of refuge and protection. Recently, two legal officials who worked in the Afghan Justice Ministry were also killed in Kabul in reprisal attacks.

In her statement to the UN Human Rights Council, the United Nations High Commissioner for Human Rights, Michele Bachelet, has confirmed that her office had received credible reports of the Taliban going door to door, looking for specific government officials. Around 250 women judges have already been dismissed and are now in hiding, with the Taliban continuing to threaten their lives. These judges often presided over cases relating to violence against women – including rape, murder and domestic abuse – which involved the trying and

sentencing of Taliban fighters. Tragically, they are now on the run from the Taliban and, in some cases, the very men they put in jail.

International Law

The Universal Declaration of Human Rights sets out the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent, and impartial tribunal, and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights codify these principles as guaranteed rights. Lawyers are also entitled to the right to life, liberty and the security of person, and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. The International Court of Justice has stated that the protections offered by human rights treaties do not cease in a time of armed conflict, except for those rights subject to express derogation under Article 4 of the ICCPR.¹ The right to life and prohibition of torture are non-derogable rights.

The Basic Principles on the Independence of the Judiciary states that “[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.² Principle 4 states that “[t]here shall not be any inappropriate or unwarranted interference with the judicial process”. The Universal Charter of the Judge further states in Article 2 that judges “must be able to exercise judicial powers free from social, economic and political pressure”.³

Under Principle 16 of the UN’s Basic Principles on the Role of Lawyers, governments are to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and are not to suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.⁴ The state is obligated to refrain from interfering in the independence of the legal profession and is also to guarantee the right to life, liberty, freedom of association and expression of all legal professionals. Moreover, lawyers are also to be protected in order to ensure that the human rights and freedoms of the society are respected.

The UN Office of the High Commissioner for Human Rights has also stated that “a just and efficient administration of justice requires that lawyers...should be allowed to work without

¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, I.C.J. Reports 2004, 136, para. 106

² Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

³ International Association Of Judges. The Universal Charter Of The Judge. Adopted By The IAJ Central Council In Taiwan On November 17th, 1999

⁴ Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

being subjected to physical attacks, harassment, corruption, and other kinds of intimidation.”⁵ The Human Rights Committee in the communication in *Ramon B. Martinez Portorreal v Dominican Republic* held that the author, a practising attorney, law professor, and human rights defender, had been arbitrarily arrested and subjected to inhuman and degrading treatment as a result of his human rights activities.⁶ The Committee held that the Dominican Republic was to provide the author with effective remedies and to take steps to ensure that similar violations do not occur in the future.⁷

The Taliban must, under international law, ensure that lawyers receive protection in order to carry out their professional duties free of interference and harassment.

Islamic Law

Under Islamic law, which the Taliban claim to uphold, providing justice to people is so elevated a venture that it is considered akin to worship. In early Islamic states, the exercise of a function of a judge or *qadi* was considered a sacred duty. At the core of the procedure followed by the *qadis* was a resolute focus on impartiality and independence from the ruler of the time. The Holy Qu‘ran makes multiple references to the importance of justice and of its being administered impartially. The Supreme Court of Pakistan, in the case of ‘*Al-Jehad Trust v. Federation of Pakistan*’⁸ which related to the appointment of judges to the superior judiciary, affirmed various principles which relate to the independence of judiciary in Islam, notably, that the power to appoint judges is a sacred trust which should be exercised in good faith, and that taking into account any consideration other than the merit of a judge is a great sin entailing severe punishment.

Request for Support

While current efforts by the global community are focused on ensuring the safety of members of the Afghan judiciary who served under the previous government, it is important that individuals who will serve as members of the judiciary under the Taliban regime are also protected. Therefore, we request that you support and facilitate an urgent global effort to provide protection for Afghan legal professionals and their families, particularly female judges, lawyers, prosecutors, activists, and human rights defenders. We urge you to call upon member states to set up programs to provide them with financial and legal support, and ensure safe passage. This can be done through the establishment of United Nations special measures, or a special envoy for mitigating the growing crisis that Afghanistan’s judges and lawyers face each day. This mission will monitor and report on the issues aforementioned and inform further action by global actors. It will also provide an independent mechanism for seeking redressal of human rights violations against the judicial system by the Taliban.

⁵ UN Office of the High Commissioner for Human Rights, ‘Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Geneva, 2003, p.151

⁶ *Ramon B. Martinez Portorreal v. Dominican Republic*, Communication No. 188/1984, U.N. Doc. Supp. No. 40 (A/43/40) at 207 (1988).

⁷ *ibid.*

⁸ PLD 1996 SC 324, at page 424.

Excellency, you have rightly and emphatically expressed in relation to Afghanistan that ‘a humanitarian crisis looms’. It is therefore imperative that the United Nations as well as all governments that are seeking to alleviate the country’s multifaceted crises – including the governments of the United States, Qatar, Turkey, and Pakistan – now take immediate steps to address the grave threat to judges and lawyers, and secure safe passage for them.

Sincerely,