

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Monday, June 22, 2015

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Mr. Mian Nawaz Sharif
Prime Minister
Prime Minister House

Islamabad, Pakistan
Email: secretary@cabinet.gov.pk;
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Mr. Sindh Syed Qaim Ali Shah
Chief Minister
Government of Pakistan
Chief Minister's Secretariat
Jeelani House, Khairpur, Pakistan

Dear President, Prime Minister and Chief Minister:

Re: Legal obligation to appoint independent commission of inquiry to investigate and remedy fatal shooting of lawyers Irfan Chauhan and Rana Khalid Abbas

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law internationally through advocacy, legal research and education. LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

LRWC condemns the fatal shooting by a Daska police officer of prominent human rights lawyer Irfan Chauhan and Rana Khalid Abbas, President of the Daska Bar Association. On 25 May 2015, Daska police officer Shehzad Warraich opened fire on a group of lawyers peacefully protesting a disagreement with the Tehsil Municipal Association, killing the two lawyers and injuring a third lawyer, Zohaib Sahi. Witnesses to the extra-judicial killings report that the police officer fired indiscriminately into the gathering without warning and in the absence of any need for violent intervention.

LRWC calls on the Government of Pakistan to ensure investigations, prosecutions and other remedies of the extra-judicial killings of Irfan Chauhan and Rana Khalid Abbas mandated by Pakistan's international law and domestic law obligations. We draw attention to Pakistan's international law obligations arising from the *International Convention on Civil and Political Rights*, *Universal Declaration of Human Rights*, *United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* and *United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* and

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domestic law obligations arising from *Constitution of the Islamic Republic of Pakistan, 1973, As Amended by the Constitution Twentieth Amendment Act.*

LRWC calls on the Government of Pakistan to:

- Create an independent commission of inquiry to conduct an exhaustive investigation into the extra-judicial killings of Irfan Chauhan and Rana Khalid Abbas and injury to Zohaib Sahi;
- Ensure that the commission of inquiry fully complies with the applicable international law requirements including the provisions of the United Nations *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*; and
- Ensure that the commission of inquiry is independent of the Daska police and any other “institution, agency or person that may be the subject of the inquiry” in accordance with Article 12 of the aforesaid *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, Article 12.

Background

Outrage at the killings has been expressed in Pakistan and internationally. In Pakistan, protests have come from every sector—street protests by citizens as well as statements from the legal community and from government officials. Around the world, human rights organizations have demanded that the Government of Pakistan ensure the punishment of the perpetrator through effective investigation, prosecution and a trial.

The Pakistan Bar Council announced a nationwide strike for lawyers on the day after the extra-judicial killings. The Chairman of the Pakistani Bar Council strongly condemned the murders and demanded that the Punjab government and authorities immediately take action to arrest the shooter(s) of lawyers Irfan Chauhan and Rana Abbas. The Islamabad Bar Association and Punjab’s Chief Minister Shahbaz Sharif put forth similar demands.

The Prime Minister of Pakistan Nawaz Sharif ordered an investigation into the incident and requested a report from state officials and promised, “Nobody will be allowed to take the law into their own hands.”

The Deputy Director of Human Rights Watch’s Asia division Phelim Kine said, “Pakistani authorities need to find out why a police officer fired live ammunition into a group of protesting lawyers and bring those responsible to justice.”

The officer identified as the shooter, Sharif Shehzad Warraich, was initially suspended and is now in custody and a joint investigation committee—which includes police members, inter-services intelligence and the intelligence bureau—has been launched.

The investigation committee has been justly criticized by the public as being potentially biased and therefore ineffective given that police investigating a police incident carries an unavoidable conflict of interest. Instead, organizations and the public call for a fair, transparent and effective investigation that meets legal requirements.

Legal Obligations to Investigate and Remedy Murder

Pakistan is legally bound by national and international law to:

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- a) Guarantee the right to life;
- b) Provide remedies for violations of the right to life; and,
- c) "...conduct genuine and effective investigations to determine the persons responsible for the human rights violations"

Internationally, these twin duties to protect the right to life and punish violations arise from a number of instruments including the: *International Convention on Civil and Political Rights* (ICCPR), the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*¹ and the *Universal Declaration of Human Rights* (UDHR). As a member of the United Nations (30 September 1947), the Government of Pakistan is obliged to respect the rights recognized by the UDHR. Pakistan ratified the ICCPR on 23 June 2010 and is bound to conform to its provisions. The UN Human Rights Committee has confirmed that a failure to properly investigate violations of protected rights such as the right to life is itself a violation of the ICCPR.

Investigations must comply with the *Principles on the Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions* provision, paragraph 9, to ensure a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions... to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death."

Impartiality is essential must be guaranteed by appointment of a special commission of inquiry when the suspect(s) are government agents. This principle is addressed in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which requires that "[i]n cases where government involvement is suspected, an objective and impartial investigation may not be possible unless a special commission of inquiry is established..."²

To fulfill the requirements of the ICCPR (Articles 2, 6) and the UN Principles on the *Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, an investigation of the murders of Irfan Chauhan and Rana Khalid Abbas and injury to Zohaib Sahi must:

1. be conducted by investigators independent from state agent(s) with alleged criminal involvement;
2. be capable of determining whether death occurred as a result of the illegal use of force;
3. lead to the identification and punishment of the person(s) responsible;
4. ensure that investigators take reasonable steps to secure evidence including eyewitness testimony, forensic evidence, objective analyses of clinical findings and conduct an autopsy that provides an accurate record of the injuries;
5. be prompt and reasonably expeditious;

¹ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989), available at <http://www1.umn.edu/humanrts/instree/i7pepi.htm>

²The United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991), Section D of the Model Protocol for a Legal Investigation of Extralegal, Arbitrary and Summary Executions("Minnesota Protocol") available at <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>

6. afford sufficient public scrutiny of the investigation and the results to secure accountability; and
7. afford to the next-of-kin whatever involvement in the process is necessary to safeguard the interests of such person(s).

The *Constitution of the Islamic Republic of Pakistan, 1973, As Amended by the Constitution Twentieth Amendment Act, 2012* repeats this legal duty to ensure the right to life. Article 9 provides, “No person shall be deprived of life or liberty save in accordance with law.”

Conclusions

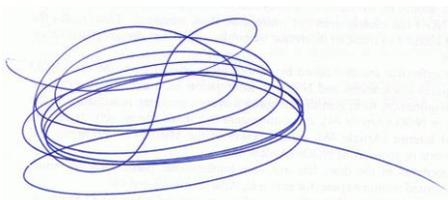
The death of lawyers Irfan Chauhan and Rana Khalid Abbas and injury to Zohaib Sahi triggered Pakistan’s legal obligation to implement timely, independent and effective investigations followed by the necessary prosecutions and trials of the potential suspects.

LRWC calls on the Government of Pakistan to immediately ensure:

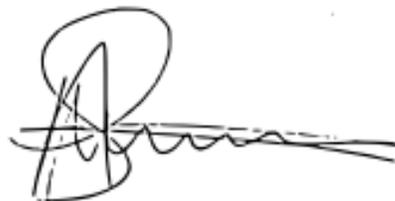
1. Investigation of the death of Irfan Chauhan and Rana Khalid Abbas and injury to Zohaib Sahi that is independent of the Criminal Justice Branch of the Government of Pakistan and of the Ministries in charge of prosecutors, police and other state authorities accused of responsibility for failing or refusing to provide protection or for complicity in previous cases;
2. Prosecution and trial of the suspected perpetrator(s) of the fatal shooting of Irfan Chauhan and Rana Khalid Abbas and injury to Zohaib Sahi;
3. Compliance with all provisions of the ICCPR and Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; and
4. Publication of a statement by the President and the Prime Minister that unambiguously condemns the fatal shootings of Irfan Chauhan and Rana Khalid Abbas as well as outlines the Government of Pakistan’s commitment to identify and punish perpetrator(s).

Please advise LRWC of the actions that the Government of Pakistan has/is taking to remedy the death of Irfan Chauhan and Rana Khalid Abbas. LRWC awaits your response.

Sincerely,



Gail Davidson, Executive Director, LRWC



Avi Sharma, LRWC Case Monitor

Copied to:

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