

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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Dear President, Prime Minister and Chief Minister,

Re: Murder of Mohammad Jan Gigyani and the need to protect jurists

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

LRWC is alarmed by the targeted shooting of human rights lawyer Mohammad Jan Gigyani. On 4 March 2017, Mohammad Jan Gigyani, a senior lawyer and leader of the secular Qaumi Watan Party (QWP), was driving to the court in Shabbqadar with his nephew Rahim Shah and two other lawyers when unknown gunmen opened fire on his vehicle, killing Mr. Gigyani and injuring his nephew. The two other lawyers were not physically injured. The gunman escaped. The Charsadda police undertook a search operation in the area but failed to find the attackers. A case has been registered with the police. Mohammad Jan Gigyani was well respected by locals for speaking out on important issues. He was “[a] long-time advocate for the rights of the poorest members of society, he regularly worked on women’s rights and labour rights cases in courts”¹. He was among the lawyers that had survived the suicide attack at the Shabbqaddar courts on 7 March 2016 that killed 19 people². In honour of Mr. Gigyani, lawyers boycotted courts and observed a day of mourning on 6 March 2017.

Continuing attacks on and murders of lawyers in Pakistan has shaken jurists in Pakistan and around the world. In February 2017 there were two separate incidents in which lawyers, judges and courts were brutally attacked. On 15 February in Peshawar, a van carrying Civil judge Asif Jadoon and three female judges of the lower judiciary was bombed by a lone suicide bomber, killing the driver of the van and injuring the four judges.³ On 21 February 2017 eight people were killed, including one lawyer, and approximately 25 were injured when three suicide bombers staged an attack on a court in Charsadda while court was in session. Two of the bombers were shot dead as they attempted to enter the court while the third blew himself up.⁴

These bombings are part of ongoing attacks targeting those in the legal profession in Pakistan. On 5 December 2016, LRWC wrote a letter to the Government of Pakistan, which identified Pakistan’s international law duties to investigate the 8 August 2016 assassination of Bilal Anwar Kasi, and the subsequent bombing of the emergency ward area of the Sandeman Civil Hospital that left over 70 people dead, the majority of whom were lawyers, and over 100 injured. These people had gathered to mourn and protest the assassination of Bilal Anwar Kasi, prominent lawyer and president of the Balochistan High Court Bar Association. The bombing has been described as destroying a whole generation of lawyers in Quetta. According to information currently available to LRWC, little progress has been made in the investigation of these attacks.

LRWC calls on the Government of Pakistan to ensure effective investigations. To be considered effective, an investigation must be directed at and capable of: determining the details of the cause of death; identifying all those who planned and carried out the means of death; and, identifying factors that might have prevented the deaths. An effective investigation must enable and lead to the prosecution and trial of suspects and such other remedies for victims.

LRWC urges the Government of Pakistan to ensure an effective investigation of the murder of Mohammad Jan Gigyani, and take prompt action to implement protective measures to ensure

¹ Frontline Defenders, Muhammad Jan Gigyani Killed.

<https://www.frontlinedefenders.org/en/case/muhammad-jan-gigyani-killed>

² Prominent lawyer gunned down in Shabbqadar, Pakistan Today, 4 March 2017.

<http://www.pakistantoday.com.pk/2017/03/04/prominent-lawyer-gunned-down-in-shabbqadar/>

³ Sarfaraz Memon. Sukkur lawyers protest attack on Peshawar judges. The Express Tribune. 16 February 2017. <https://tribune.com.pk/story/1329124/sukkur-lawyers-protest-attack-peshawar-judges/>

⁴ Eight Killed in suicide attack on Charsadda courts. The News. 22 February 2017.

www.thenews.com.pk/print/187988-Eight-killed-in-suicide-attack-on-Charsadda-courts

security, and prevent any further attacks and loss of life for those in the legal profession in Pakistan. LRWC recommends that Pakistan begin working on the development and implementation of a national law based on the Model Law for the Recognition and Protection of Human Rights Defenders.

Pakistan's International Law Obligations:⁵

As a member of the United Nations (UN), Pakistan has agreed to respect the rights to life guaranteed by the Universal Declaration of Human Rights (UDHR). As a party to the UN International Covenant on Civil and Political Rights (ICCPR) Pakistan has accepted the twin legal obligations to protect the right to life of all persons within its territory and to take effective measures to prevent, punish, and remedy violations. The ICCPR imposes on State Parties the duty to investigate violations of the right to life as an integral part of the duty to protect the right to life guaranteed by Article 6.1. The duty to conduct effective investigations that result in the identification and punishment of those responsible for violations is a key component of the State duty to protect the right to life. These twin duties are affirmed by the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)⁶, the Basic Principles on the Role of Lawyers (Basic Principles)⁷, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.⁸

The *Basic Principles on the Roles of Lawyers* (welcomed in a consensus resolution of the UN General Assembly in 1990) requires States to guarantee the right of equal access to justice by ensuring the independence and safety of lawyers and protecting them from interference by state and other actors.

Article 12 (2) requires all States to protect lawyers in the practice of their profession.

Article 16 states that “[g]overnments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”

Article 17 states that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by authorities.”

The *Constitution of the Islamic Republic of Pakistan, 1973, As Amended by the Constitution Twentieth Amendment Act, 2012* Article 9 states “[n]o person shall be deprived of life or liberty save in accordance with law.”

⁵ The references in this section are taken from various LRWC publications on the Duty to Investigate that can be accessed here <http://www.lrwc.org/library/know-your-rights-index/duty-to-investigate-and-remedy/>

⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted at the 85th plenary meeting 9 December 1998 and adopted by the U.N. General Assembly 8 March 1999 A/RES/53/144. Article 9.5 specifically requires States to “conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred...”

⁷ Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana 27 August to 7 September 1990. U.N. Doc. A/CONF. 144/28/Rev. 1 at 188. (1990)

⁸ Adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65.

Model Law for the Recognition and Protection of Human Rights Defenders (Model Law)

The Model Law is a comprehensive guide, developed by hundreds of specialists, identifying how States can implement the UN Declaration on Human Rights defenders and ensure the safety of human rights defenders. Part 4, section 34, “Mechanism for the protection of human rights defenders” recommends a variety of programs and mechanisms to provide timely and effective protection measures. It further recommends that such mechanisms or programmes should:

- (1) Be developed, implemented and evaluated in close consultation with human rights defenders and should directly involve human rights defenders in its development, governance and decision-making structures;
- (2) Be established, or the mandate conferred, in national legislation;
- (3) Be independent of government and should not be subject to political, administrative or financial controls which are incompatible with its independence;
- (4) Be adequately and sustainably resourced;
- (5) Be mandated measures to promote a safe and enabling environment for human rights defenders, contribute to the prevention of threats, risks and restrictions to human rights defenders, and provide both urgent and longer term protection to human rights defenders at risk;
- (6) Seek to identify and address both structural and systemic factors contributing to risk and provide for individualised assessment for particular defenders;
- (7) Be developed and implemented in such a way as to identify and address the particular situation and risks faced by particular groups of defenders, including women human rights defenders, and apply a gender perspective;
- (8) Include specific, rather than generic, protection measures that respond to the level and nature of risk, taking into account elements such as gender, gender identity and sexual orientation, ethnicity, age, health and family considerations, geographical location, socio-economic contexts and the individual or collective nature of the beneficiary. These measures should be defined according to a clear risk analysis methodology and in consultation with the beneficiaries;
- (9) Focus on the holistic security of human rights defenders, their family members and associates, including physical security, digital security and psycho-social well-being;
- (10) Be designed and implemented to support and minimally interfere with their activities and work as human rights defenders;
- (11) All staff and other personnel involved in the implementation of a mechanism or programme should be adequately and properly vetted and trained, including in relation to the situation and protection needs of women human rights defenders and in relation to multiple, intersectional and systemic discrimination; and

(12) Promote, contribute to ensuring, and report on the full and effective implementation of the Declaration, including through the provision of reports and advice to parliament and the government and through cooperation with relevant international and regional human rights mechanisms.

Recommendations

LRWC calls on the Government of Pakistan to ensure:

1. An impartial, competent and effective investigation of the murder of Mohammad Jan Gigyani;
2. Prosecution and trial of the suspects of the murder of Mohammad Jan Gigyani without recourse to death penalty;
3. Creation of a 'First Response Service' resourced to provide immediate protection to lawyers and other human rights defenders in danger, in cooperation with the Human Rights Commission of Pakistan, Bar Associations and civil society;
4. Adoption of the Model Law for the Recognition and Protection of Human Rights Defenders;
5. Compliance with all provisions of the ICCPR and UDHR.

Please advise LRWC of the actions that the Government of Pakistan is taking to remedy the murder of Mohammad Jan Gigyani and what actions the Government of Pakistan is taking to ensure the safety of legal professionals and other human rights defenders in Pakistan. LRWC awaits your response.

Sincerely,



Hanna Bokhari
LRWC Case Monitor for Pakistan

Copied to:

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