

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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RE: Repeal blasphemy laws, consent to reversal of conviction on appeal and release Junaid Hafeez

Dear President Alvi and Prime Minister Khan,

Lawyers' Rights Watch Canada (LRWC)¹ condemns the conviction and death sentence handed down by a district and sessional court in Multan to Junaid Hafeez on charges of blasphemy. Junaid Hafeez, a Fulbright scholar and a lecturer of English at Bahauddin Zakaria University of Multan, was arrested in 2013 under Section 295-c of the Pakistan Penal Code after being accused by students of posting blasphemous comments on a Facebook page. Junaid Hafeez's trial has lasted six years. His first lawyer dropped his case after receiving threats, his second lawyer Rashid Rehman Khan was murdered in 2014 for representing him and no one has been convicted of his murder. His cases had been transferred to eight different judges and he has remained in solitary confinement since his arrest in 2013. On 21 December 2019, Additional Sessional Judge in Multan Mr. Kashif Qayyum sentenced Mr. Hafeez to life imprisonment under Section 295-B, ten years rigorous imprisonment and a fine of Rs. 100,000 under Section 295-A and under Section 295-C a fine of Rs. 500,000 and death by hanging on charges of blasphemy.

As a member of the UN Human Rights Council to which Pakistan was elected on 16 October 2017, Pakistan has agreed, and is mandatorily obliged to "uphold the highest standards in the promotion and protection of human rights." Pakistan has also agreed to respect and ensure the right recognized by the *Universal Declaration of Human Rights* (UDHR) and is a State Party to the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees freedom of thought, conscience and religion and freedom of expression and prohibits the use of coercion to impair the freedom to have or adopt a religion or belief of choice.

Pakistan must ensure the right of all to freedom of thought, conscience and religion, guaranteed by the ICCPR and the UDHR and take necessary measures that include repeal of the blasphemy provisions in the

¹ LRWC is a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law globally through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations

Pakistan Penal Code including Sections 295-A, 295-B and 295-C and other sections that criminalize expressions that are or could be interpreted as sacrilegious or profane. The criminalization of expression including expression that subjectively or objectively, actually or potentially criticizes a religious or non-religious belief constitutes a grave violation of the UDHR and the ICCPR.

In addition, Pakistan must ensure education for all about the need to respect and support freedom to hold any (or no) religious beliefs and the freedom to criticize beliefs. The education must include illumination of the fact although the right to freedom of thought conscience and religious or non-religious belief is non-derogable, the right to manifest beliefs cannot be exercised so as to restrict or deny the rights of others.

The ICCPR provides:

Article 18 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 18 (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The charges against Junaid Hafeez were illegitimate both as a violation of internationally protected rights to freedom of thought, conscience and religion and expression and a violation of the principle of legality. To be lawful, an offence must be foreseeable and accessible so that a person can know in advance what is unlawful so that s/he can inform their actions. Where ambiguity exists in the definition of an offense, it must be interpreted in the interest of the defendant.

The Pakistan Penal Code offences set out below do not comply with the requirement of certainty and do not allow foreknowledge of the acts specifically prohibited.

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting Its religion or religious beliefs

295-B. Defiling, etc., of Holy Qur'an

295-C. Use of derogatory remarks, etc., in respect of the Holy Prophet

The ambiguity of such charges prevents foreknowledge and objective determination of what constitutes an offence. A conviction, which must rely on a subjective determination made at trial, therefore violates the ICCPR prohibition against conviction or punishment for *ex post facto* laws. The allegations were that he: 1/ uttered words with malicious intent to cause outrage among the Muslims by supporting two novels; 2/ wilfully using the Qur'an in a derogatory manner by claiming that It was derived from folklore stories; 3/ defiling the sacred name of the Holy Prophet by being friendly with people with objectionable names on Facebook; and, 4/ being a member of and posting in social groups such as 'Liberal of Pakistan' and Atheism is a Fact'.²

The court proceedings resulting in the convictions cannot be considered a trial as defined by international human rights law. The proceedings were grossly unfair on a number of bases including lack or denial of: trial before an independent, impartial and competent tribunal; trial within a reasonable time; adequate, timely and confidential access to legal counsel of choice; adequate time and facilities for the preparation

² See Urgent Action from Mandates of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, UA PAK 7/2019, 24 October 2019.

of a defence; the opportunity to know and examine witnesses against him; the opportunity to present evidence and witnesses on his behalf; pre-trial release; and, the right to be treated with humanity and respect.

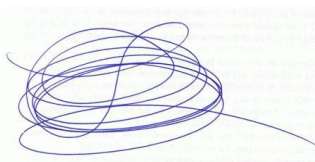
On 27 December independent UN experts condemned the conviction of Junaid Hafeez as a “travesty of justice” and the death sentence as having no basis in law or evidence. The experts unequivocally urged “Pakistan's superior courts to promptly hear his appeal, overturn the death sentence and acquit him.”³

LRWC calls on Pakistan as a member of the UN Human Rights Council to comply with its international human rights law obligations to:

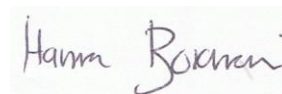
1. Immediately commute the death sentence imposed on Junaid Hafeez;
2. Release him immediately from detention and ensure his safety;
3. Vacate unconditionally the convictions for blasphemy against Junaid Hafeez;
4. Provide Junaid Hafeez with the compensation, protective measure and official documents necessary for him to seek asylum if necessary and treatment for the abuse suffered during his imprisonment;
5. Repeal sections 295A, 295B and 295C of the Pakistan Penal Code and bring Pakistan’s criminal laws regarding freedom of thought, conscience and religion and expression into compliance with Pakistan’s international human rights obligations;
6. Comply with its international and domestic law obligations to protect freedoms of religious thought and belief for all people in Pakistan;
7. Take measures to reform educational system, incorporate into curriculum teaching about tolerance, unity, religious diversity and human rights.

Please advise LRWC of the actions that the Government of Pakistan is taking to release Junaid Hafeez, ensure his safety, commute the death sentence against him, vacate the conviction and repeal blasphemy laws.

Sincerely,



Gail Davidson, Executive Director, LRWC



Hanna Bokhari, LRWC Pakistan Monitor

³ *Pakistan blasphemy death sentence for Junaid Hafeez is “travesty of justice”*- UN experts, 27 December 2019, The UN experts: Mr. Ahmed Shaheed, Special Rapporteur on freedom of religion or belief; Ms Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Mr. Nils Melzer, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Members of the UN Working Group on Arbitrary Detention- Mr. José Antonio Guevara Bermúdez (Chair), Ms. Leigh Toomey (Vice-Chair on Communications), Ms. Elina Steinerte (Vice-Chair on Follow-up), Mr. Seong-Phil Hong and Mr. Sètondji Adjovi.
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25455&LangID=E>

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