

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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Tuesday, October 25, 2016

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Mr. Shahbaz Sharif
Chief Minister
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Chief Minister's Secretariat
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Dear President, Prime Minister and Chief Minister,

Re: Murder of Human Rights Lawyer Rashid Rehman Khan

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, 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 has received no response to our letters dated [15 May 2014](#) and [6 March 2015](#), or any information about an investigation of the May 2014 murder of human rights lawyer **Rashid Rehman Khan**. LRWC therefore assumes that neither the perpetrators of the murder of Rashid Rehman Khan nor those responsible for death threats against him have been identified through investigation, prosecution and trial. LRWC urges Pakistan to create an independent Commission of Inquiry to conduct and conclude an effective investigation of the murder, the death threats made prior to the murder and the failure of Pakistan authorities to provide protection to Rashid Rehman Khan.

Background:

On 7 May 2014, two unidentified gunmen stormed the law office of **Rashid Rehman Khan**, where they then murdered him and injured two of his colleagues, **Nadeem Parwaz and Afzal**. Rashid Rehman Khan, a prominent human rights lawyer, had been threatened with death if he continued to represent a client (Professor Junaid Hafeez) charged with blasphemy. Prior to his murder, Rashid Rehman Khan had served as a widely respected human rights lawyer for over 30 years, advocating against blasphemy laws, in favour of religious freedom and against repression of religious minorities.

One of the threats reported to authorities (“you will not come to court next time because you will not exist anymore.”) was made by four men, two of whom are lawyers, in court and in the presence of the sitting judge. Rashid Rehman Khan promptly reported this death threat and the names of three of the men making the threat to the Punjab Chief Minister, the Inspector General of Punjab Police, the Multan City Police and the District Bar Association. On 10 April 2014, the Human Rights Commission of Pakistan reported the threats to the Punjab government. State officials took no action to punish or restrain the perpetrators or to protect Rashid Rehman Khan. Pakistan’s failure to act in the face of clear evidence of imminent danger to the life of Rashid Rehman Khan is shocking.

The murder of Mr. Khan and the apparent failure to ensure react to punish the criminal acts that led to his death and to prevent similar attacks on others signals a crisis, representing as it does failure by Pakistan to uphold its international legal obligations to: prevent, punish and remedy violations of the right to life, prevent lawless vigilantism against people peacefully exercising freedom of expression and provide effective and timely protection to lawyers in jeopardy as a result of their lawful human rights advocacy. In addition to failing to take any action to protect the life of Rashid Rehman Khan, Pakistan has apparently not acted to quell, or even discourage, lawless and brutal vigilantism against people—such as Rashid Rehman Khan—peacefully promoting religious tolerance and respect for freedoms of religion, expression and other human rights.

In spite of the information provided by Mr. Khan, calls from human rights specialists around the world, and the legal obligation to bring the perpetrators to justice, Pakistan has failed or refused to investigate the suspects named by Mr. Khan—reportedly because of their positions—and has not identified any other suspects. Over two years have passed and the suspected perpetrators have not been identified and charges.

International Law Duties to ensure an effective investigation

The murder of Rashid Rehman Khan triggered Pakistan’s international legal obligation to ensure timely, independent and effective investigations followed by prosecutions and trials of the suspects identified. As a member of the United Nations, 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. ICCPR imposes on Pakistan and other State Parties to the ICCPR 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 United Nations 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),¹ the Basic Principles on the Role of Lawyers (Basic Principles),² and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.³

The UN Human Rights Committee (HR Committee) has affirmed that the ICCPR Article 2.1 creates binding obligations on States to exercise due diligence to prevent, punish, investigate and redress violations of protected rights committed by State and/or private actors. Failure to take such measures can constitute violations by the State of the ICCPR. The HR Committee stated in General Comment 31:

¹ 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...”

² 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)

³ Adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65.

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁴

The HR Committee has noted that impunity may be "an important contributing element in the recurrence of . . . violations," and has emphasized that the State obligation to provide an effective remedy pursuant to Article 2(3) of the ICCPR may in appropriate cases require guarantees of non-repetition and changes in relevant laws and practices.⁵

The UN has developed detailed standards for investigation of unlawful killing, including:

- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("UN Investigation Principles");⁶ and
- UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Minnesota Protocol").⁷

The UN Investigation Principles, adopted by UN ECOSOC and welcomed by the UN General Assembly in 1989, reflect a global consensus on the standards for investigations:

- thorough, prompt, and impartial investigation of all suspected cases of extra-legal, arbitrary, and summary executions;
- an independent commission of inquiry for those cases in which the established investigative procedures are ineffective because of lack of expertise or impartiality, and for cases in which there are complaints from the family of the victim about these inadequacies or other substantial reasons;
- protection from violence or intimidation for complainants, witnesses, families, and investigators;
- removal from power or control over complainants, witnesses, families or investigators of anyone potentially implicated in extra-legal, summary or arbitrary executions;
- access by families and their legal representatives to any hearing and to all relevant information, and the right to present other evidence;
- a detailed written report on the methods and findings of the investigation, made public within a reasonable time;
- government action to bring to justice persons identified by the investigation as having taken part in extra-legal, arbitrary and summary executions, through prosecutions and trials;
- responsibility of superiors, officers or other public officials for acts committed under their authority if they had a reasonable opportunity to prevent such acts; and

⁴HR Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8

⁵ *Ibid*, paras 16, 18, available at: <http://www.refworld.org/docid/478b26ae2.html>.

⁶Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, welcomed by the General Assembly in Resolution A/RES/44/159, 15 December 1989, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>.

⁷UN Department of Political Affairs, United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. DOC. E/ST/CSDHA/12 (1991) (Minnesota Protocol). A revision of the Minnesota Protocol is currently underway in consultation with States, academia, civil society, and other interested parties. See UN Office of the High Commissioner for Human Rights, Revision of the Minnesota Protocol at: <http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>. See the draft revision at:

<http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/A.HRC.32.39.Add.4.docx>.

- fair and effective compensation for the families and dependants of victims of extra-legal, arbitrary and summary executions within a reasonable period of time.

Minnesota Protocol: The Minnesota Protocol confirms that the purpose of an inquiry or investigation, as set out Subsection III (B), paragraph 9 is to discover the truth about the events leading to the suspicious death of a victim. To fulfil that purpose, those conducting the inquiry shall, at a minimum, seek to:

- identify the victim;
- recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- identify possible witnesses and obtain statements from them concerning the death;
- determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- distinguish between natural death, accidental death, suicide and homicide;
- identify and apprehend the person(s) involved in the death;
- bring the suspected perpetrator(s) before a competent court established by law.

Independent Commissions of Inquiry: The UN Investigation Principles require an independent commission of inquiry in cases where established investigative procedures are ineffective because of lack of expertise or impartiality, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons. The Minnesota Protocol provides additional guidance, “[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. A commission of inquiry may also be necessary where the expertise of the investigators is called into question”.⁸

Conclusions

Pakistan is obliged by international law to respect and ensure the right to life and to prevent and punish violations. An integral part of these twin duties is to conduct investigations of unlawful killings that are capable of determining the cause and particulars of death, identifying the perpetrator(s) and enabling the prosecutions, trials and imposition of the punishment(s) required by law. These international law duties arise from membership in the United Nations, the UDHR, the ICCPR, and from customary international law. In cases where there is no public confidence in the ability of the State to conduct a thorough, independent, impartial investigation, Pakistan has a duty to appoint an independent commission of inquiry that complies with the standards established by the UN Investigation Principles. Where the State is unable to appoint a domestic Commission of Inquiry that is domestically and internationally trusted, the duty to investigate is neither abrogated nor abridged. In such a situation, it may be necessary for the State to seek the assistance of the United Nations.

Recommendations

LRWC again calls on the Government of Pakistan to immediately ensure:

1. Investigation of the murder of Rashid Rehman Khan that is independent of the Criminal Justice Branch 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 the murder;
2. A thorough and impartial investigation of the suspects identified by the victim;
3. Prosecution and trial of the suspected perpetrators of the threats and of the murder;
4. Investigations by the Human Rights Commission of Pakistan to: a) determine why no protection was provided to Mr. Rashid Rehman Khan; b) identify state authorities responsible for failing or

⁸ *Ibid*, Section D. Commissions of Inquiry

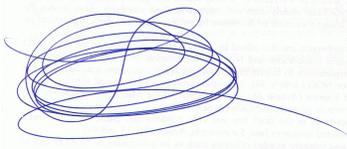
refusing to provide protection; c) recommend such other civil and/or criminal remedies as are appropriate.

5. Creation of a 'First Response Service' resourced to provide immediate protection to lawyers and other human rights defenders who report being in danger because of their work, in cooperation with the Human Rights Commission of Pakistan, Bar Associations and civil society;

6. Compliance with all provisions of the ICCPR and UDHR;

Please advise LRWC of the actions that the Government of Pakistan has/is taking to remedy the murder of Rashid Rehman Khan. LRWC awaits your response.

Sincerely,



Gail Davidson, LRWC Executive Director

Hanna Bokhari Case Monitor Pakistan LRWC

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