



Public Statement

The Law Society of Upper Canada and Lawyers' Rights Watch Canada express grave concern about the threat of disbarment against lawyers in Lahore, Pakistan

Toronto, ON — The Law Society of Upper Canada and Lawyers' Rights Watch Canada express grave concern about the threat of disbarment against lawyers in Lahore, Pakistan.

It has come to the attention of the Law Society and Lawyers' Rights Watch Canada ("LRWC") that on April 14, 2017, the Lahore High Court Bar Association (the "LHCBA") stated that it will take action against any lawyer who extends his/her services to Kulbhushan Jadhav, an alleged Indian spy who was sentenced to death in early April 2017 by a Pakistani military court. The LHCBA's official statement, released by LHCBA Secretary-General Amer Saeed Raan, was as follows:

The LHCBA has unanimously decided to cancel the membership of any lawyer who offers his services to Indian spy Kulbhushan Jadhav.

The Secretary-General added that the LHCBA has asked the government of Pakistan not to cave to any foreign pressure, including that from the Indian government, as regards Jadhav:

India has declared Jadhav its son and is putting pressure on the Pakistani government for his release. We demand that the Indian spy who is involved in playing with lives of Pakistanis should not be spared and the government (should) ensure his hanging.

According to information received by the Law Society and LRWC, following a three-and-a-half-month trial, Jadhav was sentenced to death by a Field General Court Martial in Pakistan on April 10, 2017. He was found guilty of spying for India, waging war against Pakistan, sponsoring terrorism, and destabilizing the state. Authorities claim his naval background and the sensitive nature of his case justified the military court proceedings. However, it is generally accepted that "the jurisdiction of military tribunals is restricted to offences of a strictly military nature committed by military personnel."¹ Reviewing international law restrictions on the use of military tribunals, the UN Working Group on Arbitrary Detention (WGAD) concluded that, "[u]nder international law, military tribunals can only be competent to try military personnel for military offences."² The WGAD recommended that "[a]ll sentences issued by military courts should be reviewed by a civil court, even if they have not been appealed. Military courts should never be competent to impose the death penalty."³

¹ Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 at 4 (2006), Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, to the UN Commission on Human Rights in 2006 [*Decaux Principles*]. Available at: <http://www1.umn.edu/humanrts/instree/DecauxPrinciples.html>.

² UN Human Rights Council, *Report of the Working Group on Arbitrary Detention*, 30 June 2014, A/HRC/27/48, at para 85. Available at: <http://www.refworld.org/docid/53eb29a04.html>. The WGAD has considered issues of military justice in a number of its reports available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Issues.aspx>.

³ *Ibid*, para. 86.

The right to counsel of every person charged with a criminal offence is guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR) to which Pakistan is a party. The UN Human Rights Committee, reviewing state duties under the ICCPR, has determined that the right to counsel is inalienable in capital cases and that a failure by the state to ensure competent counsel in such cases constitutes a denial of fair trial and a violation of the ICCPR Articles 2 and 14. In view of these factors it is imperative that Kulbhushan Jadhav be represented by the best counsel on a legal aid basis if necessary.

The duty of the Government of Pakistan is clear. Kulbhushan Jadhav must be provided with senior legal counsel in order to be able to properly appeal all issues including the jurisdiction of the military court to determine the charges and to impose a death sentence. Pakistan's Defence Minister, Khawaja Muhammad Asif, has stated that Jadhav's prosecution followed due legal process and was conducted in accordance with the country's laws, rules and regulations. He further noted that under the *Pakistan Army Act of 1952*, Jadhav is entitled to appeal his conviction within 40 days. None of these factors displace Mr. Jadhav's inalienable right to be represented by a lawyer or Pakistan's international law obligations to ensure legal representation, a fair trial before a properly constituted tribunal. Ostensibly, the LHCBA's statement to its members is intended to ensure that legal representation is withheld from Jadhav for the purposes of his appeal, thereby effectively rendering his right to appeal impotent and meaningless.

Lawyers must be free to fully represent the interests of Mr. Jadhav, to promote the cause of justice and "uphold human rights and fundamental freedoms recognized by national and international law" as provided by the United Nations' *Basic Principles on the Role of Lawyers* (Principles). The duties of the Government of Pakistan identified by the Principles are set out in Articles 16, 17 and 18 reproduced below.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not 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.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The Law Society of Upper Canada and LRWC are deeply concerned about the LHCBA's stance on this matter and the corollary effect on lawyers in Lahore. We urge the Government of Pakistan to comply with Pakistan's obligations under international human rights laws, including the ICCPR and the United Nations' *Basic Principles on the Role of Lawyers*.

The Government of Pakistan must take steps to ensure that Mr. Jadhav is represented by competent counsel and that those counsel are fully protected both before and after the court

proceedings from disciplinary action by the LHCBA and from attacks and violence from those who would prefer that Mr. Jadhav be unrepresented. Recently many lawyers have been murdered in Pakistan for representing unpopular causes or clients. Protection from and punishment for the murders and other attacks on lawyers by Pakistan authorities has been alarmingly inadequate. If the Government of Pakistan cannot ensure both legal representation for Mr. Jadhav and the safety of his lawyers, he cannot be tried or sentenced in Pakistan.

The Law Society and LRWC urge the Government of Pakistan to:

1. Take all steps to ensure that Mr. Jadhav is properly represented by legal competent legal counsel;
2. Ensure that legal counsel for Mr. Jadhav have adequate protections from intimidation, hindrance, harassment, improper interference, attacks and reprisals;
3. Begin public education about: the right of all criminally charged persons to legal representation; the duties of lawyers to act in the best interests of clients; and, the duty of Pakistan to prevent and punish interference with and attacks on lawyers; or,
4. In the alternative, to transfer Mr. Jadhav into the custody of Indian authorities.