

31 JUL 2017

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No. Pol/SP-Proc/2017

28 July 2017

**Subject: Joint Communication from Special Procedures regarding
Case of Mr. Mashal Khan**

My Dear Special Procedures;

I am writing with regard to your Joint Communication No. AL PAK 2/2017 dated 5 May 2017 regarding the killing of Mr. Mashal Khan.

2. The Government of Pakistan is fully committed to respect, promote and protect all the fundamental human rights. Pakistan is a thriving democracy with strong democratic values and institutions and due attention is given to the protection of right to life, freedom of expression, freedom of religion and other basic rights. We are cognizant of our responsibility for the protection of life of all our citizens in accordance with our Constitution and international commitments.

3. The unfortunate incident of Mashal Khan only strengthen the resolve of the Government and the people of Pakistan to redouble our efforts for a society based on the rule of law. No one in Pakistan is allowed to take law in his/her hands and there is severe punishment for mob violence. The killing of Mashal Khan has been condemned by all segments of society with one voice, from the national leadership, the Parliament, and media to civil society. The general public from all walks of life expressed their grief for Mashal Khan and solidarity with his family. The commendable role played by our independent judiciary, active civil society and vibrant media needs to be acknowledged in regard to provision of speedy and efficient justice in this case. This exhibited a total rejection of extremist ideology of minute minority and those advocating mob violence by Pakistani society. It would

be clear to all those closely following the case that it remains within the full parameters of due judicial process.

4. The Government of Pakistan is determined to undertake all measures necessary for a free and fair investigation and upholding of the rule of law.

Details of the Case

5. Mr. Mashal Khan, a student of Journalism and Mass Communication Department of Abdulwali Khan University, Mardan, Khyber Pukhtankhwa Province, was murdered over alleged blasphemy charges, by a mob of students and some outsiders on 13 April 2017.

6. In accordance with legal and law enforcement provision, a First Information Report (FIR) No. 233 dated 13/4/2017 was registered against twenty (20) identified and other unidentified accused. The FIR is registered under the relevant sections of criminal law (302, 148, 149, 7 ATA, 297, 169, 427) at Police Station Sheikh Maltoon, Mardan on behalf of the State by [REDACTED], who is Station House Officer (SHO) of the concerned Police Station. According to local police, 32 accused have been arrested including eight University employees allegedly involved in the incident. Efforts are underway to identify and arrest rest of the accused through a Joint Investigation Team (JIT) comprising members of relevant law enforcement agencies. The investigation is continuing and evidence is still being collected. The Federal Investigation Agency (FIA) is undertaking analysis of the evidences. Some of the steps taken by Police Department KPK are as under:

- The Inspector General of Police for Khyber Pakhtunkhwa Province has informed that so far no evidence has been found regarding the involvement of Mashal Khan in blasphemy. It would be pertinent to stress that regardless of any evidence of alleged blasphemy, the case would be fully investigated as brutal murder. In no way has Pakistan Government condoned or accepted the murder as justifiable under the blasphemy laws. Some high ranking officials of the University Administration are also under observation due to their questionable role in the event.
- The leadership of Government of Khyber Pakhtunkhwa has reached out to the family of Mashal Khan, with assurance to ensure justice.

- Some of the accused have confessed and their statements have been recorded by the Judicial Magistrate-[REDACTED] under Criminal Procedure Court (C.R.P.C) Section 164. The confession has been kept on the record of the case.

Actions Taken by the Government Entities

7. The Government of Pakistan took a serious notice of the incident. The Ministry of Human Rights called for a fact finding inquiry to be conducted by the National Commission for Human Rights. The National Commission for Human Rights (NCHR) has started the inquiry proceedings and has also met the family of Mashal Khan in District Sawabi.

8. The Parliament of Pakistan is also seized of the matter. Both Senate and National Assembly are overseeing the process. The Senate Committee on Interior has taken serious notice of the incident. The Committee has directed the Ministry of Interior to put names of all those students and University employees on Exit Control List (ECL) who are under investigation or wanted in the case.

9. The National Assembly passed a Resolution condemning the murder of Mashal Khan. The resolution was moved by Federal Minister of Defence and called inter alia for insertion of safeguards in the law to prevent misuse of the law to avoid such violent incidents. The Resolution demanded from the federal and provincial governments to take strict action against the perpetrators and facilitators of the crime including those making hate speeches. The House also condemned all those who took the law in their hands and engaged in vigilantism, resulting in loss of innocent human lives.

10. The Supreme Court of Pakistan has taken sue motto action against the occurrence. The Court stopped the proceedings of Judicial Inquiry, ordered by the Provincial government and started hearing of the case by a 03 members bench headed by Chief Justice of Pakistan on 19 April 2017. A report compiled by a 13-Member Joint Investigation Team (JIT) investigating the murder of Mashal Khan confirmed that no proof was found that Khan was involved in blasphemy. Accordingly, it has been confirmed by JIT that the assassination of Mashal Khan was planned, allegedly hatched by two persons [REDACTED]

[REDACTED]. According to the investigation, Mashal Khan was

very vocal against University Management and a few days before the incident, he had given an interview to local news channel and had spoken against university administration. According to the recommendations of JIT, further necessary action will be taken to prosecute the criminals and avoid such incidents in future.

Response of Government on Hate related Incidents

11. Whereas Specific Incidents based on hate are concerned, respective Provincial Governments have taken serious actions against the perpetrators including the initiation of judicial and departmental actions against them. The list is attached at **Annex-A**.

Authorities Responsible for Investigation of Blasphemy Cases

12. To prevent the abuse/misuse of the blasphemy law, it has been made obligatory that the investigation of blasphemy cases can only be done by an officer with the minimum rank of Superintendent of Police.

13. In 2002, the Lahore High Court had prescribed that only a District or a Session Judge should sit at the bench hearing cases regarding blasphemy. Section 196 of the Code of Criminal Procedure ("CrPC"), 1898, provides that no court shall take cognizance of any offence punishable under 295-A (deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs) of the Pakistan Penal Code unless a complaint is made by, or under authority from, the Federal Government or the concerned Provincial Government. If prior permission is not obtained, a judge cannot take cognizance of a private complaint. Section 295 of PPC provides: "Whoever, with deliberate and malicious intention of outraging the 'religious feelings of any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both." This confirms that the Blasphemy Law is non-discriminatory.

Policy Measures by Government of Pakistan to ensure Religious Harmony and improve Human Rights situation

14. The Government continues to undertake administrative and policy measures to promote interfaith harmony. The Prime Minister of Pakistan

has approved the National Plan of Action for Human Rights to improve the human rights situation in Pakistan on 13th February, 2016. The Action Plan consists of the following six broad areas of intervention: (i) Policy, Legal Reforms; (ii) Access to Justice; (iii) Implement Key Human Rights priorities; (iv) International/UN Treaty implementation; (v) Establish and strengthen national human rights institutions; and, (vi) Implementation and Monitoring mechanism for the Action Plan. A National Task Force under the Chairmanship of Federal Minister for Human Rights with representation of Federal Ministries and Provincial Law/Human Rights Departments for implementation of the Action Plan is undertaking oversight and monitoring. The two key areas on Policy, Legal Reforms and Access to Justice are primarily focused to address the complaints about misuse of any law, including Blasphemy Law.

15. In its efforts to ensure respect of religions and maintain harmony in the society, the Government is taking serious actions against hate speech which leads to instances of allegations of blasphemy. For instance, the Punjab Sound System (Regulation Act, 2015) is a recent initiative which is being successfully implemented to eliminate the use of loud speakers for incitement. The Punjab Vigilance Committee Act, 2016 provides for the establishment of vigilance committees at the district and provincial levels, which are mandated to report any unlawful activity being carried out, or being planned, with respect to incitement.

16. Section 5A(b) of the Press, Newspapers, News Agencies, and Books Registration Act 2002 (XXVIII) of 2002 restricts the publication of any graphic or printed representation or projection of statements, comments, observations or pronouncements based on sectarianism, ethnicity or racialism. This regulatory regime was further strengthened in 2007 by amending the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002, which mandates all electronic media and advertisements production houses to ensure that all their content is free of any element of violence, terrorism, racial, ethnic or religious discrimination, sectarianism, militancy, obscenity, and hatred. Section 33 of this Act provides severe punishment for violation or abetment of the provisions of this Ordinance.

17. The free and active media in Pakistan continues to help in countering extremist narrative and foster respect for religious and cultural diversity.

More than 100 T.V. channels and Radio stations are operating in Pakistan. Around 1500 newspapers and periodicals in over a dozen languages are published. A number of channels focus on human rights discussions.

18. Federal Ministries and Government bodies conducted a number of seminars, conferences and consultative meetings to promote harmony between the majority and minority communities.

19. The electronic media airs many programmes aimed at open and constructive discussions among the members of various religious, ethnic and linguistic communities of the country. These include programmes with prominent and established religious scholars, and with prominent leaders of minorities.

20. A 'National Muslims Scholars Council' has been set up for maintaining Sectarian Harmony in the country.

21. The National Commission for Minorities (NCM) with a comprehensive mandate is empowered to develop a National Policy on Inter-faith Harmony, To ensure that the churches, shrines, temples, gurdwaras and other places of worships of the Minority communities are preserved, to consider laws and orders of procedural practices of the Government which are reported to be discriminatory towards the Minorities and recommend to the Government such steps as shall ensure fuller and effective participation by the members of Minority communities in all aspect of national life.

22. Specific legislative steps and actions are being taken in the context of broader religious freedom and tolerance as enshrined in the Constitution and by setting the positive examples such as attending the Hindu Holi celebrations, participation and organizing Christmas and Easter celebrations by the Prime Minister and the other political leadership. Complete security is provided at the official level to the celebrations of festivals of minorities.

23. The Government of Pakistan, in collaboration with its partners, is imparting human rights education and training in Military and Police Academies. The Government of Punjab has also initiated a programme for

sensitizing and training master trainers for public officials on the religious rights and freedom.

24. Pakistan Evacuee Trust Property Board, a subordinate department of Ministry of Religious Affairs and Interfaith Harmony engages with Sikh organizations in Pakistan and abroad to facilitate their religious pilgrimage in Pakistan.

25. The Provincial Governments have taken a number of steps for promoting interfaith harmony and combating intolerance including:

- i. 'The Sindh Sound System (Regulation) Ordinance 2015' is instrumental in prevention of incitement to violence and violence against persons, based on religion or belief;
- ii. 'The Sindh Security of vulnerable Establishment Bill 2015' has the prime objective to identify, categorize, notify and provide full-fledged security to the religious sensitive establishments and places;
- iii. Under 'The Punjab Security of Vulnerable Establishment Act, 2015' security advisory committees at district levels have been established to identify the vulnerable establishments in the province. Worship and any other religious places are covered in definition of vulnerable establishment;
- iv. Under 'The Punjab Vigilance Committee Act, 2016' vigilance committees have been established at the district and provincial level. These committees are mandated to report any unlawful activity being carried out or being planned inter-alia with respect to incitement for violence;
- v. The Government of Punjab has initiated a programme to sensitize and train master trainers of public officials on religious rights and freedom;
- vi. The Minority Advisory Council, Punjab (MACP) has been established with both Muslim leaderships to inter-alia address the issues of discrimination on the basis of religion. The recommendations of MACP are implemented on a priority basis;
- vii. The curriculum up to 4th standard has been revised for schools in Punjab to incorporate the elements of religious tolerance and respect;
- viii. In the wake of 18th Constitutional Amendment the Khyber Pakhtunkhwa Assembly has passed the following laws to protect the rights of minority community:

- a. Khyber Pakhtunkhwa Protection of Communal Properties of Minority Act, 2014
- b. Khyber Pakhtunkhwa Evacuee Trust Property Act, 2014

26. Religious leaders play an influential role in promoting interfaith dialogue and countering all forms of discrimination in the country. In 2014, the Pakistan Ulema Council (PUC) devised a Code of Conduct to combat hate speech and religious intolerance in the country.

27. In recent years, the social media has become a powerful tool for dialogue and engagement. A number of Facebook pages and Twitter campaigns have been launched by Pakistanis for condemning extremism and intolerance and for promoting interfaith dialogue and cultural harmony. Through the social media, thousands of Pakistanis had galvanized to join the human chain formed around St. Anthony's Church in Lahore on 6 October 2013 to express solidarity with Christians after a terrorist attack took place on All Saints Church in Peshawar.

28. Interfaith Harmony Committees have been established by the Provincial Governments which are playing a positive role to create a healthy environment among different communities. Ministry of Religious Affairs and Interfaith Harmony have made consistent efforts to encourage tolerance and mutual respect through seminars, conferences and consultative meeting of different communities.

29. A number of monitoring, follow-up and accountability mechanisms have been put in place for the implementation of human rights of various segments of the society across Pakistan. The Provincial Governments have established Human Rights Departments and help lines at the provincial levels.²⁴ Pakistan is a multi-religious, multi-cultural, pluralistic society where people of different religious backgrounds are living together. Minorities constitute about 3.72 per cent of the total population and consist of Christians, Hindus, Ahmadis, Parsis, Buddhists and Sikhs. They are equal citizens of Pakistan and are free to profess, practice, and propagate their religion. Their contributions to the society add to its richness and diversity. The Government remains committed to promote and protect their rights without any discrimination.

30. The Constitution of Pakistan actively promotes minorities' rights. With a wide range of its articles (20, 21, 22, 25, 26, 27, 28, 33 and 36), the Constitution provides guarantees to minorities for protection, equal participation as well as the right to preserve and promote their cultural identity, values and practices. The Objectives Resolution of Pakistan also guarantees fundamental rights including equality of status and opportunity before law, social, economic and political justice, freedom of thought, expression, belief, faith, worship and association. Ensuring equal treatment of minorities and their enjoyment of human rights and fundamental freedoms without any discrimination are cardinal principles of Pakistan's Constitution. They have been awarded high priority by successive governments.

31. To promote the religio-cultural diversity, the religious festivals of the minorities are organized and celebrated at official level. These festivals are celebrated at the highest level, usually at Aiwan-e-Sadr, Islamabad, presided by the President of Pakistan or the Prime Minister of Pakistan. National Commission for Minorities has also been established which is fully functional and independent to discharge its functions.

Legal Aspects/Blasphemy Laws

32. Blasphemy law is aimed at protecting the life and dignity of all people of society. Its purpose is to ensure public order and harmony in the society, by seeking to prevent inter religious discord and incitement to violence through hate speech. Blasphemy law in Pakistan is non-discriminatory in nature. It is based on respect for all religions. It deals with offences against all religions and applies to Muslims and non-Muslims alike.

33. The law was first introduced during British rule in South Asia. Such laws also exist in many countries of the world.

34. The Government of Pakistan is fully conscious of the need to prevent any possible misuse or abuse of this law and has taken a number of legal and administrative measures in this regard.

35. The occasional cases of misuse of law and related violence have not just affected minorities but also Muslim majority. The misuse has been attributed to individuals who allegedly acted for personal reasons or gains.

36. The Judiciary, especially the High Courts and the Supreme Court have also ensured effective oversight. There is a strong judicial system in Pakistan. If any accused is convicted and awarded capital punishment by the Court of Sessions, the same is required to be confirmed by two judges of the High Court, otherwise it cannot be implemented. After the decision of the High Court, the convict has the remedy to file appeal to the Supreme Court of Pakistan. If the apex Court upholds the verdict of the High Court, mercy petition can be submitted to the President of Pakistan who enjoys powers under Article 45 of the Constitution to grant pardon, reprieve and remit sentence. It is, therefore, clear that adequate safeguards have been provided in the Constitution and the laws of the country so as to ensure that no innocent person is convicted in such a case. Recently, fair trial has been made fundamental right in Article 10A of the Constitution, which reads as follows:-

“10A. Right to fair trial: For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.”

37. The above procedure is a testimony that judicial system in Pakistan has been extra careful in reviewing the cases, particularly those related to blasphemy.

38. The Mashal Khan case is still under investigation by the concerned authorities of Pakistan. The Joint Investigation Team (JIT) constituted by the honorable Supreme Court of Pakistan has submitted its report to the Court and Court is seized of the matter.

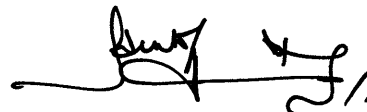
39. Since the court proceedings are going on in this case, much of the information regarding details of the case are not public. Once the proceedings are completed, the Court Judgment would speak for itself and ambiguity surrounding many aspects of this case would be clarified.

40. As the executive of the functional and transparent democratic system, the Government of Pakistan is fully seized of this case and is committed to fulfill its constitutional and legal responsibilities.

41. The Government of Pakistan wishes to take this opportunity to reaffirm its unwavering resolve to the protection and promotion of human rights of all Pakistanis.

42. We hope that the above clarifications will help in addressing the concerns expressed by you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Farukh Amil', with a horizontal line extending to the left and a small flourish to the right.

(Farukh Amil)
Permanent Representative

Ms. Ages Callamard,
Special Rapporteur on extrajudicial, summary or arbitrary executions
Geneva

Ms. Karima Bennouna
Special Rapporteur in the field of cultural rights
Geneva

Mr. Davis Kaye
Special Rapporteur on the promotion and protection of the right to freedom
of opinion and expression
Geneva

Mr. Ahmed Shaheed
Special Rapporteur on freedom of religion or belief
Geneva

Annexure A

Response of the Government of Pakistan on various Incidents of Blasphemy

1. In case of **Kasur, Kot Radha Kishan** , A mob of around 400 people lynched [REDACTED] for their alleged role in desecrating the Holy Quran in November 2014. Both husband and wife were brick kiln workers. The woman, mother of three, was pregnant. Police registered a case against 660 villagers, including 60 who were nominated in a First Information Report lodged on the complaint of Sub-Inspector [REDACTED] of Chowki Factory Area. After comprehensive investigation and trial, Anti-Terrorism Court sentenced five men to death and imposed a fine of Rs200,000 on two counts for their involvement in burning alive of Christian couple on 22nd of November, 2016. The five men were identified as [REDACTED]
[REDACTED]
[REDACTED] Eight others have also been charged with involvement in the lynching and sentenced to two years each in prison. The eight men were identified as [REDACTED]
[REDACTED]
[REDACTED]
2. In case of **Joseph Colony, Lahore**, a mob attacked Christian Colony on allegation of blasphemy in March 2013. They destroyed the houses of minority community. The Government immediately took action and held inquiry about the incident. All affected minorities members were compensated according to their satisfaction. A case was also been lodged against the culprits and an inquiry conducted against the police officials who failed to protect the minority communities. There was no causality during that incident. The Supreme Court took notice of the case, judicially scrutinized it and justice took its turn.
3. In **Gojra and Korian**, the attacks were triggered by reports of desecration of the religious text in August 2009 and July 2012, respectively. The Government immediately ordered an inquiry. A contingent of Pakistan Rangers was sent to the city on orders of federal government. Police lodged cases against 17 known and 783

unknown suspects following these attacks. The Chief Minister of Punjab Province, announced US\$ 6,000 as compensation for each bereaved family. A Judicial inquiry was conducted. Six hundred people including senior politicians and intelligence officials were probed on this incident. The National Assembly of Pakistan adopted a unanimous resolution to condemn the Gojra incident. The Minority affairs Minister of Punjab himself lodged legal complaint against the perpetrators. The Police arrested 42 individuals alleged involved in the Gojra incident. 54 individuals were arrested in case of Korian incident. The Government also banned the suspected organization which had allegedly participated in the attack. All damaged houses have been reconstructed according to the satisfaction.

4. On March 15, 2014, a crowd attacked Hindu temple and a Dharmashala in **Larkana, Sindh**, Pakistan, after unverified allegations of a Hindu youth desecrating a copy of the Religious text. Also, the home of the Hindu youth who was accused of burning the book was surrounded, which prompted the security forces to fire warning shots and teargas shells. Security forces took immediate action and no person from the minority community was harmed during the incident. The Prime Minister expressed deep grief and concern over the incident. Taking notice of the incident, the Prime Minister directed the provincial governments to take measures to protect the worship places, safeguard lives and property of the minority communities.
5. The judgment of the Supreme Court in case of murder of [REDACTED] [REDACTED] on 8th October, 2015, to restore the death sentence awarded by Anti-Terrorism Court to [REDACTED] (who was executed in March 2016) is historic as it ensures a judicial shield to protect the rights of people. The Supreme Court's decision states that there is no justification for any individual to take the law into his/her own hands.
6. In 2012, [REDACTED], who was allegedly accused of blasphemy, was released on bail. Subsequently, on 14 November 2012 case against her was dismissed by Islamabad High Court. The cleric of the mosque in [REDACTED]'s area, who apparently tampered with evidence,

was detained by police under the same Blasphemy Law- Section 295-B on 1st September 2012 and was tried under the same law.

7. [REDACTED] a laborer, was arrested in September 2005 in Qenchi Amar Siddhu neighborhood of Lahore after local residents accused him of making blasphemous remarks. He was sentenced to death by the District court. He filed an appeal in the Lahore High Court against the judgment. The Lahore High Court overturned the death sentence and [REDACTED] was acquitted.