



Litigating the War of Terror



Institute of
Policy Studies
Islamabad

Proceedings of one-day conference jointly organized by
the Institute of Policy Studies and Reprieve-UK on April 18, 2011

Litigating the War *of* Terror



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Foreword

This report is based on one-day conference jointly organized by the Institute of Policy Studies and UK-based charity Reprieve on April 18, 2011. The report is based on an approximate transcription of the proceedings of the conference and is being shared along with an executive summary. The conference had been a success in many respects and I hope that presentation of its proceedings too will help the readers know and understand, at least to some extent, the less-projected side of the war of terror. It will also give hope, courage and reinforcement to those who have opted to fight for fundamental rights without challenging the law.

While presenting this conference report, I thankfully acknowledge the efforts of Ms. Sultana Noon (Reprieve) and Mr. Nadeem Geelani (IPS) for coordinating this conference. Mr. Nadeem Geelani has also supervised the preparation of this report with valuable help and support of Ms. Amna Amir, Ms. Rahat Raja, Mr. Furqan Kakar, Mr. Naufil Shahrukh and Mr. Fazl-ur-Rahman at different stages of transcribing and finalizing it for publishing. I must also thank all members of Reprieve delegation who participated in this conference, all the speakers and participants who represented a wide spectrum and came from diverse backgrounds. Undoubtedly they had made this conference a lively and fruitful sitting with their useful and pointed interventions.

IPS welcomes informed discussion and dialogue on national and international issues. The views and ideas expressed during this conference however do not necessarily reflect the opinions of IPS, or on same corollary of Reprieve.

Khalid Rahman
Director General
Institute of Policy Studies
Islamabad

Executive Summary

There is, on one hand, an endeavor to make the world more peaceful, just and secure, and on the other hand counter-terrorism strategies involving continual violations of basic human rights are paradoxically seen as a means to attain this peace and security. Hence the arbitrary incarceration and killing of human beings in an era deemed to be one of liberalism, international law and international institutions necessitates that basic human ethics and morality are not rendered meaningless in addressing this paradox. The response to 9/11 in the form of establishing detention centers like Guantanamo bay and Bagram epitomizes the injustices and crimes that are perpetrated ironically in the name of freedom. An international order depends on a framework of agreed principles, customs, commitments, and expectations that all states agree to abide by. The so called war on terror therefore raises many political as well as legal questions.

It raises the specter of a state of affairs where all that has been gained during past centuries in the fields of politics, security, and above all human rights culminating into the UN Charter, UN Declaration of Human Rights, Geneva Conventions, and a host of other treaties, conventions and institutions is seen to be becoming irrelevant in determining the course of international affairs today. Reflecting a scenario where a state may act unilaterally and arrogate to itself the right to act on behalf of the international community. When power converges into the hands of one actor, abuse of power is more than likely to emerge. This leads to a situation where a state interprets and applies International law as it deems fit and chalks out a world order which means that every less-powerful state has to stand in allegiance to it in all circumstances. The preservation of international peace and security is contingent upon respecting the freedom and sovereign equality of all nations and their citizens.

It is in this context that a conference on “Litigating the War of Terror in Pakistan” was organized by the Institute of Policy Studies in collaboration with Reprieve.¹ The conference aimed at involving

¹ It is a Civil Society Organization based in London, founded by Clive Stafford Cliff which seeks to use the law to enforce the human rights of prisoners, from death row to Guantánamo Bay. <http://www.reprieve.org.uk>

human rights activists, legal fraternity, academia, and victims amongst others. Italicized '*of*' in the title is intentional and is actually meant to convey the meaning that it very explicitly shows; also bearing in mind that the phrase in its original form has also been described as a misnomer. The conference which was divided into two sessions highlighted the continuing human rights violations at the national and international levels. It also discussed the possible options through which efforts to access justice for the victims could be internationalized and fundamental rights are safeguarded. Amongst the victims are those who have been subjected to abduction and illegal detention and are kept for indefinite periods in secret detention centers without legal representation and fundamental rights.

Providing a background and political overview of the situation, the discourse in the first session began with anticipating the future of Pakistan vis-à-vis the war against terror. Pakistan finds its own sovereignty badly bruised by US drone attacks and facing internal security threats as a consequence of US-led war in the region. Pakistan needs to go back to basics and ask itself if the war it is engaged in is in its national interest and should it keep on fighting on US terms or evolve its own national strategy to fight terror. Pakistan needs an indigenous national policy and a coherent counter-terrorism strategy based on its own national interests. Pakistan's future will be determined by addressing some fundamental questions about its national objectives, national interests. Pakistan's future has to be based on 3Ps: Peace, Progress, and Prosperity.

Following an overall comment, the issue of proxy detention and torture, its history and importance, and how cruelly it has been played out, especially in countries like Pakistan was raised. Proxy detention introduced by Americans in countries like Pakistan that are acting as accomplices has had a compromising effect in upholding the rule of law. In this respect the United States uses local security service to pick up the suspects for them, hold them, and abuse them on behalf of the CIA and FBI. Americans feel that acts like torture can be performed with more liberty in countries like Pakistan, rather than the United States. There is need to find out more and more facts about this phenomenon and gather reliable evidence to prove the cases in the courts of law.

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Pointedly it was highlighted that US did want to be the target of international outrage for maintaining prisons like Guantanamo, it was increasingly relying on proxy detentions. In this regard cases of various types of proxy detentions like that of Dr. Aafia Siddiqui were cited. It was stressed that failure of intelligence and security agencies to charge those who had been in their custody for years and bring them to the courts of law clearly manifested the innocence of the most of them; if not of all. Time has come for all those who are genuinely concerned to exchange their notes and explore litigation strategies to effectively use the law to get these persons released.

In the discourse on 'Possible Future Litigation Strategies in the War *of* Terror', such as in the question of torture and rendition, and proxy detention, stress was laid on accessing and collecting reliable facts. One cannot win, or even plead a case in any court without facts. There is need for more people to come forward with facts but the victims are less likely to turn to courts unless they are sure that there are people among masses who would stand by them and help them in getting to the corridors of justice.

In bringing up the use of drones in this war *of* terror, attention was drawn to the fact that the intelligence being used by the US to make decisions of drone strikes is incredibly flawed and there may be number of options for litigation related to drones. Another monumentally counterproductive thing done by the US and Britain during the course of this war has been privatizing the warfare. In a general context it was emphasized that what the Americans have done in Pakistan in particular, is utterly counterproductive, it breeds anger and hatred. US and its military allies have to stop preaching one thing and practicing the opposite.

Second session too begun with a summary of background and political overview of drone attacks. It was stressed that drone strikes are breach of fundamental rights and were no less than extrajudicial killings. It is almost certain now that they are hitting many unintended targets which are written off as collateral damage. Drone attacks in Pakistan have targeted the Federally Administered Tribal Areas (Fata); an area where the courts are believed to have no jurisdiction. The people of Fata, therefore, despite being Pakistani citizens have no mechanism to enforce their rights. It was however

suggested that killing through drones was not murder that would require ordinary criminal litigation in which jurisdiction is a fundamental question. Killing through drones has to be agitated in the court of law as homicide.

Another key question is whether Pakistan has given permission for the drone attacks or not; and does its consent give legality to drone attacks? If Pakistan has not sanctioned drone strikes, as it publically claims, then what has stopped it from raising the repeated breach of its sovereignty on international forums? It is also vital to determine, as part of litigation strategies, what laws should be invoked for judicial intervention; international law or domestic laws of the country in which the court is approached. To answer this question, answer lies in determining the nature of conflict faced by Pakistan. Of course, drone strikes in Pakistan are not covered under any international instrument and have no backing of Security Council. Additionally for a targeted killing to be lawful, "an international or non-international conflict must be in progress." Some key questions in determining the relevant law therefore may be: whether Pakistan is at war with America? is it an international armed conflict or it is a civil war within Pakistan?

After Barak Obama took charge of US government, the extra-judicial killings through drones had seen sharp increase. While his predecessor, George Bush had been guilty of renditions and torture in Guantanamo Bay and elsewhere, in Obama's term the emphasis changed from detentions to killings. His increasing reliance over unmanned aerial vehicles has produced a 'play station mentality' in the drone operators who have lost the regard for human lives.

Apart from legal intricacies, at the heart of the matter is the need to give human identity to the victims of the war of terror who have yet been known merely as numbers. One way of doing that is to encourage them to narrate their ordeals which will have a chain effect and more and more people from among the public will join the cause. Emphasis was also given to the fact that apart from legislation and litigation, the political will and pressure of the people of Pakistan is a key aspect.

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Towards the end of the session, focus was centered on Bagram, the 'evil twin of Guantanamo bay,' where Pakistani citizens too are languishing along with others beyond the rule of law. In this case too, identities can be given to figures through people coming forward to narrate what happened to them or their loved ones. In this respect if Pakistan is complicit in a wrong, it has to help to release these persons.

To conclude, it was reiterated that the response to the acts of terrorism on 9/11 has turned out to be a greater form of terrorism and has destabilized the situation globally. A paradigm shift of regarding terrorism an act of war instead of a crime and from a tactic to a target had taken place. The 'right of intervention' by the powerful has destabilized the entire global architecture of peace and justice with states by-passing International laws. *War of Terror* is being used as an instrument for the pursuit of political agendas. Along with litigation and legislation, political pressure domestically and globally is a prerequisite for addressing all these related issues through dialogue and engagement, and through a political process, rather than through brute force.

Introduction

Khalid Rahman¹



Differences and distinctions are an inevitable part of life, and often add beauty to it. However at times differences of opinion and interests may become violent and destructive. Human societies have always been faced with a challenge to avoid such situations or curtail their impact if they are unavoidable. Attempts made to respond to this challenge in various ages have always been based upon certain norms and principles. Individual and collective tendencies towards creating disorder and mischief in society have been dealt through a system based upon the principle of state sovereignty.

States are responsible for taking care of those who show disrespect to the rights of others within their respective jurisdictions under their penal systems. But if such violations are committed by the states themselves against fellow states, then such actions may invite violent reactions, and the situation may have to be managed in accordance with the provisions and principles laid down in the Charter of the United Nations.

An important impact that the advancement of technology has made in recent times, is that the borders between states have become less significant in a number of aspects. Ideas as well as actions today demonstrate global outreach and extraordinary impact. Crimes and criminal activities too have become global in actual as well as in conceptual terms, and are therefore no longer confined to the national boundaries of a state.

The response to the incidents of September 11 has put the heritage of a millennium at stake.

¹ Khalid Rahman is Director General, Institute of Policy Studies, Islamabad.

This phenomenon has diffused the distinction between crime to be dealt under penal law of the land, and a war to be managed under international law.

This new situation required maturity, caution, and prudence from the international community, but unfortunately the gap created in the prevailing system by globalization was exploited by the powerful nations of the world to further their own interests, even at the stake of the rights of individuals, states, and communities. It is not that contemporary international law did not provide an answer to the questions posed by these developments, nor was the intellect of mankind unable to respond to them, but as has happened often in human history, we are facing a situation which can best be described in Lord Acton's words 'power tends to corrupt, and absolute power corrupts absolutely'.

At a time when humanity was believed to be moving towards an era where war was not to be an essential instrument of foreign policy, the response to the incidents of September 11 has put the heritage of a millennium at stake. All that the world had gained during the twentieth century in the fields of politics, security, economics, finance, and above all human rights culminating into the UN Charter, UN Declaration of Human Rights, Geneva Conventions and a host of other treaties, conventions and institutions seems becoming irrelevant today. The rights pertaining to detention and fair trial are being violated on a large scale, and neither the national penal law nor international humanitarian law appears to be in operation.

The United Nations that was being celebrated as one of the greatest achievements of mankind stands today at a juncture where its effectiveness and hence existence as a peace-building institution is being questioned. Examples like Guantanamo Bay, Bagram and Abu Ghuraib have emerged as blots on the face of humanity. The only option left to the victims of these atrocities as well as those who are concerned about them, is to create awareness and make efforts to shape opinion at all levels, while approaching the judiciary as an attempt to regain or protect their rights to the maximum possible extent.

Introduction

This is the context in which the Institute of Policy Studies and Reprieve joined hands to organize the conference titled as “Litigating the War *of* Terror in Pakistan”. It may have been noticed that the organizers of this conference have slightly maneuvered the term generally used to denote the so-called response to what is highlighted as terrorism. This italicized ‘*of*’ in the title is intentional, and is actually meant to convey the meaning that it very explicitly shows. We are glad to have a very distinguished panel of speakers as well as a select group of audience, and we genuinely hope that this Conference will initiate a discourse and coordinated action that will give a message of hope to those whose rights have been violated in this war *of* terror.

Human rights are for all,
and that to sacrifice these
principles for the illusion
of security comes at far too
high a cost; the cost is
betrayal of common
humanity.

Introduction

Lord Ken McDonald¹

I want to start by thanking the Institute of Policy Studies for hosting this important conference. Your hospitality has been extremely generous. You have done remarkable work over the years in the form of a variety of journals and books.

Let me tell you a little bit about Reprieve: It's an NGO, based in London; it's small, dedicated, and completely fearless in upholding rule of law and the rights of prisoners around the world. It uses the law in the most imaginative ways to protect fundamental rights and to save lives, and grew out of the well-known work of its founder, Clive, in representing death row prisoners in the United States. It may be fair to say that justice is in short supply on death row in the United States, but Clive managed to deliver a major amount of relief to men and women who are kept there by the United States justice system and sometimes, unhappily, by the United States Supreme Court. So he probably thought why not in other countries too, and that's what happened. Reprieve now represents death row prisoners around the world, but its network expanded in recent years to encounter the so-called war on terror or 'war of terror' as we describe it this afternoon, and the many injustices that this war has brought in its wake, not least I think in Pakistan.



So we worked extensively on the Guantanamo Bay and our lawyers and investigators visited that place on many occasions. Guantanamo Bay is a shameful outpost. I haven't visited myself but I've spoken to Clive many times about his experiences there. It is a place where men are held without legal representation and

¹ Lord Ken McDonald is Chairman Reprieve

fundamental rights and quite deliberately beyond the dictates of the United States' Constitution. I believe that this is an absolute betrayal of the thought of the founding fathers of the United States.

So we are presently litigating over issues in Bagram, and beyond that our investigators are seeking out secret prisons around the world, and we know there are plenty to uncover; to unlock justices, and prevent injustices that are perpetrated ironically in the name of freedom; and we try to bring justice to those who suffered under those systems. Our broad purpose is to shine the light of the law in the darkest places around the world. Why do we do that? There is a very simple reason explained by Clive on many occasions, and believed by all of us at Reprieve; and no doubt by everyone who shares our goals and feelings. The belief is that fundamental rights belong to everyone; human rights are for all, and that to sacrifice these principles for the illusion of security comes at far too high a cost; and the cost is betrayal of common humanity.

So I hope that many of you will be able to support our work in Pakistan, where we now have a small team operating; they are able, committed and determined to carry forward this work. I hope that many of you will come to know them all, and to work with them, and ultimately to help them to use the law to achieve its ultimate purpose; which is the delivery of justice. It will not be enough simply to recognize injustices, and to mark them, and then to move on. You can only move on when the injustice has been corrected, and justice in its place has been delivered.

Everybody who is born, I believe, has an inherent sense for justice; everybody wants justice. One of the first things in my culture is that children judge things at a very young age as fair or unfair. I think human beings are born with an instinctive thirst for justice; and if you take it away from them the consequences are drastic, as they should be, because why should people put up with injustice. So we are here to try and redress some of the problems. It is not enough simply to admit that injustice is taking place, but this has to be corrected, and those who have suffered because of it deserve that their rights should be restored along with whatever compensation of their loss is possible.

The Future of Pakistan and the War against Terror

Tariq Khosa¹

Pakistan's future will be determined by addressing some basic questions about its national objective, national interests, and in the short term, about its core strategy to combat the menace of terrorism that threatens its integrity as a nation. I believe that our national purpose should be based on 3Ps: Peace, Progress, and Prosperity.



Pakistan has to have peace in order to

ensure security for its citizens. We are a nuclear state and have the capability to defend our territorial frontiers. However, we have to guard against the internal fault-lines, and avoid becoming a nation that is at war with itself. To

do this we need to be progressive and liberal, but not in the Western sense, but in the way that our founding father Muhammad Ali Jinnah wanted. He wanted Pakistan to be a democratic nation based on enlightened, liberal and tolerant social values.

Unfortunately, Pakistan's

9/11 happened too soon after independence when Jinnah died on the 11th of September 1948. Apart from these social characteristics, economic prosperity should be our national objective. This land has treasures of gold, copper, coal, and other natural resources, but the nation is still at the edge of economic strangulation, mainly because of lack of visionary and committed leadership and poor governance.

The whole nation today is asking one question; "Is this war in our national interest?" Shall we keep on fighting on US terms, or would we ever evolve our own national strategy to fight terror?"

¹ Tariq Khosa is former Inspector General Police, Balūchistān.

The Post 9/11 Bush Doctrine introduced the concept of war against non-state actors, and pre-emptive military strikes against states sponsoring so-called terror. The sole super power in world politics tried to enforce its diktat through military aggression in Afghanistan and Iraq. After the Cold war against Communism was over, another ideological war theatre was opened against what they called 'radical Islam,' and there is no end in sight to this madness. Pakistan was sucked into this war not only due to its geographic and strategic location, but also due to its policy of alignment with the US against the Soviets during and after the Cold war. Today it finds its own sovereignty badly bruised by US drone attacks and its troops engaged in operations near the Pak-Afghan border. The whole nation today is asking one question; "Is this war in our national interest?" Shall we keep on fighting on US terms, or would we ever evolve our own national strategy to fight terror?" 'To be or not to be, that is the question'.

Pakistan's current counterterrorism strategy flows out of its multiple strategic compulsions. First, its need to stay engaged with the United States; second, to combat the Taliban attacking the Pakistani state; and third, to fight India's growing presence in Afghanistan. To some analysts, this strategy is rife with inherent contradictions, caught between inclinations to fight militant forces, and yet having to partner with some to strengthen its future bargaining position.

It is important to understand that where we stand today is because of the follies of past policies. The Zia era of the 1980's was a decade of decadence, when violent jihad was pursued as a state policy. The decade of the 1990's saw confused political 'ping pong' played between Benazir Bhutto and Mian Nawaz Sharif, with the military calling the shots on Afghan and Kashmir policies. The result was the rise of the Taliban, finally culminating in 9/11, and the War against terror, unleashed since then. The post 9/11 decade with General Musharraf in command was an era of 'enlightened despotism'. The present democratic dispensation came in the wake of the assassination of BB, and a compromise with the establishment both in Pakistan and the USA.

The Way Forward

Pakistan must come up with a national policy and a coherent counter terrorism strategy based on its own national interests. Therefore, we must address the following questions and move forward with a clarity of purpose.

First, is Pakistan being perceived to be fighting America's war on terror on its soil? The answer is 'Yes'. Is it crucial for Pakistan to fight terrorists and militants for its survival? Absolutely! Our foremost priority is internal security; the Army, Frontier Corps, Rangers, Police and intelligence agencies must come hard on terrorists and militants, both foreign and domestic in order to restore the writ of the state. However, religious extremism and sectarianism should be addressed by political parties, civil society organizations, media, and everyone who has a stake in the future of this country. Pakistan was not meant to be a theocratic state, but a pluralistic, tolerant Islamic state where freedom to practice religion and one's beliefs is an inalienable fundamental right. The battle for the soul of Islam in Pakistan has to be fought through ballot and not bullet, through debate and not deterrence, through tolerance and not tyranny. The People of Pakistan did speak, and delivered a clear verdict in the general elections on February 18, 2008, by rejecting forces that promote militancy and terrorism.

Second, is there social and economic justice in Pakistan? No. Does extremism and militancy flourish due to lack of social and economic justice? Yes. Pakistan is going through a tension between the haves and have-nots. To create a distinction between extremists and liberals is misleading in our context. The egalitarian ethos of our society has been hijacked by a materialistic and vested class of society who wield influence. Castes, tribes, clans, and feudal values are deeply dividing our society. Economic growth lacks distributive justice, and poverty is breeding angry youth who fall easy prey to militancy and terrorism.

Third, is there something wrong with our education system? Yes. Madrassas are filling the void created by lack of a good and across the board public education system. There is no need to

close the madrassas. The answer lies in a public school system that imparts affordable modern education throughout the rural, tribal and feudal landscape of Pakistan.

Fourth, any strategy to combat terrorism has geopolitical significance with both international and domestic implications. The USA, Saudi Arabia and Pakistan collaborated in the Afghan jihad against the Soviet Union. They jointly created a monster that has since 9/11 come to haunt them as Frankenstein's did. It would require close cooperation to flush out al-Qaeda and a militant Taliban from their hideouts both in Afghanistan and Pakistan. The leaders and militant organizations that sponsor and launch suicide bombers will have to be dismantled.

Fifth, the suicide bomber is the weapon of warfare being used by the terrorists. With boots on the ground both in Afghanistan and the tribal areas of Pakistan, this phenomenon cannot be wished away. Therefore, military action and operations inside the tribal areas of Pakistan and even settled areas have to be swift and short, with least collateral damage. While the emphasis of the Army and Frontier Corps has to be on effective border control, the intelligence agencies, police and other LEAs must coordinate with local notables and the political administration to identify and apprehend terrorists in the tribal, and settled areas of Pakistan. The *ISI* should be the lead agency against al-Qaeda and



the Afghan Taliban, while the Intelligence Bureau, Federal Investigation Agency, and provincial CIDs should combat the local Taliban and proscribed militant organizations.

Sixth, recent successful army operations in Swat, South Waziristan, and some other troubled tribal areas have to be properly followed up by infrastructure development, economic opportunities and political empowerment. The whole issue of having tribal agencies and federally administered areas has to be revisited, to create a uniform system of governance in KPK. Baluchistan's conversion to an all police area was a successful model which was reversed at the altar of political and feudal expediency. However, political and constitutional nuances should be addressed rather than sweeping matters under the carpet.

Seventh, we are not fighting America's war in Afghanistan or Iraq. While we need a long-term strategic partnership with the USA, and not a narrow short-term cooperation on the war on terror; we must proudly and jealously guard our national interests of being a nuclear state that is at peace with its neighbors. We want peace with India, but the core issue of Kashmir has to be settled with dignity and honor, even if we have to wait for long. We need not pursue strategic depth in Afghanistan, but should not allow that country to pose a strategic threat to us. Another 'Great Game' being played in the region should be watched carefully. We should not let our soil be used to encourage incursions or sabotage in Iran. Above all, our relationship with China should be further cemented.

Finally, the war against terror should be fought through rule



of law and administration of justice. Then the whole nations' stance against violent extremism will succeed ultimately. Let the entire nation rally under the banner of Jinnah. This country is ripe for a rule of law revolution. The silent majority is waiting anxiously on the starting line. Who will pull the trigger? We are all set to go. A brighter future is the destiny of Pakistan.

In conclusion, let me quote Benazir Bhutto who said in her last book "Reconciliation," that Pakistan is a tinderbox that could catch fire quickly. However, I would say that the entire world would be a tinderbox if the global war on terror is not perceived to be just. In the words of the great Pakistani poet-philosopher Iqbal, "Tyranny cannot long endure."

Proxy Detention and Torture

Cori Crider ¹

First of all, I have to apologize for being American, and not only for being American, but also for being from Texas (home state of George Bush).



Asim Qureshi is going to talk on how proxy detention applies in Pakistan, and what we are going to do about it. What I am here to talk about is the concept and history, and why it is becoming so much more important today, and why the US is using it. We may find a number of persons among us who have an understanding of 'rendition' but not many would have a fair understanding of the term 'proxy detention'.

Proxy detention is a phenomenon that has already become very significant in the context of the war *of* terror, and I fear that it is going to become even more important; it is a word that you are going to hear a lot more times in future. This term is used where a local security service like the ISI in Pakistan, or the Political Security Organization in Yemen, picks somebody up, but with someone, such as the CIA or MI5 standing behind them; who points the figure at somebody and says "you go and get that person," and the local intelligence service picks someone at the behest of another intelligence service for detention, interrogation, and probably torture as well.

They are using the local security service to pick up the suspects for them, hold them, and abuse them on behalf of the CIA and FBI.

Historically speaking, it is not something that surfaced in 2010; in 2002 we all know about two or three persons who were sent

¹ Cori Crider is Legal Director, Secret Prisons and Renditions, at Reprieve

to Guantanamo, and who were actually picked up here in Pakistan. They were held initially in Pakistan and were eventually handed over to the Americans. The Americans then rendered them on to be detained in Guantanamo Bay. These persons detained by Pakistan were perhaps the first three people who became the target of proxy detention. The former ruler of Pakistan Pervez Musharraf has already mentioned them in his famous book '*In the Line of Fire*'.

Recently some change has been noticed in US policy, and it is no longer interested in taking detainees. Earlier the Americans wanted to control most of the detentions themselves and this was the point in establishing Guantanamo as a detention center. CIA intelligence officers wanted to run the detention, question people themselves, but when people like Clive started going to Guantanamo, and challenging the acts of violation of legal norms, the CIA backtracked and it opened up. Once it opened up and light started to shine on those prisons for which no justification could be found in US domestic law or international law, they started to shut down; Guantanamo is still open, but many of the prisoners are out.

This policy shift, however, was not because the new policy was more legally and politically justified for the United States; but in fact the US has opted for a more inhumane and more illegal course. They are using the local security service to pick up the suspects for them, hold them, and abuse them on behalf of the CIA and FBI.

The first time Reprieve along with Cageprisoners² came across this problem was in the beginning of 2007. Some of you may remember that Ethiopia had invaded Somalia at the end of 2006 with heavy US sponsorship, and there were hundreds of refugees streaming across the border from Somalia into Kenya. At that time we started to hear of dozens, if not hundreds of people, being picked up in Kenya, rendered by the Kenyans to Ethiopia, being held under brutal conditions for months. Some might argue that all this was done during the previous regime of George W. Bush, and things

² Cageprisoners Ltd is a human rights organization based in London that exists solely to raise awareness of the plight of the prisoners at Guantanamo Bay and other detainees held as part of the War on Terror.
<http://www.cageprisoners.com>

might have changed now, but we are convinced that it is something that President Obama is more than interested to continue.

At the end of 2009 and in early 2010 after the foiled attack on the Detroit-bound airliner by a suspect who was supposed to be from Yemen, persons like my client Sharif Mobley were detained by Yemeni security forces on the indication of the United States. Sharif a US citizen was shot, held and interrogated secretly. So the problem continues, and in my opinion the ultimate trend is that because the US is neither ready to opt for the proper course of law, nor does it want to be the target of international outrage for maintaining prisons like Guantanamo; so we should expect them to rely increasingly on proxy detentions. There are many cases of disappearance, and in view of this growing number we need to talk about what we are going to do about it.

There is a recent Los Angeles Times' article, in which the CIA has stressed that "CIA has slashed its terrorism interrogation role". Apparently this suggests that they are not doing anything immoral, and they are setting a halt to extrajudicial detentions, but what it actually means is that they will have the people picked up by local partners, and join the interrogation in those situations where they are likely to be tortured, without conceding a black spot themselves. They say that they are not conducting interrogation and detention but this is not true; what's happening is that they are hiding in the shadows around the corner, and the local security services are doing the dirty work for them.

So, what are we going to do about it? I think what we need to do at the moment is to find out more and more facts about this phenomenon and gather reliable evidence to prove the cases in the courts of law. We need to convince people to come forward and speak about secret detention centers, and tell us whatever they know about them so that we can prepare a case. You do not need to go to United States to file a case against the FBI or CIA; you may bring a case for the prisoners here in Pakistan.

That's the basic context of the whole situation and a general introduction of what we are trying to achieve. Thank you!

Proxy Detention and Torture: Pakistan as a case study

Asim Qureshi¹

Proxy detention is a phenomenon that has come into operation with full force after 9/11, and Cageprisoners started to work on this in 2004. The first two reports were produced in 2006, and were titled as "*Fabricating Terrorism: British Complicity in Rendition and Torture.*" Both these reports highlighted a litany of cases where British authorities have been expressly involved in the torture and illegal rendition of suspects in the war of terror, and one aspect of this is whole criminal investigation into torture and abuse is that it can lead to ICC consequences for British politicians who are involved. These reports focused very much on role of various security agencies around the world and the first country that we really looked at was Pakistan.



We were concerned about what is actually going on here; who are actually involved; who are the players; who is doing the interrogation and indeed who are the victims. Of course, there is no denying that there is a problem with things that are going bad and wrong in our countries, and the problem is exasperated when resourceful and influential security agencies like the CIA or MI5 enter the scene; asking local security agencies to pick up someone for them, detain him and torture him until he talks. This has happened in Pakistan, Bangladesh, the horn of Africa, Bosnia, Iraq, Afghanistan, Libya, Tunisia, Egypt, Lebanon, Syria and the list goes on. However

[Aafia Siddiqui] is one example of a Pakistani being taken outside the jurisdiction of Pakistan illegally, in this case to Afghanistan, where she was detained along with her children.

¹ Asim Qureshi is Executive Director, Cageprisoners

as far as the war *of* terror is concerned, proxy detention is something that has been going on since the very start and continues until today.

The very first case in our knowledge that happened as part of the war *of* terror was of two persons, Nihad Karsic and Almin Hardaus who were picked up off the streets of Sarajevo only ten days

There has to be some mechanism, at least, for charging all these men who have been missing for years.

after 9/11. They were working for the Saudi High Commission, dealing with orphans from the fall-out of the war. They were taken to shipping containers where they were interrogated. Then they were hooded, masked, goggles put on them, and they were sent off to Tuzla air base where they were

interrogated by Americans. So it was only ten days into the war *of* terror that practices of rendition and illegal detention had started. I would dare to say that Bosnia was a training ground for everything that was going to be done in Afghanistan later.

Now that we have a fair understanding of the concept of proxy detention through the presentation by Cori; I would like to give some examples of the various types of proxy detentions that are actually taking place. The first type may be the one in which an individual is taken elsewhere and the best example that we know is of Aafia Siddiqui. This is the very first case I ever worked on. At the end of 2004 I started this work, when I started investigating into human rights issues related to the war *of* terror as a project of my organization Cageprisoners; and it was just by chance that I was flicking through some of the stuff on the internet regarding detention that I came across the face of this woman, and started reading into her story. The more I got into it, the more it shocked me, and then I literally made it my life's work to constantly follow up on this one case.

We do not have the time to go into details of the case, but our belief is that this woman was detained along with her three children from Karachi at the end of March 2003. Two of the children have now returned, they were in custody and we believe that unfortunately the youngest child passed away and according to

different channels — murdered... This is all that we can describe, because we don't actually know what happened to Aafia. A lawyer cannot have access to her, and she cannot be represented properly. So we still need to keep on trying to find out what the actual details were. But of course we need her home first, and that has to be the priority. I ask people to talk to me about her case, and when they actually start discussing it, they generally say, "*it can't be right; the Americans can't be that crazy to carve a story so ridiculous*". *But it is true that they did and they got away with it.* And now we are in a situation where a woman who has not hurt or even scratched anyone has been sentenced with 86 years in prison. This is one example of a Pakistani being taken outside the jurisdiction of Pakistan illegally, in this case to Afghanistan, where she was detained along with her children.

Then you hear of the cases such as Muhammad Naeem Noor Khan, a Pakistani man. They said that he was al-Qaeda's computer science expert, and that he was the man when there was anything to do with IT, and Al-Qaeda. So much so that he was portrayed as number three in Al-Qaeda's ranks. He was captured in 2004 and taken to a secret prison somewhere in Pakistan; then taken outside of the country, and taken to a proxy detention center where they detained, interrogated and tortured him, and then one day in 2007 he was just released on the streets of Karachi. He suffered all this pain and agony, and his whole family and friends suffered for no reason whatsoever. They said that he was a die-hard Al-Qaeda operative. If it were so, such a person should not have been released like this, but this is what they did; because after this three-year long detention, investigation, and torture, not even a charge could be framed against him. What does this whole episode tell you? It may tell you that perhaps he was not that significant or maybe he was nothing at all. This seems to be the most likely explanation for his release, but for me and my wife this was the most tragic case I had ever come across.

Similar, rather more tragic is the tale of a man named Gul Rehman. He was the former driver of a gentleman named Dr. Ghairat Baheer who is a well-known figure in Pakistan and Afghanistan. Dr. Ghairat was at home one day, and this man Gul Rehman came to visit his former employer, and told him that he had some medical problems for which he had to go to the hospital. His host told him that after his visit to the hospital he should come back

and stay with him that night, since now he was no longer his driver, rather his guest. Gul Rehman accepted this hospitality. It is unfortunate that it was that night that the Americans and the Pakistanis came for Dr. Ghairat. They picked him up with every male in the household and took them all to Bagram, Afghanistan. Three years later, Dr. Ghairat Baheer was released. In 2008, I was travelling around the North of Pakistan doing some research work, and I happened to meet the family of Gul Rehman; that's how I first found out about the case, the family showed me his pictures, they introduced me to his daughters, and said that Dr. Ghairat was taken in 2003 along with our father and our brother, he's been released now. They asked me if I could do anything in order to find out where he was. They thought that he too might have been released if Dr. Ghairat had been released. I said that I will do whatever I could, and obviously it seemed crazy to me that just a driver would be kept all that time.

Contrary to my belief, I did not find out anything about Gul Rehman, and it seemed that at Bagram nobody had heard of this man. Not until the Associated Press during some investigation work found out that Gul Rehman was beaten to death in 2003. He was murdered by the Americans at Bagram and nobody had bothered to inform the family until 2010. Thinking that the news had been widespread, I picked up the phone and rang my contact here in Pakistan, and told him that I wanted to give my condolences to the family of Gul Rehman. This person as well as the family was shocked, surprised and traumatized. They still did not know. The family was so disturbed by this information that they refused to take that peace of information as true and one cannot blame them, because they had not seen the body. The Americans were not even civil enough to at least, return the body to be buried by those who were waiting for his return.

There are number of other instances when individuals were taken outside of the territory of Pakistan to Guantanamo and other secret prisons elsewhere. But there are persons who were brought into Pakistan; that's because Americans feel that acts like torture can be performed with more liberty in these countries rather than the United States. Pakistan itself is used as a place which the Americans

thought a very good place to detain individuals outside their jurisdiction and have them tortured, abused, and interrogated.

I am talking specifically of Hassan Gul, a Pakistani man who was picked up in Iraq in 2004. He was sent to Morocco to be interrogated and tortured there; after that to Afghanistan where a similar thing happened, and then finally he ended up in Pakistan where they started the process over and over again — interrogation, torture, and abuse while moving him from one prison to another. I don't know where Hassan Gul is now. Some people say he has been released in Pakistan. This is the person whom they called one of Al-Qaeda's most senior operatives. I am told that he's been released now, but I wonder how come? He is apparently Al-Qaeda's hardcore activist; yet they have done nothing to bring him before a court of justice. Despite the fact that he had remained part of the HED program, the High-value Detainee Program; he was singled out for enhanced interrogation techniques like water-boarding. Hassan Gul is thus one of the men that were water-boarded; and the only way we knew that is, that when the Americans released total documentation about their interrogation techniques, they left out one name and that was Hassan Gul. This was the first time that there was a confirmation that he was a part of the HED program.

Pakistan has detained a number of foreigners on its land, and handed them over to the US, but it was not merely foreign nationals; we know that Pakistani nationals too have been the victims of this proxy detention program. Masood Janjua has been missing since 2005, and it is still unknown what crime he had committed. There has to be some mechanism at least for charging all these men who have been missing for years. Hundreds of families are wondering, looking for their loved ones, and asking that they should be charged if they had committed a crime. These were the instances of the madness during the initial years of the war of terror.

Pakistan itself is used as a place which the Americans thought a very good place to detain individuals outside their jurisdiction, and have them tortured, abused, and interrogated.

But then you come across cases of Muhammad Sarfraz and Zeeshan Jaleel who went missing right after Benazir Bhutto's assassination.

Then of course, finally, the last category is of foreign nationals who come to Pakistan, are detained here, and tortured here. We have got an inquiry going on in the UK that may or may not go ahead called the 'Gibson Inquiry' in which the government wants to look into British complicity in renditions and tortures. One such case is of Zeeshan Siddiqui, a young man who came to Pakistan to study religion, and was arrested by Pakistan in 2005. He was beaten to such an extent that one of his eyes was damaged. When he was finally released and returned to the UK, he was so traumatized by what he went through that he was not able to string two sentences together. It took me four hours to take a testimony from him about his experiences here in Pakistan. The British government used all that torture evidence to put him under a control order, which is a form of house-arrest in the UK, and he was insane under those conditions, and then he ran away and now he is on the run. Another British national Rangzieb Ahmad had his finger-nails torn out by the Pakistani security agencies.

The recent movement of the lawyer's community has brought a ray of hope for the people of Pakistan who feel deprived of justice. I give full credit to the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, for the black-tie movement. This resilient and determined effort has done a fantastic job, and with the support of the legal fraternity the superior judiciary of Pakistan has gained a position where they would be able to make a difference. But we need to start pushing them to take on the cases of the missing persons. So this is the time to talk of litigation strategies in order to explore the ways in which we may be able to effectively use the law to get these men released. Every legal avenue needs to be chased down.

Above all we need role models like Amna Masood Janjua and Fouzia Siddiqui, particularly Amna whose husband has been missing for five years, and it is amazing that the family has kept together that long. Poor Amna has brought herself to the point of bankruptcy; has unfortunately not been able to give time to her children while campaigning for her husband's case. However the most amazing thing is of course that it's not just her husband's case that she works

on; she represents almost 700 families, going back and forth all over Pakistan; doing petitions for them because they do not know how the legal system works. It is encouraging that some non-governmental organizations have come to the fore, and have taken up this risky and difficult task, and we should hope that more and more people who believe in justice and the rule of law would get involved with them.

Possible Future Litigation Strategies in the War of Terror

Clive Stafford Smith



Since I possess the passports of the United States and the United Kingdom both, therefore, I will have to apologize to everybody at the very outset for George Bush and for Tony Blair. The theme I am here with is that if you don't try, you can't win. If you don't bring a case against someone, you can't possibly win. So I want to, through some ideas about litigation, talk

about the way we may move forward; and I hope that sharing these experiences would stimulate a good discourse, and new and more effective ways might come up. Whether victory becomes our fate or not, the most important thing in my view is the way we approach things.

Guantanamo began, and it really annoyed me, and we decided to sue the United States of America; we did so on February 19, 2002 in the Supreme Court of the United States (*Rasul versus Bush*).¹ We may not have won our war — which has been given the name 'lawfare' by lawyers in America, as opposed to warfare, and I believe that 'lawfare' is much better than warfare — but we have brought more than 600 prisoners out of

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¹ Rasul vs Bush is a case where the Supreme Court of the US ruled on the 28th June, 2004 that US courts have jurisdiction to hear Habeas Corpus petitions filed on behalf of foreign nationals imprisoned at Guantanamo Bay. The implication of the decision was that hundreds of foreign nationals held at the camp had a legal right to challenge their imprisonment.

Guantanamo Bay through lawyers pursuing their cases, while 173 still remain and we haven't finished yet. We have at least won on one front at least, which is about world opinion about Guantanamo. The most powerful man on earth George W. Bush wanted to do it (win over world opinion) and he lost that battle when it came to public opinion, and also in the courts of law three times.

So what we are here about is to talk about how we can all work together in Britain, in the United States and in Pakistan. It's not just the court of law; British and American lawyers think far too much about the courts of law, and not too much about the courts of public opinion. But when you are representing someone who has been assailed and possesses no power at all, our job is then about bringing power to that person, and power can be brought to him or her in many different ways.

Today we want to think about what we need to do and this is not just about laws, this is about facts; you cannot win a case in any court without facts and there are people here like Kareem Khan who are bringing us evidence. We need more people like him to bring forward the facts, as facts are vital in any litigation. Legal talent is definitely required, and most of all one has to show commitment and passion. Many people would thank God on Friday, it being the last working day of the week, but I would thank God on Monday, because I look forward to reach out to those who are in need, and I really take it as a mission.

What I am here to talk about is our strategic thinking; as an American citizen, I think that the things we Americans have done in Pakistan in particular, are utterly counterproductive, utterly wrong, uncivilized and foolish in every sense, and Guantanamo is an obvious one. The idea that Guantanamo would protect us around the world from terrorism is sheer idiocy. This has been a recruiting factor for terrorism almost more than any other thing. We would like to help stop what the US and other Western countries are

We have to recognize that the intelligence being used by the US to make decisions of drone strikes is incredibly flawed.

doing; and one of the things that we have done in the last week or so while I have been here in Pakistan, is to talk to people, and listen to what angers the people of Pakistan, and talk about what we might do about the whole thing, and how we are going to move forward on these issues.

Bagram is another area of concern, which is Guantanamo's evil twin. Reprieve has been representing prisoners there for quite a long time, and the problem about Bagram is that no one pays attention to it; rather people don't even know about it. A Pakistani child Hamidullah was taken from Pakistan to Bagram by the Americans without any legal process or justification when he was only fourteen years old, and in his case too, when we confronted US authorities, they did not know how old he was. If they did not even know about his age, how could they know that he was a terrorist?



Every person who is keen about Justice and the rule of law, including my eight year old child Wilfred, is really concerned about use of drones in this war of terror. I have seen a lot of classified data about drones, and what I can conclude is that it is total nonsense. Whenever a strike has to be made through unmanned aerial vehicle (UAV), at least three things have to be done i.e. (1) Identifying a high value terrorist; (2) knowing where he precisely is at a particular time and place; and (3) hitting him accurately; and the chances of that happen-ing are very grim. First, you have to identify a high value terrorist: Mohammad Al-Guarani is one of the persons we have represented from Guantanamo Bay. After Seven years of abusing this guy, and interrogating him on almost a daily basis, they didn't even know how old he was; they didn't even know that he was only fourteen years old at the time when they arrested him in Pakistan. He had never been to Afghanistan till they took him there. I often wonder if it is a difficult affair to confirm the age of a person without asking him; if there is a fear that he might be untruthful if asked. It would have been an easy affair for the investigators to acquire his birth certificate from Saudi Arabia to know that he was only fourteen years old, and that he could not be the person linked to

al-Qaeda's London cell at the age of 11. We have to recognize that the intelligence being used by the US to make decisions of drone strikes is incredibly flawed because they do not get the right information, but still they genuinely believe in what they are presenting. I was talking to a police officer recently in England about how many times in fifty-four years he would have prosecuted a wrong person and he said categorically: Never. This confidence in wrong information makes the whole thing even more dangerous.

Now the second issue that you have to deal with, is the probability that the CIA can identify a precise location of that high value terrorist at a particular time; and the third thing is hitting right at the target. The available information raises questions on each and every one of these aspects. In a particularly sad case in 1999, when the US tried to hit people in the Balkans, and fired missiles into Belgrade which they had long mapped; they hit the Chinese embassy instead.



Chinese Embassy, Belgrade
1999

I think that it is very difficult to take care of these three things in any operation. The whole process is self-evident to anyone who looks at it, that the US cannot hit the targets that they said they did. Now it is

[Pervez Musharraf] was confessing even bragging that he had authorized the torture of people in Pakistan when he was in office.... Of course we are trying to get Musharraf arrested in Britain under the UN Convention against Torture.

our job to gather evidence against US propaganda that only the right target is hit, and only the wanted terrorists have lost their lives. We need to prove the fallacy of this propaganda in order to show why US should stop use of these drones. This practice is so flawed that there are a number of options for

litigation related to drones but this is an area where facts are so significant.

Another form of violation of law and human rights is in the shape of proxy detention. America uses Pakistan and a host of other countries around the world to detain people. I have represented people who had been held at the behest of the US in other countries too like Morocco; one of my clients Binyam Muhammed was rendered there from Pakistan for eighteen months where Moroccans separated his two genitals. This proxy detention business being carried out by the US in other countries is another issue that we need to confront and there are many legal ways of doing it.

When it comes to collection of evidence, one feels obliged to former President of Pakistan Pervez Musharraf who has mentioned those facts in his book "*In the Line of Fire*" which otherwise would have been difficult to prove. He has written that "We have captured 689, and handed over 369 to the United States. We have earned bounties totaling millions of dollars. Those who habitually accuse us of 'not doing enough' in the war on terror should simply ask the CIA how much prize money it has paid to the Government of Pakistan."

Similarly on the question of torture and rendition we need to know more facts, and more in depth understanding of history. In March 2011, I was doing a TV program in which Musharraf was also invited to comment, and I was horrified by what he said. In this program Musharraf boasted, and he had a smile on his face that he authorized torturing people in Pakistan. The anchor in this BBC program asked him, "The British government say that they told Pakistan, perhaps you directly, that they do not want the ISI to torture British citizens, British subjects. Do you have any recollection of that being said to you on behalf of the British government?" and Musharraf replied, "Never. Never once, I don't remember at all." The anchor further confirmed, "They haven't said to you, we're concerned about the treatment that British subjects are getting in Pakistan, please don't do it, don't torture them?" And the response was, "No. Not at all ... Well, maybe they wanted us to carry on whatever we were doing. [laughs] It was a tacit approval of whatever we were doing."

He somehow finds all this amusing and goes on to say why he believed in torturing people and said, "We are dealing with vicious people, and we have to get information. Now if we are extremely decent, we then don't get any information. We need to allow leeway to the intelligence operatives, the people who interrogate." When asked, "Does the end justify the means to extract information, intelligence from suspected terrorists who are reluctant to talk?" Musharraf paused for a second, and then said, "To an extent, yes." He was confessing even bragging that he had authorized the torture of people in Pakistan when he was in office. I have this video clip saved in my computer because it is my goal to expose the torture taking place behind walls, so that those who are abusing people should know for sure that if they do it now, someone is going to come after them.

Talking about the practical steps, there are tremendous international strategies being used. Of course we are trying to get Musharraf arrested in Britain under the UN Convention against Torture and that is one thing we can do. But we can also seek to have an inquiry in Pakistan based on what he had said, and if you do that the Convention against Torture says that Britain has to cooperate; they have to comply with the Pakistani torture inquiry, and it is encouraging that Pakistan has now ratified this convention as well.

Another monumentally counterproductive thing done by the US and Britain during the course of this war is privatizing all this warfare.

Retired military and intelligence personnel are running private corporations, and they are performing operations assigned by the governments. From a number of aspects this is a terrible idea. We are hoping to represent a person who was sent by a private corporation from Britain into Iraq, who was suffering deep mental illness. This

Now it is our job to gather evidence against US propaganda that only the right target is hit... This practice is so flawed that there are a number of options for litigation related to drones but this is an area where facts are so significant.

man has been exposed to terrible things while he was in the British military. At one point when he was in the Balkans as part of the British troops; there was a young child who would come and provide them with some bread. The Serbs took this child, chopped him into little pieces and put this child in the British Military ration supply. Our client found this child in his food, and this caused him immense psychological disturbance. When he was discharged from the British Military after eight years of service, he went to one of these private security corporations to find a job; this he did without proper psychological examination. Only 36 hours later he was in Iraq, and had committed a double homicide when he got drunk, because he was going through this mental disorder.

These private contractors are immensely dangerous around the world; Raymond Davis being only one such example. We need to talk about this issue as well. There are lots of ideas about that, and you have to think imaginatively. We need to think about enforcing Pakistan's gun laws; we need to think about enforcing the Vienna Convention on Consular Relations which requires all of these people being registered.

What needs to be done?

The real thing that angers people around the world, and particularly the people of nations which have to suffer in this war of terror is the

If the US authorities choose to enforce the rule of law, and give rights to everybody, not confining them to American subjects only; stop firing drones and killing innocent children, then fewer people will hate them, and even fewer will be motivated towards extremism.

sheer hypocrisy of United States. They proclaim to be preachers of rule of law and democracy, but in practical terms what they say actually means the opposite. That is what made me angry as well about Guantanamo Bay. The first thing we

did was to chase people down to Cuba where there is no rule of law, where people are held without legal right, and without lawyers, all in the name of democracy. Hypocrisy breeds hatred, and we have got to

stop that. American citizens, including me, have to stop preaching one thing and practicing the opposite.

Secondly, the consistent enforcement of human rights is the most effective weapon in our anti-terrorism arsenal. Guantanamo increases extremism as it angers people, because Americans are not applying human rights, and are behaving inappropriately. If, on the other hand the US authorities choose to enforce the rule of law, and give rights to everybody, not confining them to American subjects only; stop firing drones and killing innocent children, then fewer people will hate them, and even fewer will be motivated towards extremism. Then there will be more people who would be ready to help by taking the proper course of law, instead of taking the law into their hands. Obviously this earth cannot be converted into a Utopia, and all bad acts can never be eliminated, but it would be easier to solve the problems. The most important thing is that we need to join hands, and explore ideas to work together, to achieve the goal I have just stated above.

Questions and Comments

Asim Qureshi: My question is for Mr. Tariq Khosa. With the security agencies operating the way they have been, what is the most effective way to actually engage with them in a meaningful way in order to stop proxy detentions or forced disappearances?

Tariq Khosa: I think there is hope somewhere. In a recent case security agencies had initially denied any information about eleven (missing) persons; when the complainants took the case to the Supreme Court of Pakistan, not only the presence of the eleven individuals was confirmed in the Adiala Jail of Rawalpindi, and the whole case finally placed before the Court, but the intelligence agencies also admitted that they were bound by law and the Constitution of Pakistan, and are accountable and answerable to the courts of law. So those who are striving for rule of law with respect to human rights violations in the current scenario have a very strong partner in the form of the judiciary of Pakistan.

A second development is the constitution, and the work of the Judicial Commission for missing persons. This Commission has been constituted by the Government, and has the blessings of the judiciary as well. I am not aware of actual results, but it is generally known and believed that some missing persons have returned to their homes as a result of their efforts. The Commission comprises of retired judges, and acts like an administrative body. People as well as representatives of various agencies who appear before this Commission feel more secure to say what they may not be able to disclose or discuss in an open court. In addition to this, we need people and organizations from Pakistan and abroad who may come forward, and pursue these cases by utilizing the legal remedies through the courts.

The black coat movement starting in March 2007, ending in July 2009, and culminating into an independent judiciary has proved beyond doubts that civil society can really make a difference. There is some hope, let's keep it up.

Ayaz Ahmed Khan:¹ Since Mr. Khosa has served as Inspector General Police in Baluchistan province; we will be enlightened if he informs the house as to what had actually been the situation during his tenure e.g. number of people disappeared, any inquiries conducted, any arrests made, and punishments handed down to security agencies person for violations of law etc.?



Tariq Khosa: As Inspector General Police it was my duty to be a servant of the law, and not of any sitting government, and that is why I was able to take certain principled actions. My first move was to register cases against the Frontier Corps personnel which had never happened before. Secondly, as part of the proceedings for the missing persons' case in the Supreme Court of Pakistan, the police were given a list of 170 persons; out of them, we were able to trace and locate thirty. Addresses for the rest of the persons were not known, so as to contact the families and collect initial information.

But I am afraid that no person from the security agencies was punished during the ten months of my service as IGP, in connection with human rights violations. Some cases were registered, but in the end, punishments are to be handed down by the courts of law.

Inam-ur-Raheem Advocate: I want to highlight another very important factor. On December 14, 2003 a blast had taken place on a bridge in Rawalpindi at a time when the motorcade of the then President, General Pervez Musharraf was passing. No one was killed or injured in this attack, not even a fly. Within days after this incident, many low ranking persons from the Pakistan Air Force, and a good number of civilians were arrested. After fifteen months or so, their trial started before a military court, and out of those twelve persons, ten were given death penalties, while two were given life imprisonment. When these two gentlemen who were given life imprisonment went to the military court of appeal,



¹ Air Marshal retired

their life imprisonment was enhanced to death. These poor guys went to the High Court which asked them to produce a record of the proceedings. The Military authorities refused to give them a record of the trial proceedings under the pretext that disclosure of these proceedings was against the security of Pakistan. Ultimately, the High Court rejected their appeal saying that it had no jurisdiction to interfere in the matter. The Supreme Court of Pakistan when approached followed the same line, stating that it too did not enjoy jurisdiction to interfere into the jurisdiction of the military court. The matter is still in the Supreme Court for review.

One of these persons named Zubair Ahmed was only fourteen at the time of the incident. He is now facing the death penalty. Another person Ikhlas was arrested with an accusation that he had persuaded certain army personnel to attack Pervez Musharraf on March 3, 2003. Mr. Ikhlas presented his passport in the military court to show that he was not in Pakistan on the said date and that he returned to the country on March 15. The Military court observed that the passport was genuine, but could not be relied upon, because it was not presented by a competent witness. Mr. Ikhlas too was awarded the death penalty.

In this case, when the accused persons presented a list of defense witnesses, these defense witnesses too were picked up, and were not allowed to appear before the court. When some serving government employees pleaded that they were present on duty at a certain date when something was alleged against them, this record was destroyed. One civilian was not allowed to have a counsel during the entire proceedings. Another person who was also denied the right to engage a counsel was given a death penalty, and immediately executed.

The man on whom the attack was made is still alive, and those who are accused of making this attempt, without killing a soul, have been given death penalties. Now we are at a critical juncture. If we keep silent, things will continue repeating.

Ata Muhammad:² Mr. Clive Smith has criticized the British policy regarding the war-on-terror. I wonder why the people of this democratic country have allowed their leadership to indulge in a war based on sheer stupidity, and acts like illegal detentions and torture.

Clive Smith: I agree with you, and I should say that common sense is not very common. Yes, Britain was complicit; to be honest Britain was never as bad as the US was. I was blatant perhaps in my speech today, but Britain did some very positive things. I am glad to say that we have forced the inquiry into British complicity in abuse and torture.

I spent a lot of time recently with the Metropolitan police, and it is encouraging that in investigating British complicity they have been fair in interviewing people all around the world who have been the victims of British complicity and torture. This has established a legal principle that if the British were complicit in any wrong, they may be required to help repair the damage.

Amna Mas`ud Janju`a:³ My question is that if the evidences are there in the court, in any court of law, we are talking about litigation, so even then the case is not being resolved, then what's the answer? My husband's case, the star evidence was there in 2007, and now it is 2011. I am still looking for my husband. Our system, our judiciary, is not giving answers to the aggrieved. Where should we go?



Clive Smith: Well, you are not the only one. I represent people in America; so let me give you the case of Krishna Maharaj, who is a British resident, who has on death row in Florida since 1986, and I have been now representing him for, now coming on twenty years. He is unalterably innocent; we can prove who did it and why; we can prove that the judge solicited a bribe from him before the trial; we can prove that the judge was arrested subsequently for taking bribes.

² Student M.A (Politics and International Relations) International Islamic University, Islamabad

³ Chairperson, Defence of Human Rights — A civil society organization campaigning for release of victims of forced disappearance.

But Krishna Maharaj is still in prison in America; and this is because the American legal system is insane. I have represented him as a charitable case in every court in America and we have lost everywhere.

We will get him out in a different way, and I will tell you how we will do it; and this is how we can get Aafia out, and this is not about courts. I just finished writing a book about Krishna, and the reason for that is to raise his profile, to make a movie about his case with a view to creating so much political pressure that in the end he is released. What would get Aafia Siddiqui back to this country will not be an American Court, but it will be a prisoner transfer agreement, and we need to raise our voices for that.

Also for your husband, you and all of us need to keep on pushing. We all have to give you an enormous round of applause, that even though you have not achieved justice for your husband, you have achieved justice for a lot of other people, and once your husband comes home, he will be immensely proud of you.

Amna Mas`ud Janju`a: Mr. Khosa has mentioned a commission, but I would like to mention that a similar Commission has been working on the same issue last year, from April to December, 2010. This Commission has already submitted its report, in which the major recommendation was about accountability for those who are picking up people, and everybody knows these unseen hands. This recommendation is lying without action. The second major recommendation was that compensation should be arranged for the families of the missing persons, because in most of the cases, the only members of the family who earned bread and butter for the family had been picked up. This too has not seen any action. The third recommendation which is very important is for legislation for forced disappearances. No step has been taken in this regard as well.

So what's the point in making another Commission? Now the second commission is working. In 2009 we had 189 cases of missing persons to be pursued at different levels, 288 in 2010, and now the number has risen to 354. So the figure is constantly on the rise. More people are being picked up, and nothing seems to work to stop this happening. Husbands, sons, fathers, and brothers are being picked up

illegally, and neither the parliament nor the judiciary seems to have any answer for the victims and their families.

Sa'dia Abbasi:⁴ Do you think and suggest that a case be filed before the International Court of Justice against the perpetrators of torture, abuse and extrajudicial detentions? At least we may highlight the crimes committed by the administrations of George Bush, Tony Blair, Pervez Musharraf, and others who are involved in slaughtering, detaining and torturing people. We, and the world need to acknowledge that this war, as well as the human rights violations in this campaign



were basically initiated and driven by the Western powers like the USA and UK, while countries like Pakistan and others unfortunately chose to follow their dictates; and this ultimately means that while we should definitely fight for the rights of people in Pakistan, over and above it, we need to work more aggressively against the Western governments and their policies.

Tariq Khosa: It may be added to what Barrister Sa'dia Abbasi has said that the UK has an extradition treaty with India, despite the fact that India has a death penalty on its statutes. Yet it denies similar treaty with Pakistan, citing capital punishment in Pakistan. On one hand this is another example of double-standards, on the other, it affects the efforts for bringing to justice those who are taking refuge in the UK after committing heinous crimes in our country.

Clive Smith: Well, I agree with what you have said. I will be meeting the British High Commissioner in Pakistan, and various other people about the policies our nations should have; and I meet with the British policy makers and officials back at home, to talk about what we all disapprove of. The case of General Musharraf is a great example, to show how the British system may be pursued, if not to extradite someone, at least to bring him to justice.

To highlight the violations of human rights, and to expose their perpetrators, we need to have more discussions like this

⁴ Advocate Supreme Court of Pakistan and Former Senator.

conference. We cannot bring a case in front of the ICJ, because the ICJ has limited jurisdiction, and only a country, or a UN sponsored agency can file a case there. But we too have a role to play; we can, and should demand action from those who can bring a case in the ICJ. The people of Pakistan may insist on that, because the US is violating the Vienna Convention on Consular Relations which demands consular protection for prisoners, and the Americans are not doing that; there are precedents where German, Mexican and other governments have filed cases in the ICJ against the US to protect the rights of their respective citizens, who are facing unjust convictions in the United States in capital cases.

In addition to the ICJ, there are other international forums also available which may be approached to bring the people responsible for illegal acts to book. Very recently the UN Special Rapporteur on Torture has performed a wonderful work, and based on it, we today have a UN report that may be used to press the administration of a country to stop violating the rights of people.

We have the International Criminal Court (ICC); the Americans have not signed it, but the British have. So there are a number of things we can do, but we have to make sure that we stand by each other and make coordinated efforts to achieve results.

Dr. Fauzia Siddiqui:⁵ On the question of taking our case to the International Court of Justice; I would like to add that when I took the case of Aafia Siddiqui to the Senate, the National Assembly, and the concerned standing committees, I was told that her matter cannot be resolved through the ICJ, because the United States was not a signatory to it.



Secondly, I would like to share that for the past few years we, the family of Dr. Aafia Siddiqui, have engaged private investigators, because we thought that this would be an effective way of attaining correct information, and finding true evidence in the midst of misleading statements. Now we have almost reached the point of

⁵ Sister of Dr. Aafia Siddiqui (Pakistani scientist detained in US)

bankruptcy. During this process whenever we got somewhere close to a piece of evidence, dead bodies were dropped outside our gate; our home was broken into; two of our investigators have died, and then we are told that we should ask the agencies and the police to do the investigations? I wonder, how can we trust those to investigate, whom we suspect of being accomplices.

When it comes to litigation, you may have evidence and strong arguments, but still you would not have a verdict from the court. My question is, if there is anything that can actually be done in these circumstances?

Clive Smith: Yes, there is. I know that you need money to help your sister, and I have represented dozens of such persons, and have not charged them anything at all, because we believe that as lawyers it is our duty to help people in getting justice. So, I offer our help, and it will never ever cost you anything.

First of all let me make a clarification that the United States is a signatory of the ICJ, but they have denied application of the Vienna Convention of Consular Relations through the ICJ. The US signed the VCCR in 1969, and ratified it immediately, but George Bush withdrew from the mandatory jurisdiction by pulling out of the Optional Protocol to VCCR. This was the only international convention that we could enforce against the United States, and the problem with Guantanamo bay is the same; that the US has not signed any enforceable international treaty; even the Convention against Torture is not enforceable in the US courts.

In terms of what you can do; please remember that there is never an end to what you can do. The principle that helped Binya Muhammad get out was that if the British government is part of a wrong, it has to disclose the relevant documents. This actually is an international law principle, and the British courts recognized it. Now, if you file a case in Pakistani courts based on this principle, and if they follow the law, you will get a verdict; and the government and its concerned agencies will have to disclose the secret documents related to this case, and they may do it secretly. This evidence if obtained will help us to know the actual series of events about Aafia.

When you are acting against the wishes of a government, and the big old bureaucracy, there is always likelihood that you will receive threats; I have been threatened by the US government myself. We should remain determined to carry on what we have to do, and let them do what they want, but this is the point where we have to assure each other that we are not alone in this battle.

It is also true that in this environment it may be really hard to reach the truth, and gather evidence in your favor; and it is a long battle. Torture too is a terrible thing, but it is not the worst *aspect* of the war *of* terror; the worst aspect is the elevation of secrecy so that national security is linked with political embarrassment. The pretext of national security is used to hide things which are distinctly embarrassing. This is a long battle; we may not be winning it today, not even tomorrow, but of course we are not quitting it as well.

Shaukat Aziz Siddiqui:⁶ I thank and pay tribute to all the speakers and partici-pants of the session.



Within Pakistan, one of the most flagrant and most popularly known human rights violations has emerged in the form thousands of missing persons, for whom the affected families have launched a relentless and undaunted struggle at the social, as well as judicial levels. Petitions have also been filed in the Supreme Court of Pakistan regarding drone attacks, and the human rights issues connected to this phenomenon. But, unfortunately, it is the person of the current Chief Justice, Iftikhar Muhammad Chaudhary who is regarded as a beacon of hope, and not the institution of the judiciary, or even the Supreme Court of Pakistan. The people of Pakistan have to look beyond November 2013, when Mr. Chaudhary will no longer be holding a Supreme Court office. We need to strengthen our institutions of judiciary, by giving them confidence as an institution; and make sure that the support of the people, and their backing for justice and right makes each and every judge in the

⁶ Mr Siddiqui was President of the High Court Bar Association, Rawalpindi when this conference was held. He had moderated first session of the Conference. Currently he is serving as a judge in Islamabad High Court.

superior and lower judicial forums, as strong and steadfast as the current CJP.

This conference should also enlighten and encourage the aggrieved, as well as concerned persons to engage the High Courts, along with the Supreme Court of Pakistan, for securing their rights, and for public interest litigation. This would on the one hand make things manageable for the judiciary, and on the other hand, the judiciary will act as an institution, and exercise its powers to guarantee the rights of the people of Pakistan. In the present conditions, when the apex court has already taken cognizance of a number of issues of national and international significance on its own motion, or on a petition filed by a member of society, it may not be practical for the honorable judges to take proper care of each case.

This conference has motivated us, and strengthened each of us, by informing us that there are many in the country and in this global village who care for us, and who think and act for the rights and dignity of human beings wherever they are. One should remain convinced that rights, liberties, and freedoms are so dear, and so precious that they have to be fought for; and that they have been recognized, and guaranteed by the organic law of Pakistan, i.e. the Constitution of the Islamic Republic of Pakistan, as well as the Universal Charter of Human Rights, and other international instruments. This interaction, exchange of our thoughts, and sharing of our ideas will help us to take guidance from those who have been striving for civil liberties for years, and have developed expertise as well as networking for better outcome.

I just want to ask one question from our friends, Lord McDonald, Cori, and Clive Smith. If we recall the definition of terrorism under the League of Nations, that is "all criminal acts directed against state and intended, or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public", then what is happening on Pakistan's soil, what is happening to the Pakistani nation, what is happening to the Pakistani people, is this terrorism or not?

Thank you very much.

DRONES: BACKGROUND AND POLITICAL OVERVIEW

Kamran Arif¹³



Ladies and gentlemen! I have been asked to give a very brief background, and political overview of the topic; which is basically about drone attacks, and other methods that are used in the 'war of terror' in Pakistan.

Before I start, I would like to put forth two or three points, and then ask you to think about a couple of issues. The first point that I want to mention, is that the use of unmanned aerial vehicles (UAVs) as a combat machine, is a development of recent times. It was only after this war of terror started in Pakistan that the technology was put together to produce combat drones.

The second point that I wish you to consider is that, all these drone attacks that have taken place in Pakistan have targeted the Federally Administered Tribal Areas. It is an area where the courts have no jurisdiction. This is due to the way that our Constitution was drafted. It includes areas that have been excluded from the operation of the law. So the people living in the Tribal areas, or anyone for the moment in the tribal areas, whoever he or she may be, is a citizen of Pakistan, and has all the fundamental rights guaranteed by the Constitution, but they have no mechanism to enforce those rights. This is a point that we have to consider very carefully when we talk about litigation.

...all these drone attacks that have taken place in Pakistan have targeted the Federally Administered Tribal Areas. It is an area where the courts have no jurisdiction.

Then there are other practical issues when we come to drone attacks. First, of course would be, who is a combatant? Who is the

¹³ Kamran Arif is Co-Chairman Human Rights Commission Pakistan.

target? How are the targets selected? Then what is the difference between a drone attack, and a car full of explosives outside someone's house. Lastly, can we compare these high tech drone attacks with what one Pakistani activist has called 'low-tech drone attacks' i.e. the suicide bombers, who basically act like a drone; they select a target, get into target's way, and explode themselves to take lives.

Now when we talk about drone attacks, it is quite a heated debate in Pakistan, but the discussion is more often concerned with other factors than the actual drone attacks. There are of course two sides of the argument, but just to start the conversation; I would lay down some of these arguments, and subsequently use them to look for the answers to some of the questions raised above.

The first of these issues is about sovereignty concerns. There cannot be two opinions about drone attacks being a violation of sovereignty, but then the whole debate comes down to one simple question: whether Pakistan has given permission for the drone attacks or not? Generally it is stated that it has not; both the President and the Prime Minister have said so, but there is lot of skepticism about it, that the drone attacks have the consent of the government of Pakistan.

Drone attacks are basically about extrajudicial killings, and as long as extrajudicial executions remain illegal, drone attacks will be illegal.

The other issue raised, particularly in those areas where drone attacks happen, is that the issue of sovereignty is not raised when armed groups holding guns and rocket launchers cross the border, and try to establish a state within a state; but when the drones follow them into Pakistani territory, the sovereignty of the country is deemed to be violated.

The next issue is about collateral damage. Drones are believed to hit a lot of unintended targets, and in this context, the issue of the definition of a combatant becomes relevant. Only when you can define a combatant, you can say how much collateral damage was actually done. Then we need to determine if the statistics about collateral damage claimed by various sources are accurate. As we all

know, that as there are no human rights activists, or journalists reporting independently from those areas; so there is very less likelihood of these figures being accurate.

A related phenomenon is that of internally displaced persons (IDPs). The argument usually given is that, if we think about alternatives, the alternative to drone attacks would be a full-fledged military operation. The difference between a military operation and drone attacks in terms of their effects as we are usually told is that drone attacks do not produce IDPs.

To take both of these questions; to me personally, the issue of sovereignty becomes secondary. When we talk about drone attacks, we are talking about a method of war, or a method of hunting, which should be considered independent of the question of sovereignty. What if tomorrow it is proved that Pakistan had actually consented to drone attacks? Will that give legality to drone attacks? Secondly, can the effectiveness of a weapon give it legality; this is a question that has to be answered.

Since the inauguration of Obama's term in the White House, we have, unfortunately, seen a sharp increase in drone attacks. The emphasis has changed from detentions to killings.

So for me at least, this discussion should not be going in that direction at all. We should discuss what drone attacks are all about. Drone attacks are basically about extrajudicial killings, and as long as extrajudicial executions remain illegal, drone attacks will be illegal, even if they are very accurate, and even if they do not cause collateral damage.

Litigating the War of Terror



This brings me to the other issue, which I will touch upon very briefly, and this is about bringing a matter to the Courts. At the moment, there is an express bar in the Constitution on bringing any matter or any issue that has anything to do with the tribal areas to the superior courts of Pakistan. This is based on a 1975 judgment of the Supreme Court which has completely excluded the jurisdiction of the Supreme Court from the Tribal Areas. The same view was upheld by the Supreme Court in a 1992 judgment, in a case challenging the Frontier Crimes Regulation. So if litigation for declaring drone attacks unlawful or for forcing the Government of Pakistan to take action to curtail or to outlaw drone attacks has to be taken to the Supreme Court, the decision given in the Zahoor Elahi case of 1975¹⁴ has to be reversed. This would be regarded as the first step.

I leave all the other issues to the rest of the speakers, and would just say that when we talk about war and offensive conflict, we are definitely talking of the rights of the people. So the basic issue to which the whole debate comes down to is that, "Can we establish an order by violating human rights?" The right of the choice of the people should not be limited to a selection between two sides, both of which violate human rights. It is necessary that the governments that are fighting, or are engaged in any form of armed conflict should abide by all international laws and international treaties, particularly those which they have ratified.

Thank you.

¹⁴ PLD 1975 SC 383

EXTRA-JUDICIAL KILLINGS THROUGH DRONES

Asim Qureshi

Former US President George W. Bush had introduced the Bush Doctrine, and things like preemptive strikes, torture, and extrajudicial arrests are associated with him. President Obama came in with a promise for change. What then is the Obama Doctrine? Though it is not so openly declared, but it seems that he has one of his own. The Obama Doctrine is: “don’t detain people, and have the whole problem of going through the process of charging them of a crime, and sending them to Guantanamo, and an alternative legal system; instead just kill them.”

So this is what we are concerned with. If this really is a doctrine within the concept of American Foreign Policy, then it is an extremely dangerous one. Bush has the blame of starting drone strikes in 2004, but drone attacks were few and far between; but since the inauguration of Obama’s term in the White House, we have, unfortunately, seen a sharp increase in drone attacks. The emphasis has changed from detentions to killings. In this process not merely some lives are lost, but some persons are deprived of their near and dear ones, and at times of their homes too, which gives birth to a cycle of violence.

Speaking of the UAVs, they have various forms, and there is not just a single type of predators that are being used. Some articles in leading news media have narrated how drones are actually operated. In one of such articles, a routine day of a drone operator is narrated as an American guy in California, who gets up in the morning, takes his breakfast, kisses his wife saying “see you later honey!”, kisses his kids, gets into his car, drives down to the local base where he has got a screen in front of him. He takes off, flies his plane over Pakistan, or Yemen or Somalia, and fires at people about whom he is told are the targets; few persons are dead as he checks out, drives home, and that’s it. A very important dimension about this whole thing for which the UN Special Rapporteur on Extrajudicial Killings too has shown concern, is that this strategy has produced a ‘playstation mentality’ in the actual killings; where the

operator starts enjoying this killing as they do it through their 'joystick'; and this is very horrible in itself.

Turning now to the legal position in International law relating to strikes; it is a difficult one, because the fundamental question is 'whether Pakistan is at war with America, and whether it is an international armed conflict, or it is a civil war within Pakistan?' Whether there was a request or consent by the government of Pakistan for intervention? We actually don't know the answers to these questions because everything has been kept so confusing, that we may only guess about the truth.

There are two concepts in international law, *jus ad bellum* and *jus in bello*. *Jus ad bellum* is the kind of law relating to why, when, and how the people ought to go the war; while *jus in bello* is about the war itself. The conflict is divided into internal armed conflict, and international armed conflict. Now in terms of Pakistan, those who justify killings inside Pakistan argue that Pakistan is part of an armed conflict that it has with Afghanistan. If it is so, then the whole set of *jus in bello*, and international humanitarian law are applicable.

...the fundamental question is 'whether Pakistan is at war with America, and whether it is an international armed conflict, or it is a civil war within Pakistan?'

Let us have a look at numbers: 124 drone attacks since 2004, 3300 civilians killed, and that number changes depending on the source you go to; and this changes quite frequently also, because as we are speaking, perhaps the number may have increased after another attack. This is also a problem when presenting figures to the world in the form of a report; because every time you are close to finalizing a report you come to know that the figures you have quoted have become outdated.

The reality is that the US is not at much risk militarily, and having soldiers on the ground in the territory of another country is a more obvious violation of sovereignty, and more disturbing for many people than the present method. So their insistence on continuing with drone strikes may be understandable. On the other hand, Pakistan's President Zardari's statement about the drone campaign is, "it is undermining my sovereignty". Prime Minister Gilani has also stated that while the government of Pakistan has been trying to win the hearts and minds of the people of the tribal areas to dissociate terrorists from them, drones are doing the opposite. So from the perspective of public statements, sovereignty is an issue, and at least these public statements imply that drone strikes do not have a nod from Pakistan. But still, we do not actually know if the Pakistani Government had made a formal invitation, but if it had, it has to be public. If they are actually convinced that the sovereignty of the State has been violated, then the first thing that they have to do is to invoke Article 51 of the UN Charter on self-defense, but they are refusing to do that as well.

If they are actually convinced that the sovereignty of the State has been violated, then the first thing that they have to do is to invoke Article 51 of the UN Charter on self-defense, but they are refusing to do that as well.

So the situation has been complicated, and one is not really sure whether or not international humanitarian law is applicable. For example, if an American soldier enters into the North of Pakistan, should he be treated under the Geneva Conventions, or should he be gunned down; no one is quite sure. So this is a very difficult situation, where there are no clear options available from the international law perspective, and this perhaps is the most dangerous aspect of this whole phenomenon. They are killing people, and even if they are actually killing the insurgents, they are killing them without any charge.

I have been to Peshawar in 2008 to interview Bad-uz-Zaman, an ex-Guantanamo detainee; and while I was waiting for him, a Pakistani Taliban came into his home. I asked him a number of

questions, including that after his election President Obama had desired better relations with Muslims; and if he told them that he was removing his troops from Afghanistan, and would try to bring a reasonable peace to the region, would they accept? He told me that if this happens, they will lay down their guns that very day, as this would be end of the whole thing for them. But he further said that it was not merely about US military; the whole Pakistani army was too hunting for them. So things are complex.

The people want peace and peace is possible. The only way to start that process is to stop the killing of the innocent.

Thank you very much.

LITIGATION FOR DRONE VICTIMS

Shehzad Akbar¹³

We started working on drones in 2010, under the banner of Foundation for Fundamental Rights; aiming to work towards the advancement, protection and enforcement of fundamental human rights in and outside Pakistan, primarily for the welfare of Pakistani citizens, but certainly not limited to them. Our first project is called L.A.W i.e. Legal Aid for Waziristan, and drone litigation is a product of this project.



We believe that all who are being killed by drones are victims as they are being executed without due process, or any justification whatsoever. The Americans coined the doctrine of 'hot pursuit', but this does not work for me, because I am convinced that drone strikes within Pakistan are not covered under any instrument of international law, and have no backing of the Security Council Resolution. I do not want to go into legal details about what gross violations these strikes are committing against international humanitarian laws, but to put it simply it is plain and simple targeted killing. I could agree no more with eminent legal scholar Professor Gary Solis who while describing

“... for a targeted killing to be lawful, “an international or non-international conflict must be in progress. Without an ongoing armed conflict the targeted killing of a civilian, terrorist or not, would be assassination — a homicide and a domestic crime”.

¹³ Shehzad Akbar is an Islamabad-based lawyer and director of the Foundation for Fundamental Rights (FFR), an organization of attorneys and socially active individuals providing free legal representation to those victimised by the 'war of terror'.

drone strikes as target killings said that “ *for a targeted killing to be lawful, “an international or non-international conflict must be in progress. Without an ongoing armed conflict the targeted killing of a civilian, terrorist or not, would be assassination — a homicide and a domestic crime”.*

Now if we look at figures available so far through press reports, and the data collected by the New America Foundation, which is again highly dependent upon press reports; so far there have been 234 drone strikes, and the number of dead is anywhere between 1500 to 2200. The number of 'High Value Targets', on the basis of which the US attempts at assigning some justification to these strikes, is only 33 so far. There are no names attached with rest of the bodies. For the US these are just numbers. Our aim is to dig out evidence and give human identity to these numbers; a duty in which our state is failing. Kareem Khan is here and would narrate his story. Among these numbers are his son Ameenullah Khan, and his brother Asif Iqbal; also among them is Sadaullah aged 16, who lost both his legs, and Fahim, whom I found to be very intelligent and bright; aged only 15 when he lost his eyes, and who had to be hospitalized for almost a year, as one missile splintered through his stomach; and there are people like Muhammad Ramazan aged 70, who lost his son and brothers.

While talking about litigation for drone victims, one hurdle is the territorial jurisdiction of Pakistan judiciary. According to article 246(7) of the Constitution of Pakistan, the Tribal Areas are somewhat barred from the jurisdiction of the High Courts, and the Supreme Court, unless the Parliament extends the jurisdiction of Superior Courts to such areas. The Superior Courts have been very skeptical of this provision when it comes to enforcement of the fundamental rights of the citizens of Pakistan. The dictum of Ch. Manzoor Elahi case (PLD 1975 SC 66), and a very recent judgment of the Peshawar High Court in case of Murad Ali Vs Assistant Political Agent Landi Kotal (2009 YLR 2497)¹⁴ is: “Fundamental rights are available even to the residents of the tribal area, and the provisions of the Constitution guaranteeing them are not only mandatory but self-

¹⁴ These judgments are cited to justify that the high court can extend its jurisdiction to the tribal areas; that a high court is under its constitutional obligation to step in for enforcing obedience to the Constitution and law.

executing. A High Court has jurisdiction under Article 199 of the Constitution to grant relief to a person deprived of such a right, and any contention contrary to this would reduce such fundamental rights guaranteed by the Constitution to a farce, which can never be the intent of its framers.”

Coming back to the strategy for litigation for drone victims; what we are looking at here is two sets of litigations, and in my opinion these two are to be kept separate. The ultimate aim of this exercise is; first to stop drone strikes in Pakistan, and more importantly addressing the question of victims, and their compensation in the form of punitive damages to the guilty. When we started our work on drones, we adopted a confrontational approach by naming the station chief of the CIA in Islamabad, and seeking his arrest for killing innocent Pakistani citizens. This was enough to get everyone's attention, and to highlight the role of the CIA in the execution of civilians in the tribal area. It also provided us with a number of opportunities to talk about the issue, and also for advocacy in our favor. The claim in the petition filed to the police is under common law for wrongful death by the CIA, and the remedy sought is punitive damages.

Apart from the jurisdiction issue, there are some other problems too in connection with litigation on drone strikes; for example there is no precedent of such cases in Pakistan. This does not however mean that if such a case never came before the courts of law, it cannot be brought now. It only means that we need to build upon our own argument, and we have no previous litigation to solely rely on. Simultaneously, we are bringing a petition in the High court against the Government of Pakistan. The aim of this petition is asking the Government of their involvement in conducting

The people of Pakistan will have to speak, and stand up for protection of their rights through legal and innovative ways. People need to rally against the drone strikes, and for justice to the victims of drones with the same courage and determination as they rallied behind the Chief Justice.

drone strikes; and the core question is about their omission in protecting the basic right to life of their citizens. What is different about this petition is that it will be from people who are directly affected by drone strikes, and have lost their loved ones.

Using litigation to redress the plight of those who are suffering the atrocities of the American Empire in the Tribal Areas is a long drawn battle, and we are certainly resolved to take it to its end; but what can put an immediate stop to drone strikes is the political will of the people of Pakistan, and the backing from all justice-loving persons from across the world. It is unfortunate that we may not fully rely on our government in this regard. The people of Pakistan will have to speak, and stand up for protection of their rights through legal and innovative ways. People need to rally against the drone strikes, and for justice to the victims of drones with the same courage and determination as they rallied behind the Chief Justice of the country to defy the plans of former military dictator Pervez Musharraf.

A country of 180 million can certainly bring out at least a million in a peaceful protest till the US stops drones. What would motivate rest of the world is the resolve of the Pakistani people to say loudly and clearly 'NO' to drone strikes. Some may argue that such protest would strengthen fundamentalism in Pakistan, and throw us into further chaos. In my opinion what is sending us into chaos is the silence of the majority in Pakistan. We need to stand united against drone strikes, as well as violent extremism and we need more people like Kareem Khan, who is going to tell you his tale in person. Before him we did not have any source of getting direct knowledge about what happens in the tribal areas. He has not only come forward himself, and has opted to fight a legal battle, but he has also encouraged more and more families in the area to narrate their losses and pains to the world. We now have twenty five families with us who have suffered losses, and wish to challenge the United States at relevant judicial forums.

Kareem Khan: First of all, I would like to thank all of you for giving me this opportunity to come and tell you my story.

Litigation For Drone Victims

My name is Kareem Khan, and I am a resident of North Waziristan Agency. I have been a journalist for the last eleven years, reporting for Arab news channels. My house in Machhi Khel was attacked in 2009, which killed my seventeen years old son Hafiz Ameenullah, (may Allah be pleased with him) and brother Asif Iqbal, (may Allah be pleased with him), who was only twenty-five. He



had attached the name of Iqbal as respect to the famous Urdu poet Dr. Muhammad Iqbal (1877-1938) who is believed to have envisioned Pakistan. Asif was an English teacher in a Government Middle School Datta Khel. Asif was an idealist, and after finishing his Masters degree in English literature from the National University of Modern Languages (NUML) Islamabad, decided to return to the backward area of Waziristan to teach young children of the area.

Everything was normal, when in the evening of 31st December 2009; the Americans fired missiles from drone aircrafts at my house. Till today I am not able to understand what the crime was, for which my home was targeted, and why Ameenullah, who was only seventeen, was considered so dangerous by the Americans that they decided to kill him with missiles. I am not a lawyer, I am a human rights activist; I am a victim of Drone strikes in Pakistan; I am a victim of the American empire, and its designs that are destroying humanity. I do not seek revenge; my request to you and to the people, as well as authorities around the world, is that I want justice for my son, and my brother, and for the hundreds of innocent civilians who have been killed by the CIA. I thank you for your support for me, and my cause, and for many others who still have hope in the brothers and sisters in Pakistan, and above all from the Chief Justice of Pakistan. The people of the tribal areas have always stood firm for the state, and the nation of Pakistan. Now the people of the tribal areas are asking you for a simple thing: justice, and right to life.

Shehzad Akbar: We have to thank Kareem Khan, who has not only come forward himself, and has opted to fight a legal battle, but has also encouraged more and more families in the area to narrate their losses and pain to the world. We now have twenty five families with us who have suffered losses, and wish to challenge the United States at relevant judicial forums.

Thank you.

BAGRAM: EVIL TWIN OF GUANTANAMO BAY

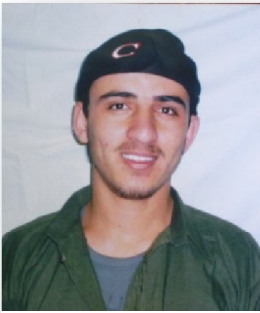
Clive Stafford Smith

Before I start with my topic on Bagram, I will like to acknowledge the dedication and efforts of our young fellows, and partners in Pakistan, some of whom are present in this conference. They need guidance, encouragement, and above all reliable facts. I hope that they will be able to get to the truth with your backing and support soon.

During the course of discussing possible litigation options relating to drone strikes and other human rights violations in FATA, the problem of jurisdiction is often cited. In my view it is not a problem as huge, so as to convince us that litigation is not an option. We can file a suit in Britain, as the British government has said publically that they are providing intelligence to the Americans for drone strikes. So the process contains international characteristics, and the litigation relating to it too may also be internationalized; and we may challenge the act of the US drone campaign striking targets in Pakistani territory in Great Britain.

Litigation for drone victims would not be a simple criminal litigation and jurisdiction; it is homicide and you may name the person who is behind the CIA decision to do this.

Secondly, litigation for drone victims would not be a simple criminal litigation and jurisdiction; it is homicide and you may name the person who is behind the CIA decision to do this; or if you know the person who is operating it in California for prosecution for homicide. If you get a homicide warrant issued, then it can be issued in the jurisdiction where it had happened. This warrant may not be enforced in all cases as you know the Americans in such cases, and you have to spend a lot of time trying to get the enforcement, and



Hamidullah

every time they don't enforce something, there is another reason for highlighting the issue and building more pressure. Further, the Convention against Torture has a universal jurisdiction, which means that you don't need to worry about jurisdiction being barred in Waziristan and other Federally Administered Tribal Areas. Along with these, there are other options which we may think of to proceed further.

Let us talk briefly about the Bagram Internment facility at Bagram Air base in Parwan province of Afghanistan, where Pakistani citizens too are languishing along with others beyond the rule of law. This place, as my son Wilf says, is the evil twin of Guantanamo. Guantanamo Bay has 173 prisoners and shrinking, while Bagram has 1500 prisoners and growing. Yet, everybody knows about Guantanamo Bay; no one talks about Bagram, which is nearly ten times as big, and ten times as bad as Guantanamo.

There are twenty-five Pakistanis languishing in Bagram, some of whom have been there for more than seven years. Among them is Hamidullah. He is our perfect plaintiff for America, and we started litigation in America on his behalf. He was only 14 years old at the time of arrest, but the US authorities did not even know about this fact. Once we told them, only then they tried to figure out his age through a bone test; while it is very obvious that the age of the prisoner, along with other details, has to be recorded at the very outset. The US authorities had then declared, not that Pakistani people had no legal right, rather they said that Pakistani Children had no rights in Bagram.

Everybody knows about Guantanamo Bay; no one talks about Bagram, which is nearly ten times as big, and ten times as bad as Guantanamo.

Bagram: Evil Twin of Guantanamo bay

This is against all sorts of UN Conventions and treaties on treatment of children, but they had to say it because they could not afford to present him before any open court for examination and cross examination. They have argued that his age is irrelevant to the jurisdiction question before the court, and that the US government can hold him indefinitely without trial. We have so far lost in the American court, but this case has certainly made the US very upset.

We have however got a person Gul Khan out of Bagram, by embarrassing the US government. An American soldier Captain Kirk, whom I had met in Guantanamo and was later transferred to Bagram sent me an email to tell me about injustices being meted out at Bagram. He told us that Gul Khan was a local sheep farmer, and that Reprieve should represent him. We went to the Obama administration and told them how urgent it was to look into this case to avoid embarrassment. Nothing happened until my colleague in America was writing to court in order to file a petition. At that time it was learnt that Gul Khan had been released. This is what international litigation is all about. So, this is one option; suing in United States, but many people here may not find it easy to do that, but we are there for you.

Before we discuss the options available in Pakistan I want to present Haroon Khan who will narrate the story of his relatives:

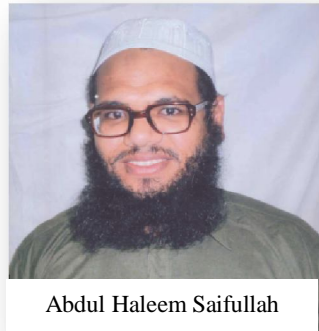
Haroon Khan:¹³ I want to tell you about Abdul Haleem, Saif-Ullah. He was a laborer, and about six years ago he was kidnapped from outside his house. Actually what happened was that his father had been unwell; he had taken him to the nearby hospital. It was almost four, but the doctor had not yet arrived. He told his father to stay there, and that he would be back shortly. He never returned; ever since then he has been missing. The trauma we have undergone in searching



¹³ Translated from Urdu

for him, that only Allah knows; words cannot describe it. Then after a year we received a letter through the ICRC, in which he wrote that he was in a jail in Afghanistan. When his father read the letter he started crying and said "you left me on a bench in the hospital, how did you end up in Afghanistan?" As a result of this shock, pain and sorrow, his father suffered a heart attack, and then a stroke, and within a year he passed away. It was not known in which part of Afghanistan, or in which jail he was kept. Three years later another letter came, and it was revealed that he was in Bagram. How the letter would reach us was that, three months after being written, it would remain in the custody of the American forces; once it had been properly investigated and scrutinized, only then would it be delivered to us. Likewise when a letter was written from here, it would be three months before he actually received the letter. We now find that the Americans are declaring him to be innocent, but still he is not being released; we do not know why.

Similarly, there are many other such Pakistanis who are imprisoned in Bagram, and whenever they are spoken to, on the telephone, the sound of their handcuffs can clearly be heard on the phone. If they say that they are being ill-treated, or if they are asked by their relatives how they are being treated, the telephone gets disconnected. There are also those Pakistanis languishing in Bagram whose families do not even know where they are or whether they



Abdul Haleem Saifullah

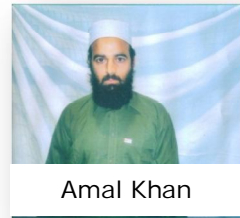
are alive or not. If any detainee protests against the ill-treatment meted out to him, he is imprisoned in a cage. We are hopeful that all the effort being made to get our relatives and loved ones released will be successful. Moreover, the media, the press and television should highlight the issue of these people so that some headway can be made regarding this matter.

Clive Smith: I am glad that Mr. Haroon Khan, and a few others have come forward to narrate the tales of their woes, which would help us in collecting the facts and in helping them. I am glad that

Bagram: Evil Twin of Guantanamo bay

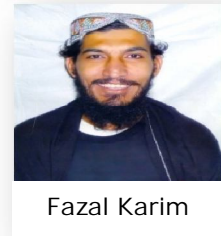
with the help of our colleagues, and some brave individuals we have been able to locate the relatives of Bagram detainees and obtain their pictures. These pictures are really important because a picture speaks a thousand words. As long as we are dealing with mere figures, it is very easy for the USA to claim that they are terrorists, but once you have somehow acquired the identities then they are not mere figures; they are individuals; and when you see them, it is hard to presume that they may be guilty.

Amal Khan has been in prison for nine years without being charged of any crime. With the courtesy of the ICRC, he has now been able to establish periodic connection with his family. He cannot however tell his family how he arrived in Bagram. We are also representing him.



Amal Khan

Another such person Fazal Karim has been in confinement for eight years. He has been cleared for release in July 2010. So he is a person whom even the USA does not consider a threat to anybody; yet he is still in Bagram.



Fazal Karim



Iftikhar Ahmed

Another person Iftikhar Ahmed had disappeared while working as a day laborer in Quetta. He probably is among those for whom Pervez Musharraf has boasted to have claimed bounties for.

Awal Noor, whose picture is not available with us, was a goat herder. He was injured in one of the airstrikes five years ago and for two years the family did not even know that he is in Bagram.

The question is, what do we do about it? The first thing is that the Government of Pakistan owes them an obligation. So we have tried to invoke the law of Pakistan on the principle of British

law, that if Pakistan is complicit in a wrong doing, it has to help these persons get out. Pakistan has also failed in ensuring consular visitation to these prisoners. Further in response to an effort for seeking the rights of these individuals, perfunctory and evasive responses are witnessed, as the Ministry of Interior and the Ministry of Foreign Affairs have been passing the buck to each other, and it is not clear who the most relevant authority is. We have not been able to publicize these facts and we need help in that front too. This, we believe, will show some results as far as the response of the Government of Pakistan is concerned.

Before concluding, please consider the case of Younus Rahmatullah. He has been in custody for six years without rights. He was originally detained by the British in Iraq, and then handed over to the Americans. The MoU between the USA and UK in Iraq, in its fourth paragraph says, "Any prisoners of war, civilian internees, and civilian detainees transferred by a Detaining Power will be returned by the Accepting Power to the Detaining Power without delay upon request by the Detaining Power." So if the Brits want him back, all that the British have to do is to demand his custody back from the Americans. This gives us the right to file habeas corpus in the UK, and we can insist that Britain should ask the Americans to return a Pakistani prisoner detained in Bagram.

So what I wanted to establish is that what seems to be a challenge for us may be overcome if we could join hands, and complement the efforts of each other. One of the objectives of such discussions is that we need fresh and innovative ideas from you, and want to share ours with you, so that we may proceed together. Such an idea was shared with us with one of our colleagues at Justice Project Pakistan that the cases of these persons may be treated as human trafficking for earning money and I think it is a nice idea.

Through our efforts to reach out to people, we don't want to instigate hatred or violence; we want to reconcile between people and contribute towards making this earth a better place to live in. Thank you very much.

Questions and Comment

Ehsan Aziz:¹³ The incidents of extrajudicial killings, abductions, and missing persons cannot be brought to a halt unless the government agencies are ready to accept the rule of law for themselves. I had been abducted by security agencies in December 2009 from near my home in Islamabad. I was pushed into a police mobile, blind-folded, handcuffed, and barefooted. Thanks to the media, my friends, and the Chief Justice of Pakistan that I was released. During this illegal detention, I was told very flatly that no law, Constitution or courts could help me. The Chief Justice of Pakistan, and the superior courts have been trying to play their role in upholding the rule of law, which even the executing agencies themselves are guilty of violating.



About drones, the government of Pakistan has been demanding transfer of drone technology to it, so that it may conduct air strikes on its own; as if the only problem related to drone strikes is



¹³ Raja Ehsan Aziz is former assistant professor of International Relations at Quaid-e-Azam University, Islamabad.

the violation of sovereignty, and not the violation of law, and the human rights through extrajudicial killings etc.

Saadia Abbasi: I think that there is no bar on the jurisdiction of the Supreme Court of Pakistan. The apex court may take cognizance of any issue of human rights in its original jurisdiction. According to Article 199 of the Constitution, the High Courts may also be moved in respect of drone attacks in Pakistan, on the basis that drone attacks are being carried out from the soil of Pakistan, and definitely the bases from which these UAVs take off, are within the territorial jurisdiction of the provincial High Courts.

Kamran Arif: The question of the jurisdiction of the tribal areas is quite contentious; in my view, the law and particularly case law on this point is very clear. In order to make fundamental rights enforceable in the tribal areas, the Frontier Crimes Regulation (FCR) has to be struck down. In two previous cases under two previous Constitutions (Constitution of Pakistan 1956 and the Constitution of Pakistan 1962), the FCR has been struck down. Now the present Constitution of 1973 expressly excludes the jurisdiction of the Supreme Court from the tribal areas. It also provides that the operation of legislation for settled areas can be extended to the tribal areas by the Parliament.

Saadia Abbasi: I agree with what you are saying but the point in question is that the Supreme Court is not barred by the Constitution to take cognizance of any act which undermines the fundamental rights of the citizens of Pakistan.

Shoukat Aziz Siddiqui: The issue of drone strikes has already been taken to the Supreme Court, and the petition is already pending there. Fortunately, all or at least most of the issues being discussed here make part of our petition, and the questions being raised here have been raised before the apex court of the country. As to the question of jurisdiction, we have maintained in this petition that since drones take off from Pakistani soil i.e. from air bases in Jacobabad, Quetta and other places, the cause of action starts at a place which is within jurisdiction of the Courts of Pakistan. There are a few interesting questions of law, and facts are involved in this

petition, and we hope that the Supreme Court of Pakistan will once again win the confidence of the people by fixing it earlier for hearing.

Cori Crider: I have a question, and would appreciate if someone could answer it. Whether the FCR, which was a colonial law, has been refined and polished to make it human friendly, or is it still as it used to be?

Kamran Arif: The first time when we had a Constitution in 1956, the FCR was immediately struck down by the High Court. The Constitution was however abrogated after military intervention, and in the famous Dosso case the Court came to the conclusion that after abrogation of the Constitution, the Constitutional objections too stood no longer, and hence the FCR stood revived. The same thing happened again under the Constitution of 1962. The matter was taken to High Court, and the High Court struck down the FCR as being totally incompatible with fundamental rights. But then again, before the Supreme Court could finally decide the issue, the 1962 Constitution too was abrogated. When the 1973 Constitution was framed, by that time, the legislators excluded the jurisdiction of superior courts providing that if the Parliament wishes, it can extend the jurisdiction through an act to the Federally Administered Tribal Areas (FATA), as well as the Provincially Administered Tribal Areas (PATA). The Parliament has actually done so by extending the jurisdiction of the courts to Malakand Agency and Swat.

Having said that, if a plane takes off from the settled areas, where the courts have jurisdiction, to conduct aerial attacks in the tribal areas, then certainly this is a different matter. However if drones bombarding the tribal areas come from Afghanistan, then the Courts have no jurisdiction. One hurdle at this point of time is the Manzoor Elahi case 1975, in which the Supreme Court had held that unless an Act of Parliament to this effect has been passed, the Court has no jurisdiction in the tribal areas. Of course the Supreme Court has reversed its position and has said that it has jurisdiction, but that has still to be exhibited.

Shehzad Akbar: The Supreme Court has appellate as well as original jurisdiction. Our contention is that the appellate jurisdiction

may not be available in case of FATA; the original jurisdiction related to fundamental rights is still there. In my view, the Manzoor Elahi case is not relevant in the current discourse; that was an entirely different case on facts. They might have said a lot of things in that, but those dictums do not apply in this case; where a person approaches the Supreme Court in original jurisdiction, where the apex court enjoys immense powers to enforce fundamental rights.

Tariq Khosa: We all know that the Supreme Court is the only Court of Justice; the rest are all Courts of Law. In the perspective of the FCR and fundamental rights, the court of justice may take cognizance of any matter whatsoever. I am glad that the drone issue has now been raised before the Supreme Court. Courts have to be approached, and the litigation has to have an international dimension. At times we may have to approach the courts in the USA and UK as well. The people of Pakistan have confidence in the judiciary, and a movement has to be developed on the basis of this confidence that pools the thoughts, as well as resources at one place with one aim.

Tariq Abdul Majeed:¹⁴ If a person feels aggrieved by an action of the Head of the State, how can he (the Head) be taken to Court in the current legal system?



Clive Smith: It's not a problem. It is an established principle that nobody is above the law. Anyone may be taken to Court; Richard Nixon had faced a trial when he was President of the United States; so it is possible, and there are many different ways of doing this.

One important aspect is that politicians are bothered about their reputation, and have to remain concerned of their public image. This makes them vulnerable to the court of public opinion much more than the courts of law. For example, we have been quite successful in Guantanamo Bay, and out of 606 prisoners for whom we have managed to win freedom, only 36 were released by a court,

¹⁴ A former Pakistan Air Force officer, management consultant and an active civil society member

while the rest of the 570 were released by the court of public opinion. This does not however mean that mobilizing public opinion should precede litigation in the courts of law. This should be done only as a supporting tactic and obviously in a healthy, democratic and non-violent way.

A Law Student from Lahore: Do you feel that filing an FIR or legal notices against the CIA local chief or the US Defense Secretary are going to make a real difference?

Shehzad Akbar: There are two sets of litigation we are looking at; in one petition filed in the Court, we are asking the Government of Pakistan about their role in the whole scenario under the concept of wrongful death in the law of Tort. It has never been done in Pakistan before, but this does not mean that it cannot be done. The provision is certainly there, and according to my knowledge it is the first case where wrongful death has been claimed. As far as the CIA Station Chief is concerned, we had filed a separate FIR against him at a local police station, and the following day he departed from Pakistan. That



was more of a tactic; it was not an end in itself — it was just a means; otherwise we were not expecting that it would be enforced, but this helped us in bringing the issue to the limelight. We were also successful in identifying him with his real name, despite this being a secret, and his act of leaving the country was the evidence. If we could, by the help of any of you, know the name of the new CIA

Station Chief, we hope that we will be able to send him back too. We have included the names of the US Defense Secretary, and the CIA Director as defendants, and we are considering inclusion of one more name; and it is John Rizzo, legal counsel for the CIA who, in an interview has admitted that he has been signing the authorization for drone strikes. We will also look for the names of others who are involved in this act of extrajudicial killings. We are not expecting them in the courts in Pakistan, but we are hopeful that one day we will be able to get an ex parte judgment in Pakistan against them for the enforcement, even outside the territorial jurisdiction of courts.

A Participant: Could you please shed some light on possible role of the International Court of Justice (ICJ) or the International Criminal Court (ICC) if approached?

Clive Smith: Neither the USA nor Pakistan is a member of the ICC. As to the ICJ, we may file a petition here in Pakistan asking the Government to take the issue of drones to the ICJ. We may or may not win the case, but certainly it would help our cause.

CONCLUDING REMARKS

Professor Khurshid Ahmad¹³

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ نَحْمَدُهُ وَنُصَلِّي عَلَى رَسُولِهِ الْكَرِيمِ



Mr. Clive Smith, Mr. Crofton Black, distinguished participants, particularly the entire team of Reprieve, and those who have made their presentations in this one-day conference; I must say that whatever I have heard and read about Reprieve has impressed me deeply. You are doing a great service. We hope that your efforts will succeed, and set a noble example for all of us

to follow. I am so happy that my colleagues in Pakistan have taken cue from you, and have started their efforts in this direction. I wish them all success.

As to the seminar, I think this has been a very valuable contribution to the debate. We all have to understand what the real issues are, what is at stake, and how we can face this challenge. I think 9/11 is a turning point in the sense that, while the occurrence of this day was a crime against humanity without going into the justification or lack of it; any act of terrorism which is directed at innocent people, even if to agitate a political cause cannot be condoned. But having said so, the response to that act of terrorism has turned out to be a greater terrorism and a destabilizing reaction globally. Proportionality has some relevance in this context

[The] right to self defense has been clearly defined in the UN Charter, Article 51. The right to intervention was superimposed, and that in my view destabilized the entire global architecture of peace and justice.

¹³ Professor Khurshid Ahmad is Chairman Institute of Policy Studies and Member Senate of Pakistan.

also. What has worried me is that at least at the conceptual, as well as the practical level five crimes have been committed:

First, terrorism has always been looked upon as a criminal act. It was transformed into a war phenomenon; it was a paradigm shift. Even in the United States, in 1993 the World Trade Center — an act of terrorism; Oklahoma, the USS Cole, all these events were treated as criminal acts; but not 9/11. So it was a paradigm shift, and that destroyed everything.

Secondly, terrorism has always been looked upon as a tactic. It is something which is an offshoot, and a result of something else. For example, as even Huntington has said in his book; terrorism is the weapon of the weak against the strong. If the strong are not prepared to play according to rules of the game, then a reaction takes place; and as such it is primarily a tactic. But from tactic, it was turned into a strategy; from a strategy to identity; from identity to a target, and a target which has been moving from one place to the other globally. So that was the second major issue conceptually that has to be addressed.

Third, because of that whatever has been achieved towards the development of international law, universal conventions, some values and principles to be respected in war or in peace, and then of course, the League of Nations, the UN Charter, the Bill of Rights, and other conventions, an effort was made to re-write the entire international law, conventions and practices.

Fourth issue, on the basis of these three is the right of intervention by the powerful anywhere in the world, as to what they regard to be an act of terrorism or a threat to their people. Now, right to self-defense, that has been clearly defined in the UN Charter, Article 51. The right to intervention was superimposed, and that in my view destabilized the entire global architecture of peace and justice.

Finally, this war on terror, and war *of* terror was used as an instrument for the pursuit of political agendas. Afghanistan was invaded, and I beg to submit that even the UN Resolution was violated in letter and spirit, as is being done now in Libya. The issue of Iraq is more important, where on the basis of apprehensions about weapons of mass destruction which weren't there, and nobody knew

Concluding Remarks

they were there; and then what is the result? We find that globalization of terrorism is making the world much more insecure, and the price we are paying in human terms, life, injuries, displaced persons, violation of sovereignty, economic crisis, you name it. This is the background. Now in that context what is needed is to challenge these flaws in the entire strategy and approach, which have been thrust upon humanity. Along with that, we should work at the micro level. I appreciate Reprieve's efforts. It is our duty; our sister Amna Janjua is here. She has been a victim, but she has also come to the help of the victims. The Court has to be invoked; litigation is one of the instruments we must pursue.

But along with that I'll share the views expressed from this floor; that unless there is political will, unless there is political effort, unless there is enough pressure; political, diplomatic, and from civil society, things may not change; and that is the real challenge. So a two-pronged strategy is needed: one, litigation, legislation; invoking laws to seek fundamental rights for the people; but secondly, to have political pressure within the country and globally. So that the pathetic situation in which the entire humanity has been thrown into after 9/11 by the colonial and neo-colonial powers, it has to be squarely faced. Therein lies the hope for the future, and freedom and rights of mankind, otherwise we are heading towards a new 'Dark ages', which would be darker than the Dark ages.



Litigating the War *of* Terror

With these few words, I thank you all, and I hope that this seminar will be a stepping stone towards seeking human rights for those who have been denied; and also to making the world a better place to live in, so that the human rights of all can be respected. To make a world where through a pluralistic model, different views could coexist; political and human issues could be resolved through dialogue and engagement, through a political process, and not brute force.

Thank you all.