

UK High Court hears Pakistan drone killing case

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The High Court in London is considering a request for a full judicial inquiry into the alleged role of the UK's Government Communications Headquarters (GCHQ) spying operation in aiding drone strikes by the US Central Intelligence Agency in Pakistan's northwest region. The court is scheduled to reach a decision before the end of the year.

The case has been brought by Noor Khan, a 27-year-old from Waziristan in Pakistan, whose father was killed by an unmanned aerial vehicle (UAV) missile strike in Datta Khel town centre, northwest Pakistan on March 17, 2011. Khan is calling on the court to look into whether UK intelligence officials provided assistance in the killing of his father and if they are liable for prosecution.

The court heard in a two day hearing last week how Khan's father, Malik Daud Khan, was chairing a peaceful jirga (tribal assembly) meeting to discuss chromite mining rights in North Waziristan when he was among at least 42 people killed by several missile strikes. Among the others killed at what was effectively a government-sponsored meeting were five members of the local police force and a child. Some 35 government-appointed tribal leaders, known as maliks, were also present. According to a Pakistani military commander in North Waziristan, the maliks had even taken care to alert the local military post of the planned jirga ten days earlier.

Malik Daud Khan and those killed in that act of savagery are a small fraction of the thousands killed in US drone attacks over the last decade. Speaking on behalf of Noor Khan, lawyer Martin Chamberlain told the court that the British-based Bureau of Investigative Journalism (BIJ) had reported that by August last year, 2,347 people had been killed in UAV attacks in Pakistan, of which at least 392 were civilians and 175

children.

Chamberlain said, "The participation of a UK intelligence official in US drone strikes, by passing intelligence, may amount to the offence of encouraging or assisting murder."

He said Khan was seeking a declaration by the courts that such intelligence-sharing is unlawful. He added that even though no GCHQ official would be able to mount a defence of combat immunity, there was no wish, on the claimants' part, to convict any individual of a criminal offence.

The case raises the legal and political implications of UK involvement in attacks carried out in a country it is not at war with. Kat Craig, the legal director of the Reprieve charity, representing Khan, said, "He is calling for the veil of secrecy around Britain's drones policy to be lifted so that he can keep his community safe. We share his concerns about the lack of accountability, and the morality of the UK being dragged into an illegal attack on a country with whom we are not at war."

The government has called on the High Court to refuse to adjudicate on the claim. James Eadie, representing the Foreign Office, said a ruling in favour of Khan's request "would have significant impact on the conduct of the United Kingdom's relations with both the United States and Pakistan." He added, "It would also be likely to have such an impact on relations between the United States and Pakistan. That impact would be felt in an acutely controversial, sensitive and important context."

The Conservative-Liberal Democrat government has refused to confirm or deny that it assists the US government in the mass killings by drone missile attacks. Government lawyers are contending that English courts cannot even make a ruling in the Noor

case, claiming it raises issues relating to sovereign foreign states that cannot be determined by the English courts.

However, Chamberlain explained the GCHQ officers were UK nationals and could be criminally liable under English domestic law. Their actions may also constitute war crimes or crimes against humanity. “We say the offence of murder is triable in England where the defendant is a subject of Her Majesty even where the killing takes place abroad,” he said. “The only persons entitled to immunity from domestic criminal law in respect of armed attacks are those regarded under international law as ‘lawful combatants’ participating in an ‘international armed conflict.’”

Such is the governments’ determination to conceal Britain’s alleged role in assisting mass murder that, according to the *Guardian*, lawyers for William Hague, the UK’s foreign secretary, told the court that the case covered “territory of extreme sensitivity.” It would be “‘prejudicial to the national interest’ for them even to explain their understanding of the legal basis for any such activities.”

The *Guardian* commented, “For Khan and his lawyers to succeed, they say, the court would need to be satisfied that there is no international armed conflict in Pakistan, with the result that anyone involved in drone strikes was not immune from the criminal law, and that there had been no tacit approval for the strikes from the Pakistan government—another matter that the British government will neither confirm nor deny.

“The court would also need to consider, and reject, the US government’s own legal position: that drone strikes are acts of self-defence. It would also need to be satisfied that the handing over of intelligence amounted to participation in hostilities.”

Despite the refusal of the government to confirm any involvement in US drone attacks, Chamberlain was able to cite an impeccably sourced July 25, 2010 *Sunday Times* article which reported that GCHQ provided critical information for “targeted killings” by drones.

The *Sunday Times* reported, “British spy agencies have been pinpointing the hiding places of Al-Qaeda and Taliban chiefs for controversial ‘targeted killings’ by US drones. GCHQ, the top-secret communications agency, has used telephone intercepts to provide the Americans with ‘locational intelligence’ on leading

militants in Afghanistan and Pakistan, an official briefed on its operations said.”

Confirming that its revelations came from a source at the highest level of GCHQ, the newspaper commented, “The *Sunday Times* has agreed not to disclose further details of these operations at the request of the agency.”

Addressing the claim of the official cited in the *Sunday Times* that GCHQ provided assistance to the US in accordance with the law, Rosa Curling of Leigh Day & Co said, “An off the record GCHQ source stated to a number of media outlets that GCHQ assistance was being provided to the US for use in drone attacks and this assistance was ‘in accordance with the law.’ We have advised our client that this is incorrect. The Secretary of State [William Hague] has misunderstood the law on this extremely important issue and a declaration from the Court confirming the correct legal position is required as a matter of priority.”

Britain’s Royal Air Force reported, as the High Court hearing commenced, that the number of its own drones involved in operations over Afghanistan is to be doubled. The five additional aircraft will be operated from the UK for the first time. The UK’s existing Reaper drones have previously been based at the Creech air force base in the state of Nevada, in the US.

The move comes after a surge in US drone strikes this year. More recent figures from the BIJ record that between June 2004 and September this year, drone attacks have killed between 2,562 and 3,325 people in Pakistan, of whom between 474 and 881 were civilians, including 176 children.



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