

UK High Court rejects inquiry into British role in Pakistan drone strikes

By Robert Stevens
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On December 21, the High Court in London rejected a request for a judicial inquiry into the alleged role of the UK's Government Communications Headquarters (GCHQ) spying operation in aiding drone strikes by the US in Pakistan's northwest region.

The case was brought by Noor Khan, a Pakistani man whose father was killed, along with 49 other people, by a US drone attack on March 17, 2011. 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 killed by several missile strikes.

In his legal submission, Khan asked the court to look into whether UK intelligence officials provided assistance in the killing of his father and if they are liable for prosecution under British law.

The revealing 15-page ruling by Lord Justice Moses and supported by Mr Justice Simon came down blatantly in favour of the Foreign and Commonwealth Office. In essence, it serves as the legal justification for ensuring that the UK's role in assisting the US to carry out its murderous drone operations never sees the light of day. As with every ruling designed to conceal the nefarious and illegal activities of the ruling elite, it is cloaked in the guise that to require the UK government to reveal such information would jeopardise "national security".

Citing evidence given to the court from the Foreign Office, the ruling states "that if the Secretary of State were required to make a substantive response to the claim, the likely consequence would be serious harm to national security and international relations. The United Kingdom Government would be compelled to express a definitive view on legal issues, complicating and damaging relations with our most important bilateral ally and, in consequence, damaging the United

Kingdom's security."

The ruling refused permission for Khan's claim, stating that "the real aim and target of these proceedings is not to inform GCHQ employees that if they were prosecuted, no defence of combatant immunity would be available. The real aim is to persuade this court to make a public pronouncement designed to condemn the activities of the United States in North Waziristan, as a step in persuading them to halt such activity."

The ruling also took note of legal proceedings that Khan has undertaken in Pakistan, in order to reiterate that under no conditions would the UK High Court make a ruling condemning the drone attacks or the GCHQ's alleged role in these. Referring to Khan's plea to the Court in Peshawar, Moses writes, "[H]e contends that the Government of Pakistan, and various Ministries, are under a constitutional obligation to take all necessary action to stop 'illegal drone strikes' and 'safeguard its citizens from target killing by an external force'. He pleads that 'the act of killing of innocent people on March 17 2011 was extra-judicial killing, more generally referred to as murder'. The prayer refers to criminal offences by those inside and outside Pakistan in drone operations."

Moses continues, "It is plain, from the nature of the claims, that the purpose of the proceedings in England and in Pakistan is to persuade a court to do what it can to stop further strikes by drones operated by the United States. That is, as Lord Rodger [a former UK Supreme Court judge] would have put it, the real aim of both sets of proceedings."

Moses dismissed the argument in the submission from Khan's legal team that clarification was required regarding the legal basis for the drone attacks carried out by the US in North Waziristan, in order to establish

whether British officials could be secondary parties to murder or guilty of war crimes if they were providing critical information to the US.

In their submission, Khan's team cited an authoritative *Sunday Times* article dated July 25, 2010. Written months before the attack that killed Khan's father and dozens of other innocent civilians, the information it contained, including quotes from a GCHQ official, confirmed that the GCHQ did pass vital locational and other intelligence to the United States on the whereabouts of what were described as "leading militants in Afghanistan and Pakistan" (see "UK High Court hears Pakistan drone killing case").

The ruling noted the *Sunday Times* article was one of a "number of reports" that alleged that the drone strikes "are linked to agents of the US Government and to United Kingdom employees of GCHQ".

Moses, however, was quick to dismiss such reports, stating, "The extent to which it is possible to identify a firm factual foundation is an important question which I shall have to determine, but at this stage I shall merely note that, through no fault of the claimant, his case rests on a respectable but unconfirmed report."

In an attempt to further obfuscate the central issues raised in the case, the ruling farcically portrays the GCHQ as akin to some rank amateur outfit, instead of one of the most advanced and sophisticated communications spying operation on the planet, with an annual budget estimated in 2003 to be around £800 million.

The ruling states, "Since an employee is unlikely to be in a position to know whether or how intelligence is disseminated no sensible guidance could possibly be given as to the circumstances when intelligence may lawfully be passed on and when it may not. If GCHQ is run on anything like the system we have, over thirty years later, learnt was adopted in the huts of Bletchley Park, the notion that those obtaining the intelligence have anything other than an inkling of how it may be deployed is little more than fanciful."

The judgment sheds important light on the British ruling elite's overt disregard for international law that in other cases it hypocritically and routinely cites to justify its predatory imperialist aims.

Even greater atrocities than the drone strikes, which have already killed thousands of people, are being considered by the ruling elite. Last month, a former

Labour Party defence minister proposed a discussion on the feasibility of dropping a neutron bomb on the Pakistan-Afghanistan border. Speaking in the House of Lords on November 22, Lord Gilbert said the bomb's "full title was the ERRB-enhanced radiation reduced blast weapon. I can think of many uses for it in this day and age." He added that such a weapon could be utilised "in the mountains on the border between Afghanistan and Pakistan".

Gilbert said, "If you told them that some ERRB warheads were going to be dropped there and that it would be a very unpleasant place to go, they would not go there", concluding, "These things are not talked about, but they should be, because there are great possibilities for deterrence in using the weapons that we already have in that respect."

Khan is to appeal the High Court ruling. Rosa Curling of Leigh Day solicitors representing him said, "This claim raises very serious questions and issues about the UK's involvement in the CIA drone attacks in Pakistan. This case seeks to determine the legality of intelligence sharing in relation to GCHQ assistance in CIA drone strikes. Those providing such information could be committing serious criminal offences, including conspiracy to murder."

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