



FOUNDATION FOR
FUNDAMENTAL RIGHTS

To

The Prime Minister of Pakistan

Mr. Yusuf Raza Gilani
Prime Minister Secretariat
Government of Pakistan
Islamabad

1 February 2012

Subject: Pakistan must approach UN to stop US drones from killing innocent civilians

Dear Prime Minister,

I am writing to request that your government take steps to put an end to the use of drone strikes by the United States against Pakistani citizens.

Drone strikes in Pakistan were started by the US through their clandestine agency CIA under Musharraf, a dictator's rule, in 2004. I am aware that you have strongly condemned drone strikes on Pakistani territory several times. Recently you spoke at the World Economic Forum where you said unequivocally that drone strikes in Pakistan are counterproductive. I am aware that your government, including your advisor on Human Rights, Mustafa Khokar, has

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publicly voiced strong objections to the United States' use of drones in Pakistan. I share your views; these strikes are counter-productive, breach Pakistan's territorial sovereignty, and alienate the Pakistani public by killing innocent civilians.

Last October, a Waziristan Grand Jirga was held in Islamabad, arranged by the Foundation for Fundamental Rights (FFR). A large number of Tribal elders from Waziristan and other Agencies, families of drone strike victims, local and international artists and lawyers all attended this jirga. I consider myself privileged to have met a young boy, Tariq Aziz, who had lost a cousin in a drone strike. Tariq was 16 years old, and enthusiastic to help prevent the strikes that were killing innocent civilians.

Only three days after the jirga, Tariq and his young cousin, Waheed Rehman, were driving to visit their aunt when a drone missile struck their car, instantly killing them both. These were two young boys with no ties to terrorism.

As you well know, Tariq and Waheed are not the only children to be killed in drone strikes. Independent organisations estimate that drone strikes in the Federally Administered Tribal Areas (FATA) have killed a may as 3,000 people since 2004 - including hundreds of innocent Pakistani women and children.



While Mr. Khokar has publicly stated that your government intends to bring drone strikes to the UN's attention,¹ over four months have passed since those announcements were first made and no action has been taken. Given the many remedies available to Pakistan, it is difficult to understand why it has taken so long for our government to follow through with Mr. Khokar's promises.

I hardly need to sketch the duties of the Pakistan government towards its citizens. For example, the Constitution makes it very clear in its preamble:

'Wherein the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded ... [s]o that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity'.

Obviously, "safeguarding" the people includes protecting their fundamental right to life. Part II, Ch. 1, Art. 9 ("Security of Person: No person shall be deprived of life or liberty save in accordance with law."). To this end, "no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in

¹ See, e.g., Daily Times, *Pakistan to lodge complaint with UN against drones* (Sept. 20, 2011), http://www.dailytimes.com.pk/default.asp?page=2011%5C09%5C20%5Cstory_20-9-2011_pg7_2; The Express Tribune, *UN to be approached over drone strikes* (Nov. 23, 2011), <http://tribune.com.pk/story/296135/un-to-be-approached-over-drone-strikes/>.



accordance with law.” Part II, Ch. 1, Art. 4(2)(a).

There are various actions that the Pakistan government can, and should, take to prevent what is essentially the murder of Pakistani citizens. I should note that this letter is in the nature of a “letter before action”: I sincerely hope and expect that your reply will be sufficiently prompt and complete, but if it is not my clients anticipate enforcing their rights through the courts of law.

First, please confirm in absolutely clear terms the government’s complete opposition to the US’ violation of our national sovereignty by stating unequivocally that Pakistan opposes the US use of drones within our territorial borders. There have, unfortunately, been reports in the media, partly based on cables leaked through Wikileaks that have suggested something quite different. See, e.g., *US embassy cables: Pakistan backs US drone attacks on tribal areas* (23 Aug. 2008, 14:12) (“The US ambassador to Pakistan reports on meetings with (now president) Asif Zardari, Prime Minister Yousuf Gilani and General Ashfaq Kayani. They discuss ... US drone attacks on the tribal areas. Although publicly the officials oppose the attacks, the meetings show they back them in private. *** *Malik suggested we hold off alleged Predator attacks until after the Bajaur operation. The PM brushed aside Rehman’s remarks and said ‘I don’t care if they do it as long as they get the right people. We’ll protest in the National Assembly and then ignore it.’*”); Hina Shamsi, Statement to the House Committee on Oversight and Government Reform, “Drones II” (April 28, 2010) (“From media accounts, it is likely that Pakistan ... may have



consented to the drone attacks on their territory. CIA Director Leon Panetta, in fact, recently acknowledged that Pakistan has been providing intelligence to the United States to support targeting decisions.” (citing Eric Schmitt and Mark Mazzetti, *In a First, US Provides Pakistan with Drone Data*, N.Y. Times, May 13, 2009)); Joby Warrick and Peter Finn, *CIA director says secret attacks in Pakistan have hobbled al-Qaeda*, Wash. Post., Mar. 18, 2010; Reuters, *Drone Warfare in Pakistan* (May 2010) (“Beyond the human intelligence that the CIA relies on to identify targets, Pakistani agents are sometimes present at U.S. bases, and are increasingly involved in target selection and strike coordination, current and former U.S. officials said.”).

Compare this to other remarks attributed to government representatives. Scott Shane, *CIA to Expand Use of Drones in Pakistan*, NYT (Dec. 4, 2009) (“In an interview this week with the German magazine Der Spiegel, the Pakistani prime minister, Syed Yousuf Raza Gilani, said the drone strikes “do no good, because they boost anti-American resentment throughout the country.”). Pakistan must speak with one voice in our opposition to killing innocent civilians such as Tariq Aziz, and there is no room for even a suspicion of hypocrisy on this front.

Second, it is indisputable that the use of drones by the US against the will of your government is a violation of Pakistan’s territorial sovereignty, protected by Article 2(4) of the UN Charter. As the UN Security Council is responsible for taking whatever actions are necessary to restore international peace and security, Pakistan must

go immediately to the Security Council and demand the adoption of a resolution condemning drone strikes and requiring the US to stop the strikes in Pakistan.²

Third, Pakistan should issue a complaint to the UN Human Rights Council and the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Human Rights Council is intended to address gross violations of human rights occurring in any part of the world. Certainly the right to life is the most basic human right, and the US policy of carrying out drone strikes in FATA is a clear violation of that right. The Special Rapporteur has already issued several reports raising concerns about the legality of drone strikes in Pakistan.

Fourth, victims and victim families should also be publicly encouraged – by our government – to file complaints with the Human Rights Council so that the Secretary-General can list this vital issue on the Council meeting agenda for discussion. FFR represents several individuals impacted by drone strikes and would be more than willing to prepare a complaint for submission to the Council. All such complaints need to reach the Human Rights Council before its next session begins on 27 February 2012.

² If the Security Council proves unable to perform its functions, according to General Assembly Resolution 337(V), Pakistan could approach the General Assembly for adoption of the resolution condemning US drone strikes.



Fifth, you should give notice to the US government of your intention to seek review in the International Court of Justice of the US actions on Pakistan territory.

Finally, I note that Pakistan has yet to sign up to the Rome Treaty, and cannot therefore rely on the International Criminal Court to prosecute these international war crimes. This is anomalous. Even Afghanistan has ratified the treaty and may therefore complain of the murder of its citizens, notwithstanding the United States' refusal to subject Americans to the ICC. Shane Harris, *Are Drone Strikes Murder?*, National Journal (Jan. 9, 2010) ("In a November interview with *The Wall Street Journal*, Chief Prosecutor Luis Moreno Ocampo said that American and NATO troops in Afghanistan fall under the ICC's jurisdiction to investigate war crimes, regardless of whether their home countries are members of the court. Afghanistan ratified the court's founding treaty in 2003; the United States has never done so, but the ICC asserts jurisdiction over all forces operating within its member states. Ocampo told *The Journal* that he was conducting a 'preliminary examination' that could include NATO and American soldiers."). Please indicate immediately your intention to bring Pakistan in line with many other nations by signing and ratifying the treaty.

I strongly encourage you, with the support of your entire government, to act urgently on this issue. Indeed, if I may be so bold, I demand on behalf of our clients that you do so, or indicate to me in writing that you will do so, by 14 February 2012, that you will be taking the



required action on each of the seven points above. By failing to act, you not only continue to put innocent Pakistani lives in jeopardy, but you also fuel ongoing rumours that your government has tacitly authorized these drone strikes.

I remain,

Yours sincerely,



Mirza Shahzad Akbar

Barrister-at-law

Director, Foundation for Fundamental Rights

Reprieve's Legal Fellow



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Copy to:

Ch. Nisar Ali Khan, Leader of Opposition

Imran Khan, Chairman Pakistan Tehreek-e-Insaf

Mian Nawaz Sharif, President Pakistan Muslim League – N

Chaudhry Shujahat Hussein, President Pakistan Muslim League-Q

Asfandyar Wali Khan, President Awami National Party

Farooq Sattar, Parliamentary Leader of Muttahida Qaumi Movement

Syed Munawar Hassan, Ameer Jamat-e-Islami

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