

Health Care in Pakistan's Tribal Areas

A. "The Hands of Cruelty"

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *Amnesty International*, "The Hands of Cruelty", Abuses by Armed Forces and Taliban in Pakistan's Tribal Areas, AI Index: ASA 33/019/2012, 13 December 2012; footnotes omitted; available at <http://www.amnesty.org>] [...]

1. ABUSES BY THE TALIBAN AND OTHER GROUPS [...] **3.1 ABUSES FOLLOWING QUASI-JUDICIAL PROCEEDINGS [...]** The Taliban have also used accusations of spying as a means of controlling the population in regions either under their effective control or where they retain significant influence. On 15 June 2012, the Taliban announced a ban on all vaccinations of the general population by government-employed medical staff and non-governmental organisations in North and South Waziristan until attacks by US pilotless aircraft came to an end. In a statement on behalf of the group, Hafiz Gul Bahadar, a powerful Taliban commander from North Waziristan, claimed that the USA was using health workers to secretly target Taliban forces in the Tribal Areas under the guise of vaccinations. He also linked the ban to the apparent use of a fake vaccination campaign by the USA in its attempts to locate Osama bin Laden in Pakistan. Bahadar said that breach of the ban would lead to "any kind of loss" without any right to challenge such punishment. As Dr. Muhammad Sadiq, the surgeon-general of North Waziristan Tribal Agency explained, "we cannot carry on the Polio vaccination campaign after surfacing of the pamphlet. We stopped the campaign immediately after we received it because to continue would risk certain death." **4. THE TRIBAL AREAS – A LEGAL WILDERNESS [...]** **4.7 VIOLATION OF THE RIGHT TO LIFE OUTSIDE AN ARMED CONFLICT** As

documented in Amnesty International's 2010 report, and as continues to this day, the Armed Forces are using lethal force in both FATA ["Federally Administered Tribal Areas"] and PATA ["Provincially Administered Tribal Areas"]. There has been, and continues to be, a non-international armed conflict in some parts of FATA, between the Pakistan state and the Taliban and other armed groups. However, there are other parts of FATA and PATA to which the AACPR ["Actions in Aid of Civil Power Regulations", note of the author] currently applies but where there is no armed conflict taking place. If the AACPR is to apply to the FATA as a whole and PATA, in order to ensure respect for the right to life, the AACPR must recognise the different sets of rules that apply under international law in situations of armed conflict and outside of situations of armed conflict. They should by default reflect the standard position under international law outside of armed conflict, which is to provide for a human rights and law enforcement standards framework, and only permit recourse to the more permissive rules of international humanitarian law in those particular situations and territories that actually constitute an armed conflict. [...]

B. Taliban Block Vaccinations in Pakistan

[Source: *Taliban Block Vaccinations in Pakistan*, by Declan Walsh, New York Times online, 18 June 2012; available at <http://www.nytimes.com>]

ISLAMABAD, Pakistan – A Pakistani Taliban commander has banned polio vaccinations in North Waziristan, in the tribal belt, days before 161,000 children were to be inoculated. He linked the ban to American drone strikes and fears that the C.I.A. could use the polio campaign as cover for espionage, much as it did with Shakil Afridi, the Pakistani doctor who helped track Osama bin Laden. The commander, Hafiz Gul Bahadur, said that the vaccinations would be banned until the Central Intelligence Agency stopped its drone campaign, which has been focused largely on North Waziristan. [...] The announcement, made over the weekend, is a blow to polio vaccination efforts in Pakistan, one of just three countries where the disease is still endemic, accounting for 198 new cases last year — the highest rate in the world, followed by Afghanistan and Nigeria. The tribal belt, which has suffered decades of poverty and conflict, is the largest reservoir of the disease. A Unicef spokesman said health workers had hoped to reach 161,000 children younger than 5 in a vaccination drive scheduled to begin on Wednesday. That is likely to be canceled, at a time when officials felt they were making progress. So far this year, Pakistan has recorded 22 new polio cases, compared with 52 in the same period last year. The Taliban announcement is also likely to rekindle controversy surrounding Dr. Afridi, who was recently convicted by a tribal court and sentenced to 33 years in prison. In March and April 2011, Dr. Afridi ran a vaccination campaign in Abbottabad that was intended to determine covertly whether Bin Laden lived in a house in the city. Dr. Afridi failed to obtain a DNA sample, a senior American official said, but did help establish that Bin Laden's local protector, known as the "courier," was inside the Bin Laden compound. [...] American officials said Dr. Afridi had been working with the C.I.A. for several years, at a time when he was leading polio vaccination efforts in Khyber Agency, a corner of the tribal belt that harbors a rare strain of the disease. Western aid workers have criticized the C.I.A. for recruiting medical personnel and have complained of harsh restrictions imposed by suspicious Pakistani authorities. American officials say Dr. Afridi was targeting a mutual enemy of Pakistan and the United States. [...] The bans may be a result of paranoia about the American drone strikes, which have increased in frequency and accuracy in the past year. Two weeks ago, American officials said that a strike killed Abu Yahya al-Libi, Al Qaeda's deputy leader, at a

farmhouse near Mir Ali in North Waziristan. In his statement, Mr. Bahadur, the local warlord, said there was a “strong possibility of spying on mujahedeen for the U.S. during the polio vaccination campaign; one such example is Dr. Shakil Afridi.”

[...]

C. WHO and UNICEF condemn attacks on health workers in Pakistan

[Source: Joint WHO/UNICEF Statement, WHO and UNICEF condemn attacks on health workers in Pakistan, 18 December 2012; available on <http://www.who.int>]

WHO and UNICEF join the Government of Pakistan and the provinces of Sindh and Khyber Pakhtunkhwa in condemning the multiple attacks that have killed six health workers in the past 24 hours. At least six people working on a polio vaccination campaign have been reported shot dead in several locations in Pakistan - Gadap, Landi, Baldia and Orangi towns of Karachi city, Sindh Province and Peshawar, Khyber Pakhtunkhwa Province. Those killed were among thousands who work selflessly across Pakistan to eradicate polio. The Government of Pakistan and the affected provinces have temporarily suspended the vaccination campaign due to concerns over safety of health workers. [...] WHO, UNICEF and all their partners in Pakistan and globally express their deepest sympathy to the families of the health workers. We remain committed to supporting the Government of Pakistan and the people of Pakistan in their efforts to rid the country of polio and other disease.

Discussion

I. Classification of the conflict

1. (Document A)

a. How does Amnesty International classify the situation in the Pakistani Tribal Areas? (GC I-IV, Art. 3)b. Is it possible that there is an armed conflict only in some parts of a state? What is the geographical scope of application of IHL in non-international armed conflicts occurring in the territory of one state? If IHL is applicable in the whole state, does it mean that all the actions carried out by government forces or by armed groups are governed by IHL? That IHL always prevails over human rights?c. Are human rights applicable during a non-international armed conflict? If yes, how do you determine which body of law prevails in case of contradiction? Does this have to be decided in a general way or on a case by case basis?

2. (Documents A and B) Does the secret collection of data about Taliban fighters reach, per se, the threshold of intensity required to qualify a situation as a non-international armed conflict? The carrying out of drone attacks against Taliban fighters? If the level of violence is not sufficient, is the U.S. bound by IHL because it participates in a non-international armed conflict in Pakistan? 3. Are the U.S. and Pakistan state parties to Protocol II? Are the Pakistani Taliban bound by this Protocol? What is the law applicable to this armed

conflict? **II. Ban of polio vaccination programs by a party to the conflict** 4. (*Documents A, B and C*)

a. Under IHL, do the Taliban have an obligation to care for sick and wounded fighters? To care for sick and wounded civilians? Does this obligation also include the prevention of diseases? (GC I-IV, Art. 3; CIHL, Rule 110)b. Are the Taliban allowed to ban a vaccination program for the civilian population?c. (Document C) Does the killing of six health workers violate IHL even if the Taliban had issued an advance warning that any “breach of the ban would lead to ‘any kind of loss’ without any right to challenge such punishment”? If yes, which provisions of IHL have been violated by the Taliban? (GC I-IV, Art. 3; CIHL, Rules 1, 2, 25, 26, 89 and 100)d. Is the ban on a vaccination campaign a lawful means to stop American drone strikes? Does your answer to this question depend on the legality or not of drone strikes under IHL? (CIHL, Rule 140)

III. Use of vaccination programs to track and target fighters 5. (*Documents A, B and C*)

a. How would you qualify Doctor Afridi and other medical personnel working for the C.I.A.? Are they civilians? Did their spying activities amount to direct participation in hostilities? Are they legitimate targets under IHL? If yes, may they be targeted at all times or only for such time as they are directly participating in the hostilities? (CIHL, Rules 6 and 25; see ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities*)b. Does IHL allow medical personnel to engage in spying activities? May their behaviour be qualified as a ruse of war? An act of perfidy? Why? (CIHL, Rules 57 and 65)

6. (*Documents A and B*) Could the Taliban ban a vaccination program and threaten the medical personnel involved if there exists a possibility that the U.S. used the program to track and target Taliban fighters? What if only one such incident was confirmed? Could they take other measures? Could Pakistan in such a case stop the vaccination programme? (CIHL, Rules 26 and 110)