

1<sup>st</sup> Respondent  
Chanaka Wickremasinghe  
3<sup>rd</sup> statement  
Date: 20 December 2011

Ref No. 2011/2210

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT (Laws LJ, Silber J)

BETWEEN:

YUNUS RAHMATULLAH

*Applicant / Appellant*

- v -

(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

(2) SECRETARY OF STATE FOR DEFENCE

*Respondents*

---

**THIRD WITNESS STATEMENT OF  
CHANAKA WICKREMASINGHE**

---

I, CHANAKA WICKREMASINGHE, of the Foreign and Commonwealth Office, King Charles Street, London WILL SAY as follows:

1. In obedience to the writ of *habeas corpus* issued by the Court of Appeal on 14 December 2011, and further to my first and second witness statements, I return the following on behalf of the First Respondent.
2. It has not been possible to produce the body of Yunus Rahmatullah (YR) in accordance with the Court's order. YR remains detained by the US Department of Defense in Afghanistan.
3. In light of this, I have set out below the steps taken pursuant to the Court's writ, and in respectful obedience to it.

4. On the day the Court handed down its judgment, Wednesday 14 December 2011, the Court's decision was circulated among those departments in Her Majesty's Government that had not had sight of the embargoed judgment and yet had a direct interest in the Court's decision. Those departments included the Cabinet Office, the Attorney General's Office, and the Home Office.
5. At the same time, the First Respondent's staff at the British Embassy in Washington DC, USA, drew the attention of the US Department of Defense and US Department of State to the judgment.
6. The same day, a conference was held with Counsel instructed for the Respondents. (In recalling this fact, I do not waive the Respondents' privilege with respect to that conference, or at all).
7. The following day, Thursday 15 December 2011, the text of a request was agreed amongst UK Government departments.
8. On Friday 16 December, a letter was sent by the Respondents (signed by Mr Tom Drew, Director of International Security, for the First Respondent and Mr Devine, Director of Operational Policy, for the Second Respondent) to Mr William Lietzau, the Deputy Assistant Secretary of Defense for Detainee Policy. (The Respondents understand that Mr Lietzau is the senior official of the US Administration with responsibility for detainee issues, and the official who reports directly to the US Secretary of Defense on these matters.) I exhibit this letter as exhibit CW/2. The letter was delivered the same day by staff at the British Embassy in Washington to the Deputy Assistant Secretary's Office.
9. On Monday, 19 December 2011, a holding response from the Office of the Deputy Assistant Secretary of Defense (Rule of Law and Detainee Policy) was received by the British Embassy. It stated:

"This is to acknowledge receipt of a letter signed by Paul Vincent Devine and Tom Drew dated 16 December 2011 to Deputy Assistant Secretary of Defense Mr Lietzau requesting the transfer of Yunus Rahmatullah to UK custody.

Please be advised that Mr Lietzau is currently on travel and will not be back in the office until 21 December 2011. Given his travel and our internal processes, we will be unable to provide a substantive response prior to the return date for your Government to report to the Court.

For the record, it should be noted that Rahmatullah is held by U.S. Forces under the Authorization to Use Military Force, as informed by the laws of war. Under this authority, U.S. forces in Afghanistan detain, inter alia, persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United

States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy forces. Rahmatullah has been determined to meet this criteria by multiple review boards, the latest of which was held during November 2011, and remains under U.S. control, subject to further periodic reviews by a board of officers. If such board determines that Rahmatullah does not meet the criteria for continued detention, he is to be released from DoD custody as soon as practicable. This board will consider Rahmatullah's case at regular six-month intervals for as long as he remains in DoD custody.

Aside from release of those detainees who do not meet the legal standard for detention, the review board may recommend alternative disposition options, including lawful transfer to the detainee's home country for prosecution or participation in a rehabilitation or reconciliation program. Such recommendations are advisory only, and subject to other considerations including a prudential review of the detainee's background and terrorist or insurgent connections, of the security situation in the receiving country, and of the ability of the receiving country adequately to mitigate the risk of the detainee if transferred."

10. Despite Mr Lietzau's current unavailability, the Respondents have been assured by members of his Office that this matter has been brought to his personal attention while he is away. The Respondents consider that Mr Lietzau, as the official with direct responsibility for detainee policy, is the appropriate addressee of their request, and the Respondents understand that other officials at the US Department of Defense would have to refer the request to him in any event. The US authorities have not provided any specific date by which they intend to respond. The British Embassy will contact Mr Lietzau immediately on his return to seek an early response.

**Statement of truth**

**The contents of this witness statement are true.**

Signed .....

*C. Wickham*

Dated .....

*20 December 2011*