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# Living Under Drones

Death, Injury, and Trauma to Civilians  
From US Drone Practices in Pakistan



International Human Rights  
and Conflict Resolution Clinic  
**Stanford Law School**

<http://livingunderdrones.org/>

Global Justice Clinic  
**NYU School of Law**

**Cover Photo:** Roof of the home of Faheem Qureshi, a then 14-year old victim of a January 23, 2009 drone strike (the first during President Obama's administration), in Zeraki, North Waziristan, Pakistan. Photo supplied by Faheem Qureshi to our research team.

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In December 2011, Reprieve, a charity based in the United Kingdom, contacted the Stanford Clinic to ask whether it would be interested in conducting independent investigations into whether, and to what extent, drone strikes in Pakistan conformed to international law and caused harm and/or injury to civilians. The Stanford Clinic agreed to undertake independent fact-finding and analysis on these questions, as well as others related to drone strikes and targeted killings in Pakistan, beginning in December 2011. Later, the NYU Clinic agreed to join the research project and participated in the second research trip to Pakistan, as well as in additional research, writing, and editing of this report.

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## **ABOUT THE AUTHORS**

### **Stanford International Human Rights and Conflict Resolution Clinic (IHRCRC)**

The Stanford International Human Rights and Conflict Resolution Clinic (Stanford Clinic) addresses a range of situations of rights abuse and violent conflict around the world. By providing direct representation to victims and by working with communities that have suffered or face potential abuse, the Clinic seeks both to train advocates and advance the cause of human rights and global justice. The Clinic engages students in sophisticated and multi-disciplinary advocacy to advance the basic human rights and dignity of victimized individuals and communities globally. Students divide their time between an intensive clinical seminar and ongoing clinical advocacy projects. They are exposed to a range of tools and strategies to promote respect for rights and dignity, including factual documentation, elaboration, and distribution of reports on rights abuse, litigation before national and international institutions, community empowerment strategies, and conflict transformation techniques.

### **Global Justice Clinic (GJC) at NYU School of Law**

The Global Justice Clinic (NYU Clinic) at NYU School of Law provides high quality, professional human rights lawyering services to individual clients and non-governmental and inter-governmental organizations, partnering with groups based in the United States and abroad, or undertaking its own projects. Serving as legal advisers, counsel, co-counsel, or advocacy partners, Clinic students work side-by-side with human rights activists from around the world. Clinic work has addressed economic and social rights; human rights, national security, and counter-terrorism; transnational corporate accountability; weapons development; and the human rights of marginalized groups. These projects give students an opportunity to assist in formulating policy, research, and legal responses to cross-border human rights problems.





## EXECUTIVE SUMMARY AND RECOMMENDATIONS

In the United States, the dominant narrative about the use of drones in Pakistan is of a surgically precise and effective tool that makes the US safer by enabling “targeted killing” of terrorists, with minimal downsides or collateral impacts.<sup>1</sup>

This narrative is false.

Following nine months of intensive research—including two investigations in Pakistan, more than 130 interviews with victims, witnesses, and experts, and review of thousands of pages of documentation and media reporting—this report presents evidence of the damaging and counterproductive effects of current US drone strike policies. Based on extensive interviews with Pakistanis living in the regions directly affected, as well as humanitarian and medical workers, this report provides new and firsthand testimony about the negative impacts US policies are having on the civilians living under drones.

Real threats to US security and to Pakistani civilians exist in the Pakistani border areas now targeted by drones. It is crucial that the US be able to protect itself from terrorist threats, and that the great harm caused by terrorists to Pakistani civilians be addressed. However, in light of significant evidence of harmful impacts to Pakistani civilians and to US interests, current policies to address terrorism through targeted killings and drone strikes must be carefully re-evaluated.

It is essential that public debate about US policies take the negative effects of current policies into account.

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<sup>1</sup> The US publicly describes its drone program in terms of its unprecedented ability to “distinguish ... effectively between an al Qaeda terrorist and innocent civilians,” and touts its missile-armed drones as capable of conducting strikes with “astonishing” and “surgical” precision. *See, e.g.*, John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, The Efficacy and Ethics of U.S. Counterterrorism Strategy, Remarks at the Woodrow Wilson International Center for Scholars (Apr. 30, 2012), available at <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

**First, while civilian casualties are rarely acknowledged by the US government, there is significant evidence that US drone strikes have injured and killed civilians.** In public statements, the US states that there have been “no” or “single digit” civilian casualties.”<sup>2</sup> It is difficult to obtain data on strike casualties

From June 2004 through mid-September 2012, available data indicate that drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children.

- *The Bureau of Investigative Journalism*

because of US efforts to shield the drone program from democratic accountability, compounded by the obstacles to independent investigation of strikes in North Waziristan. The best currently available public aggregate data on drone strikes are provided by *The Bureau of Investigative Journalism (TBIJ)*, an independent journalist organization. *TBIJ* reports that from June 2004 through mid-September 2012, available data indicate that drone strikes killed 2,562-3,325 people in Pakistan, of whom 474-881 were civilians, including 176 children.<sup>3</sup> *TBIJ*

reports that these strikes also injured an additional 1,228-1,362 individuals. Where media accounts do report civilian casualties, rarely is any information provided about the victims or the communities they leave behind. This report includes the harrowing narratives of many survivors, witnesses, and family members who provided evidence of civilian injuries and deaths in drone strikes to our research team. It also presents detailed accounts of three separate strikes, for which there is evidence of civilian deaths and injuries, including a March 2011 strike on a meeting of tribal elders that killed some 40 individuals.

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<sup>2</sup> See *Obama Administration Counterterrorism Strategy* (C-Span television broadcast June 29, 2011), <http://www.c-spanvideo.org/program/AdministrationCo>; see also Strategic Considerations, *infra* Chapter 5: Strategic Considerations; Contradictions Chart, *infra* Appendix C.

<sup>3</sup> *Covert War on Terror*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/category/projects/drones/> (last visited Sept. 12, 2012).

**Second, US drone strike policies cause considerable and under-accounted-for harm to the daily lives of ordinary civilians, beyond death and physical injury.** Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities. Those living under drones have to face the constant worry that a deadly strike may be fired at any moment, and the knowledge that they are powerless to protect themselves. These fears have affected behavior. The US practice of striking one area multiple times, and evidence that it has killed rescuers, makes both community members and humanitarian workers afraid or unwilling to assist injured victims. Some community members shy away from gathering in groups, including important tribal dispute-resolution bodies, out of fear that they may attract the attention of drone operators. Some parents choose to keep their children home, and children injured or traumatized by strikes have dropped out of school. Waziris told our researchers that the strikes have undermined cultural and religious practices related to burial, and made family members afraid to attend funerals. In addition, families who lost loved ones or their homes in drone strikes now struggle to support themselves.

Drones hover twenty-four hours a day over communities in northwest Pakistan, striking homes, vehicles, and public spaces without warning. Their presence terrorizes men, women, and children, giving rise to anxiety and psychological trauma among civilian communities.

**Third, publicly available evidence that the strikes have made the US safer overall is ambiguous at best.** The strikes have certainly killed alleged combatants and disrupted armed actor networks. However, serious concerns about the efficacy and counter-productive nature of drone strikes have been raised. The number of high-level targets killed as a percentage of total casualties is extremely low—estimated at just 2%.<sup>4</sup> Furthermore, evidence suggests that US strikes have facilitated recruitment to violent non-state armed groups, and motivated further violent attacks. As the *New York Times* has reported, “drones have replaced Guantánamo as the recruiting tool of choice for

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<sup>4</sup> Peter Bergen & Megan Braun, *Drone is Obama’s Weapon of Choice*, CNN (Sept. 6, 2012), <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone/index.html>.

militants.”<sup>5</sup> Drone strikes have also soured many Pakistanis on cooperation with the US and undermined US-Pakistani relations. One major study shows that 74% of Pakistanis now consider the US an enemy.<sup>6</sup>

The number of high-level targets killed as a percentage of total casualties is extremely low—estimated at just 2%.

- Peter Bergen & Megan Braun, CNN

**Fourth, current US targeted killings and drone strike practices undermine respect for the rule of law and international legal protections and may set dangerous precedents.** This report casts doubt on the legality of strikes on individuals or

groups not linked to the terrorist attacks of September 11, 2001, and who do not pose imminent threats to the US. The US government’s failure to ensure basic transparency and accountability in its targeted killing policies, to provide necessary details about its targeted killing program, or adequately to set out the legal factors involved in decisions to strike hinders necessary democratic debate about a key aspect of US foreign and national security policy. US practices may also facilitate recourse to lethal force around the globe by establishing dangerous precedents for other governments. As drone manufacturers and officials successfully reduce export control barriers, and as more countries develop lethal drone technologies, these risks increase.

**In light of these concerns, this report recommends that the US conduct a fundamental re-evaluation of current targeted killing practices, taking into account all available evidence, the concerns of various stakeholders, and the short and long-term costs and benefits.** A significant rethinking of current US targeted killing and drone strike policies is long overdue. US policy-makers, and the American public, cannot continue to ignore evidence of the civilian harm and counter-productive impacts of US targeted killings and drone strikes in Pakistan.

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<sup>5</sup> Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

<sup>6</sup> PEW RESEARCH CENTER, PAKISTANI PUBLIC OPINION EVER MORE CRITICAL OF U.S.: 74% CALL AMERICA AN ENEMY (2012), available at <http://www.pewglobal.org/files/2012/06/Pew-Global-Attitudes-Project-Pakistan-Report-FINAL-Wednesday-June-27-2012.pdf>.

This report also supports and reiterates the calls consistently made by rights groups and others for legality, accountability, and transparency in US drone strike policies:

➤ **The US should fulfill its international obligations with respect to accountability and transparency, and ensure proper democratic debate about key policies. The US should:**

- **Release the US Department of Justice memoranda** outlining the legal basis for US targeted killing in Pakistan;
- **Make public critical information concerning US drone strike policies, including as previously and repeatedly requested by various groups and officials;<sup>7</sup> the targeting criteria for so-called “signature” strikes; the mechanisms in place to ensure that targeting complies with international law; which laws are being applied; the nature of investigations into civilian death and injury; and mechanisms in place to track, analyze and publicly recognize civilian casualties;<sup>8</sup>**
- **Ensure independent investigations** into drone strike deaths, consistent with the call made by Ben Emmerson, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in August 2012;<sup>9</sup>

We call on US policy makers to rethink current targeted killing practices.

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<sup>7</sup> See, e.g., Special Rapporteur on extrajudicial, summary or arbitrary executions, *Study on Targeted Killings*, Human Rights Council, UN Doc. A/HRC/14/24/Add.6 (May 28, 2010) (by Philip Alston), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>; *US: Transfer CIA Drone Strikes to Military*, HUMAN RIGHTS WATCH (Apr. 20, 2012), <http://www.hrw.org/news/2012/04/20/us-transfer-cia-drone-strikes-military>; Letter from Amnesty International et al. to Barack Obama, President of the United States (May 31, 2012), available at <http://www.justforeignpolicy.org/node/1242>.

<sup>8</sup> Letter from Amnesty International et al., *supra* note 7.

<sup>9</sup> Terri Judd, *UN ‘Should Hand Over Footage of Drone Strikes or Face UN Inquiry’*, INDEPENDENT (Aug. 20, 2012), <http://www.independent.co.uk/news/world/asia/us-should-hand-over-footage-of-drone-strikes-or-face-un-inquiry-8061504.html>.

- **In conjunction with robust investigations and, where appropriate, prosecutions, establish compensation programs** for civilians harmed by US strikes in Pakistan.
- **The US should fulfill its international humanitarian and human rights law obligations with respect to the use of force**, including by not using lethal force against individuals who are not members of armed groups with whom the US is in an armed conflict, or otherwise against individuals not posing an imminent threat to life. This includes not double-striking targets as first responders arrive.
- **Journalists and media outlets should cease the common practice of referring simply to “militant” deaths, without further explanation.** All reporting of government accounts of “militant” deaths should include acknowledgment that the US government counts all adult males killed by strikes as “militants,” absent exonerating evidence. Media accounts relying on anonymous government sources should also highlight the fact of their single-source information and of the past record of false government reports.

# INTRODUCTION

The report is divided into five chapters: Background and Context, Numbers, Living Under Drones, Legal Analysis, and Strategic Considerations. Immediately following is a brief account of the methodology of this study, including challenges faced by our research team. The report then turns to the five main chapters:

**‘Background and Context,’ Chapter 1**, provides brief background and context on: the nature of unmanned aerial vehicles; drones and targeted killings as a response to 9/11; Obama’s escalation of the drone program; the decision-making process behind drone strikes; the Pakistani government’s divided role; conflict, non-state groups, and military forces in northwest Pakistan; the Federally Administered Tribal Areas (FATA); and the limits on access to FATA.

**‘Numbers,’ Chapter 2**, assesses the debate on drone casualties, outlining the factors that produce conflicting and often unreliable reporting by government and media sources. Examining the methods and content of three well-known and widely cited drone data aggregators, this chapter explains what information can be gleaned from these sources, and challenges the oversimplified civilian/“militant” binary reproduced in many accounts.

**‘Living under Drones,’ Chapter 3** sets forth the **core findings** of this report. The Chapter begins with firsthand narrative accounts of three specific drone strikes. For each of these strikes, there is significant evidence of civilian casualties. It further examines the broader impacts of drone surveillance and strikes in North Waziristan, including on the families of those killed, education and economic opportunities, emotional trauma, widespread fear, and the undermining of community institutions.

**‘Legal Analysis,’ Chapter 4** provides an overview of the terms of debate on the legality of the US targeted killing program and drone campaign in Pakistan under both international and US domestic law. It describes the law related to key issues: whether US drone practices violate Pakistan’s sovereignty; when and which individuals may lawfully be targeted; and the extent to which the US has met, or failed to meet, its international legal obligations related to transparency and accountability.

**‘Strategic Considerations,’ Chapter 5** examines the strategic implications of US drone strike policies in Pakistan. In particular, it considers available evidence about their effectiveness in hampering attacks by armed non-state actors, their impact on attitudes in Pakistan and the surrounding region toward the US, their geopolitical implications, and their effect on decision-making related to war and the use of force in the US.

The report includes several appendices. The first appendix provides additional narratives from victims and witnesses to drone strikes, as well as others directly affected by drones. The second appendix charts the timing and intensity of drone attacks between January 2010 and June 2012 in light of parallel political events and key moments in Pakistani-US relations. The third appendix compares statements of US officials on drone strikes with strike data reported by a leading strike data aggregator.

## METHODOLOGY

This report is based on over 130 detailed interviews with victims and witnesses of drone activity, their family members, current and former Pakistani government officials, representatives from five major Pakistani political parties, subject matter experts, lawyers, medical professionals, development and humanitarian workers, members of civil society, academics, and journalists. Our research team also engaged in extensive review of documentary sources, including: news reports; legal, historical, political, medical, and other relevant scholarship; civil society and analysts' reports; court filings and other legal documents; government documents; and physical evidence.

Our research team conducted two separate investigations in Pakistan (including in Islamabad, Peshawar, Lahore, and Rawalpindi) in February-March 2012 and May 2012.<sup>10</sup> Investigations included interviews with 69 individuals ('experiential victims') who were witnesses to drone strikes or surveillance, victims of strikes, or family members of victims from North Waziristan.<sup>11</sup> These interviewees provided first-hand accounts of drone strikes, and provided testimony about a range of issues, including the missile strikes themselves, the strike sites, the victims' bodies, or a family member or members killed or injured in the strike.<sup>12</sup> They also provided testimony about the impacts of drone surveillance and attacks on their daily lives, and their views of US policy.

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<sup>10</sup> Our researchers did not conduct *in situ* investigations in the drone-affected areas of FATA because of security risks at the time of our investigations, and because the Pakistani military prevents foreigners and non-FATA residents from accessing the region.

<sup>11</sup> A majority of the interviewees brought school-or government-issued photo identification cards to the interview indicating their residence in North Waziristan.

<sup>12</sup> We have defined "close family member" as a member of the interviewee's household. In Waziri culture, households can include grandparents, parents, siblings, and children, as well as uncles, aunts, or cousins.



Interviews were arranged through local contacts in Pakistan, including journalists, lawyers, tribal leaders, experts, and civil society members. The majority of the experiential victims interviewed were arranged with the assistance of the Foundation for Fundamental Rights, a legal nonprofit based in Islamabad that has become the most prominent legal advocate for drone victims in Pakistan. Those interviewees, who undertook an extremely unsafe, time-consuming, and difficult trip in order to be interviewed, were all male, as poor security conditions, together with cultural norms of *purda* (separation of men and women), restricted women's ability to travel. One of the experiential victims interviewed is a female Waziri now residing outside Federally Administered Tribal Areas (FATA). Nine of the 69 experiential victims are clients of the Foundation for Fundamental Rights. None of the interviewees were provided compensation for participating in investigations for this report.<sup>13</sup>

The interviews were conducted by teams that included at least one Stanford or NYU researcher, as well as a translator. Some interviews also included a researcher from either Reprieve or the Foundation for Fundamental Rights. The interviews with individual Waziris were semi-structured, and lasted from approximately thirty minutes to two hours.

Security, confidentiality, and privacy for those interviewed were key concerns. Our research team applied informed consent guidelines to all interviews, and interviewees chose if or how they wished to be identified in this report. We do not include the names and other identifying information of interviewed individuals in this report when so requested by the person concerned, or when the research team determined that doing so might place the individual at risk. Thus, many of the experiential victims have been given pseudonyms in this report. All of the medical and humanitarian professionals, and most of the journalists with whom we met, also expressed concerns for their safety, and requested anonymity.

In addition to our interviews with medical professionals in Pakistan, medical experts at Stanford reviewed this report's sections concerning the psychological and physiological impacts of drones. These experts also met with our research team to discuss our findings and assist in our analysis of the classification of symptoms.

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<sup>13</sup> The Foundation for Fundamental Rights and Reprieve organized and financed the transportation to Islamabad and Peshawar for the majority of experiential victims. The Stanford Clinic paid for the translation services and rental of the space used for interviewing in both Peshawar and Islamabad.

As part of our effort to speak with relevant stakeholders, our research team requested the input of the US government, and sought to share our findings in advance of this report's release. Via letter sent July 18, 2012, we requested a meeting with the National Security Council (NSC), "the President's principal arm for coordinating [national security and foreign] policies among various government agencies."<sup>14</sup> At this writing, we had not received a response to our request.

## CHALLENGES

The foremost challenge the research team faced was the pervasive lack of US government transparency about its targeted killing and drone policies and practices in Pakistan. This secrecy forced us to conduct challenging primary research into the effects of drones in Pakistan. Primary research in FATA is difficult for many reasons.

First, it is very difficult for foreigners physically to access FATA, partly due to the Pakistani government's efforts to block access through heavily guarded checkpoints, and partly due to serious security risks.

Second, it is very difficult for residents of Waziristan to travel out of the region. Those we interviewed had to travel hundreds of kilometers by road to reach Islamabad or Peshawar, in journeys that could take anywhere from eight hours to several days, and which required passing through dozens of military and police checkpoint stops, as well as, in some cases, traveling through active fighting between armed non-state groups and Pakistani forces.

Third, mistrust, often justifiable, from many in FATA toward outsiders (particularly Westerners) inhibits ready access to individuals and communities.

Fourth, many residents of FATA fear retribution from all sides—Pakistani military, intelligence services, non-state armed groups—for speaking with outsiders about the issues raised in this report.

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<sup>14</sup> WHITE HOUSE, NATIONAL SECURITY COUNCIL, <http://www.whitehouse.gov/administration/eop/nsc> (last visited Sept. 12, 2012). We requested a meeting with US Deputy National Security Advisor Denis McDonough.

Fifth, practices of *purda* in FATA make it extremely difficult for women to travel, for outsiders to speak directly to Waziri females, or to obtain information about females through male family members. It is often considered inappropriate, for example, for men to provide the names of female victims of drone strikes. In addition, strict segregation can mean that neighbors or extended family members may not know how many women and children were killed or injured in a strike.<sup>15</sup> Because of these obstacles to speaking directly with women, most of the information the research team obtained about the impacts of drones on the daily lives of women came second-hand through husbands, sons, fathers, and in-laws, as well as by health care providers and members of civil society working in the area. Following interactions and the building of trust between our researchers and interviewees, a number of those interviewed expressed an interest in facilitating interviews with female witnesses and victims in future investigations.

Sixth, and as documented in the ‘Background and Context’ Chapter, FATA has very low literacy rates. This, in conjunction with the fact that much information about incidents in Waziristan is not recorded in written form, made it difficult for some interviewees to pinpoint the exact dates of certain strikes or to identify in terms that could be related to outsiders the precise geographical locations of small villages. The research team has made extensive efforts to check information provided by interviewees against that provided in other interviews, known general background information, other reports and investigations, media reports, and physical evidence wherever possible. Many of the interviewees provided victims’ identification cards and some shared photographs of victims and strike sites, or medical records documenting their injuries. We also reviewed pieces of missile shrapnel.

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<sup>15</sup> Extended family households can be quite large; one interviewee, for instance, told us he lives in a large extended family compound of 50-60 relatives. Interview with Ibrahim Shah, in Islamabad, Pakistan (May 9, 2012).



## CHAPTER 1: BACKGROUND AND CONTEXT

This section provides background and contextual information relevant to understanding U.S drone policies in Pakistan. It provides a basic overview of what unmanned aerial vehicles are, how the US has been using this technology as part of a broader effort to engage in “targeted killing” of alleged enemies, and how the use of drones has undergone a dramatic escalation under President Obama. The section also provides some background on Pakistan’s Federally Administered Tribal Areas (FATA), the area in which most drone strikes take place, on the residents of North Waziristan who live under drones, and on armed non-state actors and military forces in northwest Pakistan.

The US government has been using armed unmanned aerial vehicles, or drones, to carry out hundreds of covert missile strikes in northwest Pakistan since at least June 2004. Drone strikes now form a key part of the US government’s approach to counterterrorism and enable the US to kill from afar without immediate risk to American lives. For years, the government would neither confirm nor deny the existence of the strikes, and only began to outline the practices and legal justifications following significant pressure from domestic and international civil society.<sup>16</sup> To date, the government has refused to provide necessary details on how the program works, how targets are chosen, or how legality and accountability are ensured, leading civil society groups repeatedly to request this information.<sup>17</sup> Instead, the government insists that the killings are lawful, and that

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<sup>16</sup> *Covert War on Terror—The Data*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/the-bush-years-2004-2009/> (last visited Aug. 8, 2012). Obama acknowledged that the US was using drones to target suspected terrorists in FATA in an online video chat on January 31, 2012. *See President Obama’s Google+ Hangout*, WHITEHOUSE.GOV (Jan. 30, 2012), <http://www.whitehouse.gov/photos-and-video/video/2012/01/30/president-obama-s-google-hangout>. More recently, his top counterterrorism advisor, John Brennan, discussed drone strikes, as well as counterterrorism policies in Pakistan, in a speech at the Woodrow Wilson International Center. *See* John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, *The Efficacy and Ethics of US Counterterrorism Strategy*, Remarks at the Woodrow Wilson International Center for Scholars (Apr. 30, 2012), *available at* <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

<sup>17</sup> *See supra* note 16 and accompanying text; Letter from Amnesty International et al. to Barack Obama, President of the United States (May 31, 2012), *available at* <http://www.justforeignpolicy.org/node/1242>. Letter from Amnesty International et al. to Barack Obama, President of the United States (May 31, 2012), *available at* <http://www.justforeignpolicy.org/node/1242> (requesting that information be released to Congress concerning “US drone use, including targeting criteria for signature strikes; mechanisms used by the CIA and JSOC to ensure that such targeting is within the confines of international law, including which laws are being applied to these cases and definitions of a civilian; the procedure in place for investigations when civilians are known to have suffered losses of life, limb or property as a result of strikes; and mechanisms in place to track, analyze and public recognize civilian casualties.”).

virtually all of those targeted are linked to Al Qaeda and associated forces and pose a threat to US national security.<sup>18</sup> Recently, anonymous government officials have revealed that, for the purpose of tracking civilian casualties, the government presumes that all military-age males killed in drone strikes are combatants.<sup>19</sup>

## DRONES: AN OVERVIEW

According to the US Department of Defense, a drone, or unmanned aircraft, is an “aircraft or balloon that does not carry a human operator and is capable of flight under remote control or autonomous programming.”<sup>20</sup> Although drones have only recently become the subject of significant public debate, they are not new, and their origins can be traced at least to World War I.<sup>21</sup> Throughout the twentieth century, however, they were used primarily for surveillance, most notably during the Gulf War and the conflict in the Balkans in the 1990s.<sup>22</sup> The first armed drones were flown in Afghanistan in early October 2001.<sup>23</sup> Since then, the US has increased its arsenal of Predator drones from 167 in 2002 to more than 7,000 today.<sup>24</sup>

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<sup>18</sup> See, e.g., Brennan, *supra* note 16; *President Obama’s Google+ Hangout*, *supra* note 16; see also Ken Dilanian, *US Put New Restrictions on CIA Drone Strikes in Pakistan*, L.A. TIMES (Nov. 7, 2011), <http://articles.latimes.com/2011/nov/07/world/la-fg-cia-drones-20111108>; Justin Elliott, *Obama Administration’s Drone Death Figures Don’t Add Up*, PROPUBLICA (June 18, 2012), <http://www.propublica.org/article/obama-drone-death-figures-dont-add-up>.

<sup>19</sup> Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

<sup>20</sup> DEP’T OF DEFENSE, 331 JOINT PUBLICATION 1-02, DICTIONARY OF MILITARY AND ASSOCIATED TERMS (2010) (amended July 15, 2012).

<sup>21</sup> *Time Line of UAVs*, PBS, <http://www.pbs.org/wgbh/nova/spiesfly/uavs.html> (last visited Aug. 8, 2012).

<sup>22</sup> See Mary Ellen O’Connell, *Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009* 3 (Notre Dame Law School Legal Studies Research Paper No. 09-43, 2010).

<sup>23</sup> Eric Schmitt, *Threats and Responses: The Battlefield: US Would Use Drones to Attack Targets*, N.Y. TIMES (Nov. 6, 2002), <http://www.nytimes.com/2002/11/06/world/threats-responses-battlefield-us-would-use-drones-attack-iraqi-targets.html?pagewanted=all&src=pm>.

<sup>24</sup> Anna Mulrine, *Unmanned Drone Attacks and Shape-Shifting Robots: War’s Remote Control Future*, CHRISTIAN SCIENCE MONITOR (Oct. 22, 2011), <http://www.csmonitor.com/USA/Military/2011/1022/Unmanned-drone-attacks-and-shape-shifting-robots-War-s-remote-control-future>.

There are two types of lethal drones primarily now used by the US: the MQ-1B Predator and the MQ-9 Reaper.<sup>25</sup> The Predator MQ-1B, first flown in 1994,<sup>26</sup> was designed “to provide persistent intelligence, surveillance and reconnaissance information combined with a kill capability.”<sup>27</sup> Equipped with AGM-114 Hellfire missiles, the Predator MQ-1B was the world’s first-ever weaponized unmanned aircraft system.<sup>28</sup> As P.W. Singer writes in *Wired for War*, “[a]t twenty-seven feet in length, [the Predator] is just a bit smaller than a Cessna. . . . made of composite materials instead of metals, the Predator weighs just 1,130 pounds. Perhaps its best quality is that it can spend some twenty-four hours in the air, flying at heights of up to twenty-six thousand feet.”<sup>29</sup> The MQ-9 Reaper “is larger and more powerful than the MQ-1 Predator and is designed to prosecute time-sensitive targets with persistence and precision, and destroy or disable those targets.”<sup>30</sup>

The technical precision of these weapons has been disputed, including by companies that developed software used in targeting.<sup>31</sup> One factor that reduces targeting precision is ‘latency,’ the delay between movement on the ground and the arrival of the video image via satellite to the drone pilot. As the *New York Times* reported in July 2012, “Last year senior operatives with Al Qaeda in the Arabian Peninsula told a Yemeni reporter that if they hear an American drone overhead, they move around as much as

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<sup>25</sup> See also Spencer Ackerman, *Air Force is Through With Predator Drones*, WIRED (Dec. 14, 2010), <http://www.wired.com/dangerroom/2010/12/air-force-is-through-with-predator-drones/>; Noah Shachtman, *US Military Joins CIA’s Drone War in Pakistan*, WIRED (Dec. 10, 2009), <http://www.wired.com/dangerroom/2009/12/us-military-joins-cias-drone-war-in-pakistan/>. Both the Predator and the Reaper are manufactured by General Atomics Aeronautical Systems, Inc. For more information, see *Aircraft Platforms*, GENERAL ATOMICS AERONAUTICAL, <http://www.ga-asi.com/products/aircraft/index.php> (last visited Aug. 8, 2012). General Atomics refers to the original Predator platform as the “Predator UAS,” and to the Reaper platform as the “Predator B UAS.” *Id.*

<sup>26</sup> *Predator UAS*, GENERAL ATOMICS AERONAUTICAL, <http://www.ga-asi.com/products/aircraft/predator.php> (last visited Aug. 8, 2012).

<sup>27</sup> *MQ-1B Predator Factsheet*, UNITED STATES AIR FORCE, <http://www.af.mil/information/factsheets/factsheet.asp?fsID=122> (last visited Aug. 8, 2012).

<sup>28</sup> *Id.*; see *Predator UAS*, *supra* note 26.

<sup>29</sup> P.W. SINGER, *WIRED FOR WAR* 32-33 (2009).

<sup>30</sup> *MQ-9 Reaper Factsheet*, UNITED STATES AIR FORCE, <http://www.af.mil/information/factsheets/factsheet.asp?id=6405> (last visited July 16, 2012).

<sup>31</sup> Christopher Williams, *CIA Used ‘Illegal, Inaccurate Code to Target Kill Drones*, REGISTER (Sept. 24, 2010), [http://www.theregister.co.uk/2010/09/24/cia\\_netezza/](http://www.theregister.co.uk/2010/09/24/cia_netezza/). Intelligent Integration Systems (IISI), the software firm that developed the location analysis software package used in drones known as “Geospatial”, claimed in court that Netezza, the data warehousing firm that eventually sold the product to the CIA, “illegally and hastily reverse-engineered IISI’s code to deliver a version that produced locations inaccurate by up to 13 meters. Despite knowing about the miscalculations, the CIA accepted the software, court submissions indicate.” *Id.* Richard Zimmerman, IISI’s CTO, stated that “my reaction was one of stun, amazement that they want to kill people with my software that doesn’t work.” *Id.*

possible.”<sup>32</sup> Even when they are precise, however, casualties and damage are not necessarily confined to the specific individual, vehicle, or structure targeted. The blast radius from a Hellfire missile can extend anywhere from 15-20 meters;<sup>33</sup> shrapnel may also be projected significant distances from the blast.

#### DRONES AND TARGETED KILLING AS A RESPONSE TO 9/11

In the aftermath of the September 11, 2001 attacks, the Bush administration began a campaign of ‘targeted killing’ against suspected members of Al Qaeda and other armed groups.<sup>34</sup> The CIA allegedly carried out its first targeted drone killing in February 2002 in Afghanistan, where a strike killed three men near a former *mujahedeen* base called Zhawar Kili.<sup>35</sup> Some reports suggest the CIA thought one of the three men might have been bin Laden in part due to his height.<sup>36</sup> When questioned in the aftermath of the strike, however, authorities confirmed that it was not bin Laden and, instead, appeared not to know who they had killed. A Pentagon spokeswoman stated, “[w]e’re convinced that it was an appropriate target,”<sup>37</sup> but added, “[w]e do not know yet exactly who it was.”<sup>38</sup> Another spokesman later added that there were “no initial indications that these were innocent locals.”<sup>39</sup> Reports since have suggested that the three individuals were local civilians collecting scrap metal.<sup>40</sup>

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<sup>32</sup> Mark Mazzetti, *The Drone Zone*, N.Y. TIMES (July 6, 2012), available at <http://www.nytimes.com/2012/07/08/magazine/the-drone-zone.html?pagewanted=all>.

<sup>33</sup> Thomas Gillespie, Katrina Laygo, Noel Rayo & Erin Garcia, *Drone Bombings in the Federally Administered Tribal Areas: Public Remote Sensing Applications for Security Monitoring*, 4 J. OF GEOGRAPHIC INFORMATION SYSTEM 136, 139 (2012), available at <http://www.scrip.org/journal/PaperInformation.aspx?paperID=18766>.

<sup>34</sup> Q&A: *US Targeted Killings and International Law*, HUMAN RIGHTS WATCH (Dec. 19, 2011), <http://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law>.

<sup>35</sup> John Sifton, *A Brief History of Drones*, NATION (Feb. 7, 2012), <http://www.thenation.com/article/166124/brief-history-drones#>.

<sup>36</sup> *Id.* (“CIA observers thought they’d seen bin Laden: a tall man with long robes near Tarnek Farm, bin Laden’s erstwhile home near Kandahar. This sighting by an unarmed drone was what led to the first arguments among the White House and CIA about arming drones with missiles.”).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*; see Jane Mayer, *The Predator War*, NEW YORKER (Oct. 26, 2009), available at [http://www.newyorker.com/reporting/2009/10/26/091026fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer); Seymour M. Hersh, *Annals of National Security: Manhunt*, NEW YORKER (Dec. 23, 2002), available at [http://www.newyorker.com/archive/2002/12/23/021223fa\\_fact](http://www.newyorker.com/archive/2002/12/23/021223fa_fact).



Six months later, on November 3, 2002, the US took the targeted killing program to Yemen. US officials, reportedly operating a drone from a base in Djibouti, hit and killed six men travelling in a vehicle in an under-populated area of Yemen.<sup>41</sup> One of the men was Qaed Sinan Harithi, believed to have been one of the planners of the attack on the USS Cole in 2000.<sup>42</sup> In January 2003, the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, concluded that the strike “constitute[d] a clear case of extrajudicial killing.”<sup>43</sup>

Nonetheless, the strike in Yemen set the precedent for what would later become a full scale program of targeted killing by drone in Pakistan. After the US invasion of Afghanistan, a number of Taliban fighters fled across the border into Pakistan and in particular FATA, which borders Afghanistan.<sup>44</sup> From 2002 to 2004, the US used Predator drones to monitor this area. Then, in June 2004, the US launched a strike against Nek Muhammad, a Pakistani Taliban commander who two months prior had announced his support for Al Qaeda.<sup>45</sup> Witnesses initially reported that the missile was fired from a drone circling overhead, but the Pakistani military denied any US involvement, instead taking credit for the operation itself.<sup>46</sup> Today, this is widely believed to have been the first US drone strike in Pakistan.<sup>47</sup>

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<sup>41</sup> Doyle McManus, *A US License to Kill*, L.A. TIMES (Jan. 11, 2003), <http://articles.latimes.com/2003/jan/11/world/fg-predator11>.

<sup>42</sup> *Id.*

<sup>43</sup> Special Rapporteur for extrajudicial, summary or arbitrary executions, *Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*, ¶ 39, Commission on Human Rights, UN Doc. E/CN.4/2003/3 (Jan. 13, 2003) (by Asma Jahangir), available at <http://www.extrajudicialexecutions.org/application/media/59%20Comm%20HR%20SR%20Report%20%28E-Cn.4-2003-3%29.pdf>.

<sup>44</sup> See Brian Glyn Williams, *The CIA's Covert Predator Drone War in Pakistan, 2004-2010: The History of an Assassination Campaign*, 33 STUDIES IN CONFLICT & TERRORISM 871, 873-74 (2010).

<sup>45</sup> *Id.* at 874; see also Pir Zubair Shah, *My Drone War*, FOREIGN POL'Y (Mar./Apr. 2012), [http://www.foreignpolicy.com/articles/2012/02/27/my\\_drone\\_war?page=0,1](http://www.foreignpolicy.com/articles/2012/02/27/my_drone_war?page=0,1).

<sup>46</sup> David Rohde & Mohammed Khan, *Ex-Fighter for Taliban Dies in Strike in Pakistan*, N.Y. TIMES (June 19, 2004), <http://www.nytimes.com/2004/06/19/international/asia/19STAN.html>.

<sup>47</sup> Peter Bergen & Jennifer Rowland, *Drones Decimating Taliban in Pakistan*, CNN (July 3, 2012), <http://www.cnn.com/2012/07/03/opinion/bergen-drones-taliban-pakistan/index.html>; see Shah, *supra* note 45; see also 2004-2007—*The Year of the Drone*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones/2007> (last visited Aug. 8, 2012); *The Bush Years: Pakistan Strikes 2004-2009*, BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/the-bush-years-2004-2009/> (last visited Aug. 8, 2012).

## PRESIDENT OBAMA'S ESCALATION OF THE DRONE PROGRAM

When President Bush left office in January 2009, the US had carried out at least 45 drone strikes according to the New America Foundation, or 52 according to *The Bureau of Investigative Journalism (TBIJ)*, inside Pakistan.<sup>48</sup> Since then, President Obama has reportedly carried out more than five times that number: 292 strikes in just over three and a half years.<sup>49</sup> This dramatic escalation in the US use of drones to carry out targeted killings has brought with it escalating tensions between the US and Pakistan, as well as continued questions about the efficacy and accuracy of such strikes.<sup>50</sup>

### “PERSONALITY STRIKES” AND SO-CALLED “SIGNATURE STRIKES”

A key feature of the Obama administration's use of drones has been a reported expansion in the use of “signature” strikes. Between 2002 and 2007, the Bush administration reportedly focused targeted killings on “personality” strikes targeting named, allegedly high-value leaders of armed, non-state groups like Salim Sinan al Harethi and Nek Mohammad.<sup>51</sup> Under Obama, the program expanded to include far more “profile” or so-called “signature” strikes based on a “pattern of life” analysis.<sup>52</sup> According to US authorities, these strikes target “groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose

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<sup>48</sup> Peter Bergen & Katherine Tiedemann, *The Year of the Drone: An Analysis of US Drone Strikes in Pakistan, 2004-2010*, NEW AMERICA FOUNDATION, 1 (2010), available at [http://www.newamerica.net/publications/policy/the\\_year\\_of\\_the\\_drone](http://www.newamerica.net/publications/policy/the_year_of_the_drone); *The Bush Years: Pakistan Strikes 2004-2009*, THE BUREAU OF INVESTIGATIVE JOURNALISM, *supra* note 47.

<sup>49</sup> See *Covert War on Terror—The Data*, *supra* note 16.

<sup>50</sup> See *infra* Chapter 5: Strategic Considerations.

<sup>51</sup> Leila Hudson, Colin S. Owens & Matt Flannes, *Drone Warfare: Blowback from the New American Way of War*, MIDDLE EAST POLICY (Fall 2011) (noting in the last two years of the Bush administration, “an acceleration of attack frequency,” and a much lower percentage of high-value targets killed in relation to overall fatalities), available at <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>; see David S. Cloud, *CIA Drones Have Broader List of Targets*, L.A. TIMES (May 5, 2010), <http://articles.latimes.com/2010/may/05/world/la-fg-drone-targets-20100506>.

<sup>52</sup> Cloud, *supra* note 51; see Daniel Klaidman, *Drones: How Obama Learned to Kill*, DAILY BEAST (May 28, 2012, 1:00 AM) (excerpt from Klaidman's book *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY*, *infra* note 53), <http://www.thedailybeast.com/newsweek/2012/05/27/drones-the-silent-killers.html>. According to recent news reports, the CIA may have given these strikes a new name: terrorist-attack-disruption strikes (TADS). *Id.*

identities aren't known."<sup>53</sup> Just what those "defining characteristics" are has never been made public. In 2012, the *New York Times* paraphrased a view shared by several officials that "people in an area of known terrorist activity, or found with a top Qaeda operative, are probably up to no good."<sup>54</sup> The *Times* also reported that some in the Obama administration joke that when the CIA sees "three guys doing jumping jacks," they think it is a terrorist training camp.<sup>55</sup>

### WHO MAKES THE CALL?

On June 15, 2012, the Obama administration, in a letter to Congress, publicly acknowledged the existence of military actions in Yemen and Somalia against individuals alleged to be linked to Al Qaeda.<sup>56</sup> However, the administration has not provided similar statements about CIA activities (including drone programs) in Pakistan and Yemen.<sup>57</sup> As a result, what little public information exists about government

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<sup>53</sup> DANIEL KLAIDMAN, *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY* 41 (2012); *see also* Becker & Shane, *supra* note 19 ("In Pakistan, Mr. Obama had approved not only 'personality' strikes aimed at named, high-value terrorists, but 'signature' strikes that targeted training camps and suspicious compounds in areas controlled by militants.").

<sup>54</sup> Becker & Shane, *supra* note 19.

<sup>55</sup> *Id.*

<sup>56</sup> Letter from Barack Obama, President of the US, to John Boehner, Speaker of the US House of Representatives (June 15, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/06/15/presidential-letter-2012-war-powers-resolution-6-month-report> ("In Somalia, the US military has worked to counter the terrorist threat posed by al-Qa'ida and al-Qa'ida-associated elements of al-Shabaab. In a limited number of cases, the US military has taken direct action in Somalia against members of al-Qa'ida, including those who are also members of al-Shabaab, who are engaged in efforts to carry out terrorist attacks against the US and our interests. . . . The US military has also been working closely with the Yemeni government to operationally dismantle and ultimately eliminate the terrorist threat posed by al-Qa'ida in the Arabian Peninsula (AQAP), the most active and dangerous affiliate of al-Qa'ida today. Our joint efforts have resulted in direct action against a limited number of AQAP operatives and senior leaders in that country who posed a terrorist threat to the United States and our interests."); *see also* Adam Entous, *US Acknowledges Its Drone Strikes*, WALL ST. J. (June 15, 2012), <http://online.wsj.com/article/SB10001424052702303410404577468981916011456.html>.

<sup>57</sup> *See* Entous, *supra* note 56. ("The Central Intelligence Agency's covert drone campaigns in Yemen and Pakistan haven't been similarly declassified, officials said.") The language in President Obama's June 15, 2012 letter does not expressly refer to drones or UAVs in Yemen and Somalia. *See* Letter from Barack Obama, *supra* note 56. However, as Entous writes, "The move effectively declassifies the existence of the military's targeted-killing campaigns against Al Qaeda in the Arabian Peninsula in Yemen and certain Al Qaeda and al Shabaab militants in Somalia, though without providing any details about the operations themselves." Entous, *supra* note 56; *see also* *US Air Strike Kills Top al-Qaida Leader in Yemen*, GUARDIAN (May 7, 2012), <http://www.guardian.co.uk/world/2012/may/07/us-airstrike-kills-al-qaida-leader-yemen> ("CIA drone strike hits Fahd al-Quso.").

perspectives, programs, and policies has come largely through anonymous sources and leaks in major news outlets. In May 2012, three such stories—one by the *New York Times*,<sup>58</sup> one by the *Associated Press*,<sup>59</sup> and one by *Newsweek* reporter and author Daniel Klaidman<sup>60</sup>—revealed the most information to date about how the decision to kill a particular target is made.

According to the *Associated Press* and the *New York Times*, the President acts as the final decision maker, at least with respect to the decision to carry out “personality strikes” targeting named individuals. According to the *New York Times*, early in his presidency, “the president tightened standards, aides say: If the agency did not have a ‘near certainty’ that a strike would result in zero civilian deaths, Mr. Obama wanted to decide personally whether to go ahead.”<sup>61</sup> *Newsweek* reporter Daniel Klaidman noted that, “Obama followed the CIA operations closely”<sup>62</sup> and that he would frequently pull aside CIA director Leon Panetta “and ask for details about particular strikes.”<sup>63</sup>

Both the CIA and the US Special Operations Command,<sup>64</sup> the latter through its Joint Special Operations Command (JSOC)—have their own target lists. Those lists are drawn up through independent processes, but significant overlap often exists.<sup>65</sup> The administration claims to have a thorough vetting process by which names are chosen. It is unclear what, if any, process is in place for decisions regarding the so-called “signature strikes,” which are particularly problematic and open to abuse and mistake.<sup>66</sup>

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<sup>58</sup> Becker & Shane, *supra* note 19.

<sup>59</sup> Kimberly Dozier, *Who Will Drones Target? Who in the US Will Decide?*, ASSOCIATED PRESS (May 21, 2012), <http://bigstory.ap.org/content/who-will-drones-target-who-us-will-decide>.

<sup>60</sup> Klaidman, *Drones: How Obama Learned to Kill*, *supra* note 52.

<sup>61</sup> Becker & Shane, *supra* note 19.

<sup>62</sup> Klaidman, *Drones: How Obama Learned to Kill*, *supra* note 52.

<sup>63</sup> *Id.*

<sup>64</sup> The US Special Operations Command is comprised of the Special Operations Commands of the Army, Air Force, Navy, and Marine Corps of the US Armed Forces. *About USSOCOM*, UNITED STATES SPECIAL OPERATIONS COMMAND, <http://www.socom.mil/Pages/AboutUSSOCOM.aspx> (last visited on Sept. 15, 2012).

<sup>65</sup> Dozier, *supra* note 59.

<sup>66</sup> According to anonymous officials interviewed by the *New York Times*, prior to May 2012, the Department of Defense went through a vetting process for personality strikes that “paralleled” a similar process at the CIA. Becker & Shane, *supra* note 19. This vetting process involved a video conference run by the Pentagon that included more than 100 members of the government’s national security apparatus. *Id.* (The CIA’s process is reported to have been “more cloistered” and focused largely on Pakistan. *Id.*) Participants would examine Powerpoint slides of suspected Al Qaeda affiliates and debate their inclusion on the target list. *Id.* It could take five or six times for a name to be added, and, even then, the name would be removed if it was decided the suspect no longer posed an “imminent threat.” *Id.* Any names nominated

These strikes target individuals or groups “who bear characteristics associated with terrorism but whose identities aren’t known.”<sup>67</sup>

### PAKISTAN’S DIVIDED ROLE <sup>68</sup>

Pakistan-US relations are complex and complicated by continuing drone strikes. Pakistan initially appeared to support US strikes covertly. From 2004 through at least 2007, the Pakistani government claimed responsibility for attacks that had, in fact, been conducted by the US, thus allowing the US to deny any involvement.<sup>69</sup> In 2008, according to cables released by *Wikileaks*, Pakistan’s Prime Minister reportedly told US Embassy officials, “I don’t care if they [conduct strikes] as long as they get the right people. We’ll protest in the National Assembly and then ignore it.”<sup>70</sup> In 2009, both Pakistan’s Prime Minister and its Foreign Minister publicly celebrated the drone strike that killed Baitullah Mehsud, the alleged leader of Tehreek-e-Taliban, Pakistan (TTP), an armed group that launches terrorist attacks within Pakistan.<sup>71</sup>

As strikes have increased, however, so too has the Pakistani public’s opposition to them. In 2011, rising opposition to the US within Pakistan was further exacerbated by three separate events: the public shooting of two men by CIA agent Raymond Davis in January, the May raid of Osama bin Laden’s compound and his killing,<sup>72</sup> and the killing of 24 Pakistani soldiers in an errant NATO airstrike in November.<sup>73</sup>

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for inclusion in the list would then be sent to President Obama for approval to be killed. *Id.* On May 21, 2012, citing anonymous officials, the *Associated Press* reported that this process has now changed. *See* Dozier, *supra* note 59. John Brennan, Obama’s top counterterrorism advisor, has reportedly established a new procedure for choosing which suspected terrorists will be targeted. *Id.* Brennan’s staff consults directly with the State Department and other agencies, thereby reducing the role of the Pentagon, and then compiles a potential target list based upon these consultations. *Id.* The list is “reviewed by senior officials” after being vetted by all counterterrorism agencies at the weekly White House meeting, and then ultimately sent to the President for approval. *Id.*

<sup>67</sup> Klaidman, *Drones: How Obama Learned to Kill*, *supra* note 52.

<sup>68</sup> For more on the role of Pakistani governmental authorities, see *infra* Chapter 4: Legal Analysis.

<sup>69</sup> *See* Brian Glyn Williams, *Death From the Skies: An Overview of the CIA’s Drone Campaign in Pakistan*, 29 *TERRORISM MONITOR* 8, 8 (2009); *infra* Chapter 2: Numbers.

<sup>70</sup> *US Embassy Cables: Pakistan Backs US Drone Attacks in Tribal Areas*, *GUARDIAN* (Nov. 30, 2010), <http://www.guardian.co.uk/world/us-embassy-cables-documents/167125>.

<sup>71</sup> Shuja Nawaz, *Drone Attacks Inside Pakistan—Wayang or Willing Suspension of Disbelief*, 12 *CONFLICT & SECURITY* 79, 80 (2011).

<sup>72</sup> Recent factual revelations in a book by a former Navy Seal involved in the operation that killed bin Laden suggest that the killing may have violated international law. According to the Navy Seal’s account,

It is important to note that segments of the Pakistani population, including in FATA, support drone strikes that kill terrorists. This is primarily because of the significant toll that terrorists and armed non-state groups take on the civilian population.<sup>74</sup> In the absence of other effective government action, some support military efforts to attack and kill terrorists.

However, it is clear that the majority of the population oppose current drone practices. A Pew Research Poll conducted in 2012 found only 17 per cent of Pakistanis favor the US conducting “drone strikes against leaders of extremist groups, even if they are conducted in conjunction with the Pakistani government.”<sup>75</sup> Of those familiar with the drone campaign, the study noted that 94 per cent of Pakistanis believe the attacks kill too many innocent people and 74 per cent say they are not “necessary to defend Pakistan from extremist organizations.”<sup>76</sup> Further, particular strikes (such as those targeting first responders), as well as the constant presence of drones overhead, have caused significant hardships for many in FATA. Because the consequences of US drone

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bin Laden was shot repeatedly in the chest, after already having been wounded. MARK OWEN, *NO EASY DAY* 236 (2012) (“We saw the man lying on the floor at the foot of his bed. . . . The point man’s shots had entered the right side of his head. Blood and brains spilled out of the side of his skull. In his death throes, he was still twitching and convulsing. Another assaulter and I trained our lasers on his chest and fired several rounds. The bullets tore into him, slamming his body into the floor until he was motionless.”). Under international humanitarian law, attacking persons who are unconscious or wounded is prohibited, where they abstain from any hostile act. See JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOL. 1: RULES* 47 (2006); see also Kevin Jon Heller, *Author of “No Easy Day” Admits to Committing A War Crime*, *OPINIO JURIS* (Aug. 29, 2012, 8:05 AM), <http://opiniojuris.org/2012/08/29/author-of-no-easy-day-admits-to-committing-a-war-crime/>.

<sup>73</sup> See *Thousands of Pakistanis rally against US*, *EXPRESS TRIBUNE* (Mar. 18, 2011), <http://tribune.com.pk/story/134419/political-parties-civil-society-hold-protests-against-govt/> (noting that the release of Raymond Davis was “widely condemned among the Pakistani public and media” and that “anti-US sentiments rose after missiles fired from an unmanned US aircraft on Wednesday” killed civilians and police); *US Drone Strike in Pakistan; Protests Over Bin Laden*, *REUTERS* (Mar. 6, 2011), <http://www.reuters.com/article/2011/05/06/us-binladen-pakistan-protest-idUSTRE74516H20110506> (noting outrage against the US in response to the killing of Osama bin Laden); Karl Kaltenthaler et al., *The Drone War: Pakistani Public Attitudes Toward American Drone Strikes in Pakistan* 8 (Paper prepared for the Annual Meetings of the Midwest Political Science Association Meetings, Chicago, IL, Apr. 13-17, 2012) (describing the Salala incident as a “matter of huge public fury within Pakistan”), available at <http://www.uakron.edu/dotAsset/4823799c-34eb-4b4f-992e-ac4a2261e0c4.pdf>.

<sup>74</sup> Interview with civil society representative in Peshawar, Pakistan (May 16, 2012); Interview with civil society representative in Peshawar, Pakistan (May 16, 2012).

<sup>75</sup> PEW RESEARCH CENTER, *PAKISTANI PUBLIC OPINION EVER MORE CRITICAL OF US* 2 (2012), available at <http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/>.

<sup>76</sup> *Id.* at 13.

practice for those living in targeted areas have been largely omitted from coverage in the US, this report focuses on these effects.

Opposition to drone strikes has accompanied increasingly negative perceptions of the US. Roughly three in four now consider the US an enemy, an increase from both 2010 and 2011.<sup>77</sup> David Kilcullen, former Senior Counterinsurgency Advisor to General David Petraeus, and Andrew M. Exum of the Center for a New American Security have explained that “[p]ublic outrage at the strikes is hardly limited to the region in which they take place . . . . Rather, the strikes are now exciting visceral opposition across a broad spectrum of Pakistani opinion in Punjab and Sindh, the nation’s two most populous provinces.”<sup>78</sup>

Pakistani officials have been very vocal, particularly in 2012, in their opposition to ongoing drone strikes in FATA. They have asserted that the strikes are unlawful, a violation of Pakistan’s sovereignty, and counterproductive.<sup>79</sup>

## CONFLICT, ARMED NON-STATE GROUPS, AND MILITARY FORCES IN NORTHWEST PAKISTAN

For decades, and including back at least to the Soviet occupation of Afghanistan in the late 1970s and 1980s, northwest Pakistan has been the site of significant unrest. When the US invaded Afghanistan in 2001, it persuaded Pakistani President Pervez Musharraf to assist its regional counter-terrorism operations,<sup>80</sup> contributing to a change in FATA dynamics.<sup>81</sup> Fighting in FATA intensified in the coming years as the Pakistani

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<sup>77</sup> *Id.* at 10.

<sup>78</sup> David Kilcullen & Andrew McDonald Exum, *Death From Above, Outrage Down Below*, N.Y. TIMES (May 17, 2009), <http://www.nytimes.com/2009/05/17/opinion/17exum.html?pagewanted=all>.

<sup>79</sup> See *Pakistan: Drone Strikes Are Violations of Sovereignty*, REUTERS (June 4, 2012), [http://www.huffingtonpost.com/2012/06/04/pakistan-drone-strikes\\_n\\_1568016.html](http://www.huffingtonpost.com/2012/06/04/pakistan-drone-strikes_n_1568016.html); see also *infra* Chapter 5: Strategic Considerations.

<sup>80</sup> See, e.g., Tony Karon, *Why Musharraf Failed*, TIME (Aug. 19, 2008)(noting that, “Pakistan was forced to support the U.S.—or at least not stand in the way of its assault on Afghanistan.”), available at <http://www.time.com/time/world/article/0,8599,1833820,00.html>; see also Daniel Schorn, *Musharraf: In the Line of Fire*, CBS NEWS: 60 MINUTES (Feb. 11, 2009)(noting that, “[t]he U.S. made it clear that [the Pakistani government’s] relationship [with the Afghan Taliban government] would have to end.”), available at [http://www.cbsnews.com/2100-18560\\_162-2030165.html](http://www.cbsnews.com/2100-18560_162-2030165.html) (60 Minutes report itself was produced by Leslie Cockburn).

<sup>81</sup> See, e.g., SHUJA NAWAZ, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, FATA- A MOST DANGEROUS PLACE 9 (2009), available at [http://csis.org/files/media/csis/pubs/o81218\\_nawaz\\_fata\\_web.pdf](http://csis.org/files/media/csis/pubs/o81218_nawaz_fata_web.pdf).

government scaled up military efforts to combat some of the armed non-state groups operating in Pakistan.<sup>82</sup>

For the past decade, violence in northwest Pakistan has involved a range of armed non-state actor groups, Pakistani forces, and US forces (through drones). The armed non-state groups reportedly operating in the region include Al Qaeda, the Quetta Shura, the Haqqani Network, the Tehrik-i-Taliban, Pakistan (TTP), and Tehrik-i-Nifaz-i-Shariat-i-Muhammadi (TNSM).<sup>83</sup> Some of these groups have been involved in attacks against Pakistani civilians and government targets, while others have engaged in battles with US and Afghan forces across the border in Afghanistan.

The Taliban has also attempted to control local FATA governance functions. As New American Foundation analyst Brian Fishman has written:

Before the arrival of the Taliban in 2001. . . . [t]he government was perceived as corrupt, [and] tribal judicial processes as unfair and too slow. The Taliban's strict interpretation of sharia did not appeal to everyone in the tribal agencies, but...Taliban courts resolved disputes between tribes and clans that had dragged on for decades. The Taliban even limited corruption among some political agents.<sup>84</sup>

However, the methods employed by the Taliban in FATA have often been extremely violent, and analysts have noted the ways in which they have weakened existing social structures. As Fishman observes:

Taliban militants have systematically undermined the tribal system, which serves as a social organizing principle and the primary system of governance in the FATA. The most overt method has been to kill the tribal elders who serve as interlocutors between the political agent and locals. The assassinations serve the dual purpose of intimidating local tribes and eliminating the tenuous links between Pakistan's central government and tribes in the FATA.<sup>85</sup>

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<sup>82</sup> See generally A. RAUF KHAN KHATTAK, FUNDAMENTALISM, MUSHARRAF AND THE GREAT DOUBLE GAME IN NORTH-WEST PAKISTAN (2011).

<sup>83</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, CIVILIANS IN ARMED CONFLICT: CIVILIAN HARM AND CONFLICT IN NORTHWEST PAKISTAN 25 (2010), available at <http://www.civicworldwide.org/storage/civicdev/documents/civic%20pakistan%202010%20final.pdf>.

<sup>84</sup> BRIAN FISHMAN, NEW AMERICAN FOUNDATION, THE BATTLE FOR PAKISTAN: MILITANCY AND CONFLICT ACROSS THE FATA AND NWFP 5 (2010), available at <http://counterterrorism.newamerica.net/sites/newamerica.net/files/policydocs/fishman.pdf>.

<sup>85</sup> *Id.* at 6 (citations omitted); see also AMNESTY INTERNATIONAL, 'AS IF HELL FELL ON ME': THE HUMAN RIGHTS CRISIS IN NORTHWEST PAKISTAN 39 (2010), available at <http://www.amnesty.org/en/library/asset/ASA33/004/2010/en/1ea0b9e0-c79d-4f0f-a43d->



As many have reported, Taliban forces have been responsible for a wide range of severe abuses against civilians in FATA. According to the Campaign for Innocent Victims in Conflict (CIVIC), an organization dedicated to promoting the right of civilian victims to amends, attacks by armed non-state actors in northwest Pakistan have “directly targeted civilians, shattering lives and spreading fear.”<sup>86</sup> Amnesty International, in a 2010 report, elaborated on abuses by the Taliban in FATA:

The Taleban’s violent conduct quickly shocked many locals, even though many people in northwest Pakistan adhered to conservative religious and cultural practices...Taleban forced men to maintain long beards; wear caps; not smoke, watch television, or listen to music; attend religious teachings; and pray five times a day at mosque. They used violence to force women to stay inside if not veiled, and to be accompanied by a male relative outside the home. . . . militants began attacking military look-out posts (also known as pickets), bridges, schools, hospitals, electricity and mobile telephone towers, markets, and shops, civilian and military convoys, anti-Taleban tribal elders, and so-called spies.<sup>87</sup>

While often linked by broad ideology, armed non-state groups in northwest Pakistan differ on issues such as operational strategies and willingness to collaborate with Pakistani authorities. The Haqqani Network and Quetta Shura, for example, have reportedly collaborated in particular ways with the Pakistani state.<sup>88</sup> Other groups have

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[98f7739ea92e/asa330042010en.pdf](#) (“[T]he Taleban aggressively moved to weaken the existing tribal structure by killing or intimidating tribal elders and government officials....Taleban forces also began to launch attacks against the government, those believed to support the government, and other political rivals.”).

<sup>86</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 83, at 15.

<sup>87</sup> AMNESTY INTERNATIONAL, *supra* note 85, at 39; see HUMAN RIGHTS WATCH, WORLD REPORT 2012: PAKISTAN 1,5 (2012), available at [http://www.hrw.org/sites/default/files/related\\_material/pakistan\\_2012.pdf](http://www.hrw.org/sites/default/files/related_material/pakistan_2012.pdf) (noting that “[t]he Taliban and affiliated groups targeted civilians and public spaces, including marketplaces and religious processions,” and they “regularly threaten media outlets over their coverage”); see also Salman Masood, *Pakistani Taliban kills 22 Shiites in Bus Attack*, N.Y. TIMES (Aug. 16, 2012), <http://www.nytimes.com/2012/08/17/world/asia/pakistani-taliban-kill-22-shiites-in-bus-attack.html>; Declan Walsh, *Taliban Block Vaccinations in Pakistan*, N.Y. TIMES (June 18, 2012), <http://www.nytimes.com/2012/06/19/world/asia/taliban-block-vaccinations-in-pakistan.html>.

<sup>88</sup> On the collaborative nature of the relationship between the Haqqani Network and the Pakistani state, see COMBATING TERRORISM CENTER AT WEST POINT, HAQQANI NETWORK FINANCING: THE EVOLUTION OF AN INDUSTRY (2012). On the collaborative relationship between Quetta Shura and Pakistan, see Matt Waldman, *The Sun in the Sky: The Relationship Between Pakistan’s ISI and Afghan Insurgents* (LSE Crisis States Research Centre Discussion Paper 18, June 2010), available at <http://www2.lse.ac.uk/internationalDevelopment/research/crisisStates/download/dp/dp18%20incl%20Dari.pdf>. For a suggestion that there is a difference between full support and an effort to influence militant organizations, see Hussein Nadim, *The Quiet Rise of the Quetta Shura*, FOREIGN POL’Y (Aug. 14, 2012), [http://afpak.foreignpolicy.com/posts/2012/08/14/the\\_quiet\\_rise\\_of\\_the\\_quetta\\_shura](http://afpak.foreignpolicy.com/posts/2012/08/14/the_quiet_rise_of_the_quetta_shura).

attacked Pakistani targets brutally, particularly after a high profile hostage crisis at the *Lal Masjid*, or Red Mosque.<sup>89</sup> In July 2007, the Pakistani military stormed the mosque, which had been occupied by an extremist cleric and thousands of followers.<sup>90</sup> The clash resulted in over 100 deaths.<sup>91</sup>

The response of the Pakistani authorities to increased militancy in FATA has involved military engagement, interspersed with failed ceasefires and peace agreements.<sup>92</sup> Pakistani forces engaged in the conflict in northwest Pakistan include the federal paramilitary force Frontier Corps (FC), the Inter-Service Intelligence Agency (ISI), and tribal *lashkars* (traditional tribal militias).<sup>93</sup> Pakistani forces have been responsible for severe rights abuses, particularly in the course of counterterrorism operations. These have included extrajudicial killings and enforced disappearances, as well as complicity in the murder of journalists.<sup>94</sup> Amnesty International has noted that “government forces are also culpable of systematic and widespread human rights violations in FATA and [the Northwest Frontier Province], both in the course of military operations and by subjecting suspected insurgents to arbitrary arrest, enforced disappearance and apparent extrajudicial execution.”<sup>95</sup> According to Human Rights Watch, “[t]he government appeared powerless to rein in the military’s abuses.”<sup>96</sup>

## UNDERSTANDING THE TARGET: FATA IN CONTEXT

FATA consists of seven agencies and six Frontier Regions, and is bordered by the Durand line and Afghanistan to the west, by Khyber Pakhtunkhwa province to the north and east, and by Balochistan province to the south.<sup>97</sup>

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<sup>89</sup> Fishman, *supra* note 84, at 3.

<sup>90</sup> *Pakistan: A Mosque Red with Blood*, ECONOMIST (July 5, 2007), <http://www.economist.com/node/9435066>.

<sup>91</sup> Syed Shoaib Hasan, *Profile: Islamabad's Red Mosque*, BBC NEWS (July 27, 2007), <http://news.bbc.co.uk/2/hi/6503477.stm>.

<sup>92</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 83, at 9.

<sup>93</sup> *Id.*

<sup>94</sup> HUMAN RIGHTS WATCH, *supra* note 87, at 1, 5.

<sup>95</sup> AMNESTY INTERNATIONAL, *supra* note 85, at 49.

<sup>96</sup> *Id.* at 2.

<sup>97</sup> There are no large cities in FATA, and only 2% of the total population of Pakistan lives within the territory. The nearest large city is Peshawar, which lies just a couple of miles outside the western border of Khyber Agency. Islamabad is located nearly 200 km southeast of Peshawar; Lahore is just over 500 km

## FEDERALLY ADMINISTERED TRIBAL AREAS & FRONTIER REGIONS



**FATA:** The epicenter of the US targeted killing program is the FATA of Pakistan, a semi-autonomous territory approximately the size of the state of Maryland that runs along the Afghanistan-Pakistan border.<sup>98</sup>

southeast of Peshawar. The largest cities in FATA are Wana in South Waziristan, and Miranshah in North Waziristan.

<sup>98</sup> According to the 1998 census data, the total area of FATA is 27,220 square kilometers. *Population Demography*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=56&Itemid=92](http://fata.gov.pk/index.php?option=com_content&view=article&id=56&Itemid=92) (last visited June 1, 2012). FATA is subject to the direct authority of the President of Pakistan. *See Administrative System*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=50&Itemid=84](http://fata.gov.pk/index.php?option=com_content&view=article&id=50&Itemid=84) (last visited June 1, 2012).

## PASHTUN CULTURE AND SOCIAL NORMS

FATA is inhabited almost entirely by Pashtuns,<sup>99</sup> a group of tribes that first settled in the area more than 1,000 years ago. The various Pashtun tribes live not only in FATA, but also in large parts of south and east Afghanistan. Altogether, there are some 25 million Pashtuns worldwide, making it one of the largest tribal groups in the world.<sup>100</sup> Because of the shared ethnicity and porous nature of the Afghanistan-Pakistan border, Pashtuns on either side regularly interact with each other.<sup>101</sup>

Pashtun social life and legal norms are framed by *Pashtunwali/Pukhtunwali* (“the way of the Pashtuns”), an ethical code and “system of customary legal norms.”<sup>102</sup> Its fundamental principles include “[h]onour of the individual and honour of groups; [f]ighting spirit and bravery; [e]quality and respect for seniors; [c]onsultation and decision making; [w]illpower and sincerity; [c]ompensation and retaliation; [g]enerosity and hospitality; [p]ride and zeal.”<sup>103</sup>

One particularly important principle of *Pashtunwali* is *melmastia* or hospitality. Such “hospitality whether individually or collectively expressed, is one of the major cognitive, tangible and coherent symbols of ‘Pukhtunwali’ to the Pathan.”<sup>104</sup> This concept, in turn, is related to the principle of *nanawatey/nanawati*, or asylum, sometimes defined as “to enter into the security of a house.”<sup>105</sup> Thus, “the defense of the guest comes under the norm of *nanawati*. . . . the guest is protected and his enemies repelled for as long as he stays.”<sup>106</sup> Together, the two concepts impose a high burden on Pashtuns to provide for

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<sup>99</sup> ANATOL LIEVEN, PAKISTAN: A HARD COUNTRY 383 (2011). The ethnic group is sometimes also referred to as Pakhtun or Pathan.

<sup>100</sup> Thomas H. Johnson and M. Chris Mason, *No Sign Until the Burst of Fire*, 32 INT’L SECURITY 41, 50 (2008).

<sup>101</sup> See, e.g., Angel Rabasa, RAND CORP., UNGOVERNED TERRITORIES 5 (2008) (testimony of Angel Rabasa at the Hearing Before the House Oversight and Government Reform Committee, S. Comm. On Nat’l Security & Foreign Affairs, 110<sup>th</sup> Cong.), available at [http://www.rand.org/pubs/testimonies/2008/RAND\\_CT299.pdf](http://www.rand.org/pubs/testimonies/2008/RAND_CT299.pdf).

<sup>102</sup> LUTZ RZEHAK, AFGHANISTAN ANALYSTS NETWORK, DOING PASHTO 3 (2011), available at <http://aan-afghanistan.com/uploads/20110321LR-Pashtunwali-FINAL.pdf>.

<sup>103</sup> *Id.* at 2.

<sup>104</sup> AKHBAR S. AHMED, MILLENNIUM AND CHARISMA AMONG PATHANS 59 (1976).

<sup>105</sup> Palwasha Kakar, *Tribal Law of Pashtunwali and Women’s Legislative Authority* 4 (Afghan Legal History Project, Harvard Law School, 2004), <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf>.

<sup>106</sup> *Id.* at 4; see also David Ignatius, *Afghan Reconciliation Strategy Should Reflect Pashtun Culture*, WASH. POST (May 16, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/14/AR2010051404320.html>.

and protect guests and those seeking asylum. The *Pashtunwali* demands “the feeding of strangers and friends, both in [sic] guest house and in the home.”<sup>107</sup> This duty to provide hospitality to all may create complications where it leads civilians to provide shelter to armed non-state actors, not out of support for their cause, but to fulfill a fundamental duty.<sup>108</sup>

## GOVERNANCE

FATA is a territory subject to the direct authority of the Pakistani President.<sup>109</sup> Laws passed by the Parliament of Pakistan have no effect in FATA unless the President so directs,<sup>110</sup> and the Pakistani courts have no jurisdiction in FATA.<sup>111</sup> Only the President of Pakistan has the power to issue and enforce new regulations, “for the peace and good governance” of FATA.<sup>112</sup> The executive’s administrative role is generally limited to overseeing development projects and punishing crime. In practice, the administration of development in FATA is carried out primarily by the Civil Secretariat FATA, in cooperation with the Secretariat of the Governor of the neighboring province of Khyber Pakhtunkhwa.<sup>113</sup> Each of the seven FATA agencies are administered by a political agent, who supervises federal development projects and handles inter-tribal disputes.<sup>114</sup>

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<sup>107</sup> Kakar, *supra* note 105, at 4.

<sup>108</sup> See, e.g., Rebecca Conway, *The Battle Against Militancy in South Waziristan*, REUTERS (June 6, 2011), <http://in.reuters.com/article/2011/06/06/idINIndia-57520420110606> (“Pashtuns are also hospitable and protective of visitors. So persuading them to go after or hand over militants can be a daunting task.”); *Honour Among Them*, ECONOMIST (DEC. 19, 2006), <http://www.economist.com/node/8345531> (noting that the Pashtun duty of *nanawatai* or sanctuary requires that asylum be provided to “whoever requests it,” and relating the story of a Pashtun woman who provided such refuge to the killer of her own son).

<sup>109</sup> *Administrative System*, *supra* note 98 (“FATA . . . remains under the direct executive authority of the President (Articles 51, 59 and 247).”).

<sup>110</sup> *Id.* (“Laws framed by the National Assembly do not apply here unless so ordered by the President.”).

<sup>111</sup> Wasseem Ahmed Shah, *FCR Reform Process Should Not Stop*, DAWN (Aug. 15, 2011), <http://dawn.com/2011/08/15/fcr-reform-process-should-not-stop/> (“[T]hrough Article 147 of the Constitution, the superior courts have been barred from exercising jurisdiction in Fata.”).

<sup>112</sup> PAKISTAN CONST. art. 247.

<sup>113</sup> *Administrative System*, *supra* note 98 (“[T]oday, FATA continues to be governed primarily through the Frontier Crimes Regulation 1901. It is administered by Governor of the KPK in his capacity as agent to the President of Pakistan, under the overall supervision of the Ministry of States and Frontier Regions in Islamabad.” (citation omitted)).

<sup>114</sup> LIEVEN, *supra* note 99, at 382.

The most important legal and social institution for the resolution of community conflicts in FATA is the *jirga*, a decision-making assembly of male elders.<sup>115</sup> *Jirgas* can vary in formality, but in essence they are group discussions in which community problems are resolved, and legal issues addressed.<sup>116</sup> The *jirga* system is based on Pashtun conceptions of justice, community input, and effective administration of local affairs.<sup>117</sup>

Frontier Crimes Regulation (FCR), a system of laws applicable only to FATA, institutionalizes both the Pashtun tribes' traditional reliance on the *jirga* as the primary mechanism for dispute resolution, and the British *maliki* patronage system used to subjugate the tribes. Under FCR, individual residents can bring disputes before selected tribal elders called *maliki* (singular: *malik*), who settle disputes in a *jirga* according to Pashtun codes.<sup>118</sup> Importantly, a *malik* is the liaison elder selected by the government, not necessarily the most authoritative elder in the tribe. Much police work is entrusted to *khassadars*, government employees administered at the local level by *maliks*,<sup>119</sup> who serve as a locally recruited auxiliary police force.<sup>120</sup>

The political agent in each FATA agency has funding and broad powers to “secure the loyalty of influential elements in the area,” i.e. by providing the *malik* with “hospitality” allowances in exchange for furthering the government’s agendas.<sup>121</sup>

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<sup>115</sup> See SHERZAMAN TAIZI, JIRGA SYSTEM IN TRIBAL LIFE (2007), available at <http://www.tribalanalysiscenter.com/PDF-TAC/Jirga%20System%20in%20Tribal%20Life.pdf>; HASSAN M. YOUSUFZAI & ALI GOHAR, TOWARDS UNDERSTANDING PUKHTOON JIRGA (2005), available at [http://peace.fresno.edu/docs/Pukhtoon\\_Jirga.pdf](http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf); see also *infra* Chapter 3: Living Under Drones.

<sup>116</sup> See LUTZ RZEHAK, AFGHANISTAN ANALYSTS NETWORK, DOING PASHTO 14 (2011), available at <http://aan-afghanistan.com/uploads/20110321LR-Pashtunwali-FINAL.pdf>; TAIZI, *supra* note 115; YOUSUFZAI & GOHAR, *supra* note 115.

<sup>117</sup> See generally RZEHAK, *supra* note 116; TAIZI, *supra* note 115; YOUSUFZAI & GOHAR, *supra* note 115.

<sup>118</sup> *Administrative System*, *supra* note 98 (“[J]irga and Maliki systems are strong and powerful local institutions for the reconciliation and resolution of local disputes and even to punish those who violate the local rules and customs.”).

<sup>119</sup> IMTIAZ GUL, THE MOST DANGEROUS PLACE: PAKISTAN’S LAWLESS FRONTIER 49 (2010).

<sup>120</sup> LIEVEN, *supra* note 99, at 455.

<sup>121</sup> Anita Joshua, *Pakistan: Undoing a Colonial Legacy*, HINDU (Sept. 5, 2011), <http://www.thehindu.com/opinion/lead/article2427237.ece>. Reforms to FCR enacted in August 2011 included some increased scrutiny of the use of funds by political agents, but it will likely only affect the most egregious incidents of bribery. Under the Pashtunwali code, hospitality is a legitimate and vitally necessary element of the *jirga*. See Nasir Iqbal, *Major Changes Made in FCR: FATA People Get Political Rights*, DAWN (Aug. 13, 2011), <http://dawn.com/2011/08/13/major-changes-made-in-fcr-fata-people-get-political-rights/>.

## ECONOMY AND HOUSEHOLDS

FATA suffers from one of highest poverty rates in the world. The per capita income is approximately US\$250 per year, with 60 percent of the population living below the national poverty line.<sup>122</sup> Undeveloped infrastructure and low per capita public development expenditure have resulted in an overall literacy rate of only 17 percent. Most of the population depends on subsistence agriculture, manual labor, small-scale local business, or remittances from relatives working abroad or in other regions of Pakistan for survival.<sup>123</sup> In North Waziristan, chromite mining operations also provide limited contract jobs near the Afghan border.<sup>124</sup> There are only 41 hospitals in the region,<sup>125</sup> and an estimated one doctor for every 6,762 residents.<sup>126</sup>

In North Waziristan, extended families often live together in compounds that contain several homes, often constructed with mud.<sup>127</sup> Most compounds include a *hujra*, which is the main gathering room for men and the area in which male family members entertain visitors.<sup>128</sup> The *hujra* is often in close proximity to buildings reserved exclusively for women and children. As a result, the shrapnel and resulting blast of a missile strike on a *hujra* can and has killed and injured women and children in these nearby structures.<sup>129</sup>

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<sup>122</sup> UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, COMBATING TERRORISM: THE UNITED STATES LACKS COMPREHENSIVE PLAN TO DESTROY THE TERRORIST THREAT AND CLOSE THE SAFE HAVEN IN PAKISTAN'S FEDERALLY ADMINISTERED TRIBAL AREAS (2008), *available at* <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-08-622/pdf/GAOREPORTS-GAO-08-622.pdf>.

<sup>123</sup> *See id.*; *Economy and Livelihood*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=54&Itemid=90](http://fata.gov.pk/index.php?option=com_content&view=article&id=54&Itemid=90) (last visited July 16, 2012).

<sup>124</sup> *See Economy and Livelihood*, *supra* note 123; *Department of Minerals*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=54&Itemid=90](http://fata.gov.pk/index.php?option=com_content&view=article&id=54&Itemid=90) (last visited July 16, 2012).

<sup>125</sup> UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 122.

<sup>126</sup> *Id.*

<sup>127</sup> Interview with Noor Behram in Islamabad, Pakistan (Mar. 9, 2012); Interview with Dawood Ishaq (anonymized name) in Islamabad, Pakistan (Mar. 8, 2012).

<sup>128</sup> *Tribal and Ethnic Diversity*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=53&Itemid=87](http://fata.gov.pk/index.php?option=com_content&view=article&id=53&Itemid=87).

<sup>129</sup> *See* JAMES H. STUHMILLER, BORDEN INSTITUTE, BLAST INJURY: TRANSLATING RESEARCH INTO OPERATIONAL MEDICINE (2008), *available at* [http://www.bordeninstitute.army.mil/other\\_pub/blast/Blast\\_monograph.pdf](http://www.bordeninstitute.army.mil/other_pub/blast/Blast_monograph.pdf); *see also* Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012) (describing how the January 23, 2009 strike on his relatives “destroyed the entire house—it destroyed the *hujra* and the house was badly damaged. . . .

## ACCESSING FATA

While FATA has been termed “the most dangerous place,”<sup>130</sup> few outside the region have a thorough understanding of life in the area. Citing security concerns, the Pakistani military has barred not only the media and virtually all international organizations from entering the region, but also most Pakistani nongovernmental organizations (NGOs) and non-FATA-resident Pakistani citizens.<sup>131</sup> While outsiders cannot get in, neither can residents easily get out. Residents are regularly subjected to extended and unplanned curfews that limit their mobility,<sup>132</sup> in some cases even preventing them from getting appropriate medical care,<sup>133</sup> or holding funerals for loved ones who have been killed.<sup>134</sup> When the curfews are lifted, travel within and outside of the region is hampered by armed non-state actor activity, and a network of military and civilian checkpoints that subject residents to intense interrogation and harassment.<sup>135</sup> Trips that would normally take only a few hours can take days, or travelers may be turned back before they reach their destination.<sup>136</sup>

The barriers to information are more than just physical. Journalists trying to report on the situation in FATA are subject to threats and pressure from the local administration, security forces, and armed non-state actors, all of whom have an interest in controlling

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[T]here was [a child] in the *hujra* as well.”); Interview with Rashid Salman (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012) (“The attack was on a *hujra* . . . there were women and children nearby. . . . Women, children, and men [died] . . .”).

<sup>130</sup> This characterization forms the title of a book on FATA by Imtiaz Gul. GUL, *supra* note 119.

<sup>131</sup> In rare instances, the Pakistani military does take prominent international journalists on one-day visits to the region. During such visits, access is restricted to pre-determined areas and journalists are under constant supervision, ostensibly for their own safety. See Interview with G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>132</sup> See INTERNATIONAL CRISIS GROUP, PAKISTAN: COUNTERING MILITANCY IN FATA 9 (2009), available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/178\\_pakistan\\_countering\\_militancy\\_in\\_fata.pdf](http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/178_pakistan_countering_militancy_in_fata.pdf). Our team had firsthand experience with the effects of curfews on mobility in FATA, as more than a dozen interviewees for this report were delayed by three days due to an unexpected curfew and reported fighting between the Taliban and Pakistani forces.

<sup>133</sup> Zulfiqar Ali & Muhammad Irfan, *Measles Surge: North Waziristan Tribesmen Face Double Whammy*, EXPRESS TRIBUNE (May 13, 2012), <http://tribune.com.pk/story/377965/measles-surge-north-waziristan-tribesmen-face-double-whammy/> (quoting Azmat Khan Dawar, a resident of Shahzad Kot in Datta Khel sub-district of North Waziristan, as saying: “despite the deteriorating condition of my [two-year old] daughter [who had measles], I was unable to take her to the hospital due to a curfew.”).

<sup>134</sup> See INTERNATIONAL CRISIS GROUP, *supra* note 132, at 9.

<sup>135</sup> *Id.*

<sup>136</sup> For a discussion of how these challenges affected our research, see *infra* Methodology section.



the information reported.<sup>137</sup> Residents of FATA and professionals who live there, including doctors and humanitarian workers, also live in fear of violence from Pakistani, American, and Taliban forces.<sup>138</sup> High-profile stories of Taliban retaliation against individuals suspected of spying for the US have generated widespread suspicion throughout Waziri communities. Most recently, in February 2012, the Taliban reportedly beheaded a 70-year-old baker suspected of spying for the US.<sup>139</sup> Earlier, in 2009, Taliban forces reportedly executed 19-year old Habibur Rehman for allegedly dropping US-provided “transmitter chips” at local Taliban and Al Qaeda houses, signaling specific targets for CIA drone strikes.<sup>140</sup> In a videotaped “confession,” Rehman admitted to “throwing the chips all over” because the money was so good.<sup>141</sup> The story bred fear and suspicion throughout Waziristan, where residents are “gripped by rumors that paid CIA informants have been planting tiny silicon-chip homing devices” that attract the drones.<sup>142</sup> Many of the Waziris we interviewed spoke of a constant fear of being tagged with a chip by a neighbor or someone else who works for either Pakistan or the US, and of the fear of being falsely accused of spying by local Taliban.<sup>143</sup>

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<sup>137</sup> See, e.g., Amirza Afridi, *FATA Journalists: The Forgotten Scribes of a Secret War*, EXPRESS TRIBUNE (Sept. 10, 2011), <http://tribune.com.pk/story/249142/fata-journalists-the-forgotten-scribes-of-a-secret-war/>; Ikram Junaidi, *FATA Journalists on Razor's Edge*, DAWN (Mar. 1, 2012), <http://dawn.com/2012/03/01/fata-journalists-on-razors-edge/> (“President [of the] Tribal Union of Journalists Safdar Hayat Dawar . . . alleged that both the military and Taliban forced mediapersons to file stories of their choice, adding [that] both didn’t care about human rights.”); Rahimullah Yusufzai, *Pakistani Journalists Under Siege*, NEWSLINE (Feb. 29, 2012), <http://www.newslinemagazine.com/2012/02/pakistani-journalists-under-siege/>.

<sup>138</sup> See, e.g., Interviews with Medical Professionals in Pakistan (2012); see also Interview with Marwan Aleem (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Umar Ashraf (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Ismail Hussain in Islamabad, Pakistan (Feb. 26, 2012); Interview with Umar Ashraf (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012).

<sup>139</sup> M. Ibrahim, *Tribesmen Condemn Taliban Killing of 70-Year-Old Baker*, CENTRAL ASIA ONLINE (Feb. 21, 2012), [http://centralasiaonline.com/en\\_GB/articles/caii/features/pakistan/main/2012/02/21/feature-01](http://centralasiaonline.com/en_GB/articles/caii/features/pakistan/main/2012/02/21/feature-01).

<sup>140</sup> Carol Grisanti & Mushtaq Yusufzai, *Taliban-Style Justice for Alleged US Spies*, MSNBC (Apr. 17, 2009), <http://worldblog.nbcnews.com/news/2009/04/17/4376383-taliban-style-justice-for-alleged-us-spies?lite>.

<sup>141</sup> *Id.*

<sup>142</sup> See, e.g., Jane Mayer, *supra* note 40; see also *infra* Chapter 3: Living Under Drones.

<sup>143</sup> Interview with Umar Ashraf (anonymized name) in Islamabad, Pakistan (2012); Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Hayatullah Ayoub (anonymized name) in Islamabad, Pakistan (Mar. 2, 2012); Interview with Noor Behram in Islamabad, Pakistan (Mar. 9, 2012); Interview with Ismail Hussain (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Mahmood Muhammad (anonymized name), and Sameer Rahman (anonymized

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name) in Islamabad, Pakistan (Feb. 29, 2012); Interview with Najeeb Saaqib (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012).

## CHAPTER 2: NUMBERS

US officials rarely mention civilian casualties by US drone strikes. When they do, they generally offer extremely low estimates in the “single digits.”<sup>144</sup> It is very difficult—given the opaqueness of the US government about its targeted killing program, and the obstacles currently faced by independent observers investigating on the ground—to determine precisely the total number of individuals killed, let alone the number of civilians who have been killed or injured in drone strikes in Pakistan. Yet the numbers of civilians killed are undoubtedly far higher than the few claimed by US officials.

At the same time, however, given the military effect of drone strikes themselves, as well as the political impact caused by reports of civilian deaths from drone strikes in Pakistan, the Taliban and other armed groups have an interest in exaggerating civilian casualty figures.<sup>145</sup> Caution, therefore, must be exercised around all claims, and underlying sources must be scrutinized. It should also be noted that such concerns about both exaggeration and under-counting are not unique to the drone strike context, and are present in many conflict and government use of force contexts around the world.

This section aims to account for the contradictory claims made about drone casualties, and to explain the obstacles to certainty about who has been or is being killed by the US. First, we consider the concerning implications of reducing all casualties to an oversimplified civilian/“militant” binary, as most government and media sources do. We then examine the biases and demonstrated unreliability of government accounts of drone strikes, and explain the various factors that produce conflicting and often unreliable reporting by major media outlets. Lastly, we detail the methods and content of the three most well-known and widely cited strike data aggregators—*The Long War Journal*, New American Foundation, and *The Bureau of Investigative Journalism* (TBIJ)—and outline why TBIJ’s data currently constitute the most reliable available source.

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<sup>144</sup> Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>; see also *infra* note 156.

<sup>145</sup> See David Rohde, *The Drone War*, REUTERS (Jan. 26, 2012), <http://www.reuters.com/article/2012/01/26/us-david-rohde-drone-wars-idUSTRE80P11I20120126> (observing, in the context of Afghanistan and Pakistan, that “militants use exaggerated reports of civilian deaths to recruit volunteers and stoke anti-Americanism”).

## TERMINOLOGY

Major media outlets in the US, Europe, and Pakistan that report on drone strikes tend to divide all those killed by drone strikes into just two categories: civilians or “militants.” This reflects and reinforces a widespread assumption and misunderstanding that all “militants” are legitimate targets for the use of lethal force, and that any strike against a “militant” is lawful. This binary distinction, in turn, feeds the political discourse around drone warfare, enabling commentators and analysts to make sweeping claims about the program’s efficacy and accuracy. The civilian/“militant” distinction is extremely problematic, however, from a legal perspective, and also because of the questionable reliability of the information on which “militant” determinations are based.

First, in most coverage of drone strike casualties, “militant” is never defined. The term’s use often implies to the reader that the killing of that person was lawful. The frequent use of the word “militant” to describe individuals killed by drones often obscures whether those killed are in fact lawful targets under the international legal regime governing the US operations in Pakistan. It is not necessarily the case that any person who might be described as a “militant” can be lawfully intentionally killed. As discussed in the Legal Analysis section, Chapter 4,<sup>146</sup> in order for an intentional lethal targeting to be lawful, a fundamental set of legal tests must be satisfied. For example, depending on the applicable legal framework (but at the very minimum): the targeted individual must either be directly participating in hostilities with the US (international humanitarian law) or posing an imminent threat that only lethal force can prevent (international human rights law). Thus, for instance, members of militant groups with which the US is not in an armed conflict are not lawful targets, absent additional circumstances (such as evidence that lethal force against that person is proportionate and necessary). Further, simply being suspected of some connection to a “militant” organization—or, under the current administration’s apparent definition, simply being a male of military age in an area where “militant” organizations are believed to operate<sup>147</sup>—is not alone sufficient to make someone a permissible target for killing.<sup>148</sup> Failure by government and media

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<sup>146</sup> See *infra* Chapter 4: Legal Analysis.

<sup>147</sup> Becker & Shane, *supra* note 144.

<sup>148</sup> Philip Alston, the former United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, has explained that a person who merely engages in “political advocacy, supplying food or shelter, or economic support or propaganda” for Al Qaeda or its affiliates is not a legitimate target under international humanitarian or human rights law, because such conduct does not rise to the level of direct participation in hostilities. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Study on Targeted Killing*, ¶ 57-69, Human Rights Council, UN Doc A/HRC/14/24/Add.6 (May 28, 2010) (by Philip Alston); see also *infra* Chapter 4: Legal Analysis.

sources to provide any additional details about most of those killed often makes it difficult to assess the legality of any particular attack.

Second, the label “militant” also fails to distinguish between so-called “high-value” targets with alleged leadership roles in Al Qaeda or anti-US Taliban factions, and low-level alleged insurgents with no apparent access or means of posing a serious or imminent threat to the US. National security analysts—and the White House itself—have found that the vast majority of those killed in drone strikes in Pakistan have been low-level alleged “militants.”<sup>149</sup> Based on conversations with unnamed US officials, a *Reuters* journalist reported in 2010 that of the 500 “militants” the CIA believed it had killed since 2008, only 14 were “top-tier militant targets,” and 25 were “mid-to-high-level organizers” of Al Qaeda, the Taliban, or other hostile groups.<sup>150</sup> His analysis found that “the C.I.A. [had] killed around 12 times more low-level fighters than mid-to-high-level” during that same period.<sup>151</sup> More recently, Peter Bergen and Megan Braun of the New America Foundation reported that fewer than 13% of drone strikes carried out under Obama have killed a “militant leader.”<sup>152</sup> Bergen and Braun also reported that since 2004, some 49 “militant leaders” have been killed in drone strikes, constituting “2% of all drone-related fatalities.”<sup>153</sup>

Third, major media outlets, the main source for public information on drone strikes, typically cite to “anonymous officials”<sup>154</sup> (generally from Pakistan) for the claim that a certain number of those killed were “militants.”<sup>155</sup> Often, little to no information is presented to support the claim. And, it is entirely unclear what, if any, investigations are carried out by the Pakistani or US governments to determine who and how many people were killed. It is these media reports that are typically compiled by drone strike data aggregators and become the basis for statistical claims about the US drone program.

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<sup>149</sup> Adam Entous, *Special Report: How the White House Learned to Love the Drone*, REUTERS (May 18, 2010), <http://www.reuters.com/article/2010/05/18/us-pakistan-drones-idUSTRE64H5SL20100518>; see Peter Bergen & Jennifer Rowland, *CIA Drone War in Pakistan in Sharp Decline*, CNN (Mar. 28, 2012), <http://www.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html>.

<sup>150</sup> Entous, *supra* note 149.

<sup>151</sup> *Id.*

<sup>152</sup> Peter Bergen & Megan Braun, *Drone is Obama’s Weapon of Choice*, CNN (Sept. 6, 2012), <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone/index.html>.

<sup>153</sup> *Id.*

<sup>154</sup> See *infra* notes 241-269 and accompanying text.

<sup>155</sup> See *infra* note 187 and accompanying text.

## UNDERREPORTING OF CIVILIAN CASUALTIES BY US GOVERNMENT SOURCES

While western media outlets are generally quick to report official US accounts of drone strikes and their attendant casualties, those government sources have proved to be unreliable. Civilian death toll figures cited by the Obama administration during the last few years have been so low<sup>156</sup> that even the most conservative nongovernmental civilian casualty estimates—including those released by think tanks such as the Foundation for Defense of Democracies<sup>157</sup> and the Jamestown Foundation<sup>158</sup>—contradict the administration's claims.<sup>159</sup> Most recently, officials in the Obama administration asserted that civilian casualties in Pakistan have been “exceedingly rare,”<sup>160</sup> perhaps even in the “single digits” since Obama took office.<sup>161</sup> These estimates are far lower than media reports, eyewitness accounts, and the US government's own anonymous leaks suggest.<sup>162</sup>

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<sup>156</sup> Most notably, the President's top counterterrorism advisor, John O. Brennan, claimed in June 2011 that the US had not killed a single civilian since August 23, 2010. *See Obama Administration Counterterrorism Strategy* (C-Span television broadcast June 29, 2011), <http://www.c-spanvideo.org/program/AdministrationCo>; see also Chris Woods, *US Claims of 'No Civilian Deaths' are Untrue*, THE BUREAU OF INVESTIGATIVE JOURNALISM (July 18, 2011), <http://www.thebureauinvestigates.com/2011/07/18/washingtons-untrue-claims-no-civilian-deaths-in-pakistan-drone-strikes/>.

<sup>157</sup> The *Long War Journal*, a project of the Foundation for Defense of Democracies, claims that drones have caused 138 civilian deaths since 2006. Bill Roggio & Alexander Mayer, *Charting the Data for US Airstrikes in Pakistan, 2004–2012*, LONG WAR JOURNAL, <http://www.longwarjournal.org/pakistan-strikes.php> (last updated Sept. 16, 2012). Bill Roggio, the *Long War Journal's* managing editor, was quoted in 2011 as saying “the C.I.A.'s claim of zero civilian casualties in a year is absurd.” Scott Shane, *C.I.A. is Disputed on Civilian Toll in Drone Strikes*, N.Y. TIMES (Aug. 11, 2011), <http://www.nytimes.com/2011/08/12/world/asia/12drones.html?pagewanted=all>.

<sup>158</sup> A study released by the Jamestown Foundation in late 2010 found that 68 people killed by drones in Pakistan since 2004 “could be clearly identified as civilians.” Bryan Glyn Williams, Matthew Fricker, & Avery Plaw, *New Light on the Accuracy of the CIA's Predator Drone Campaign in Pakistan*, 41 TERRORISM MONITOR 8 (2010).

<sup>159</sup> Colonel David M. Sullivan, an Air Force pilot with “extensive experience with both traditional and drone airstrikes” told the *New York Times* that the US figures “do[] not sound . . . like reality.” Shane, *C.I.A. is Disputed on Civilian Death Toll in Drone Strikes*, *supra* note 157.

<sup>160</sup> John O. Brennan, Assistant to the President for Homeland Security and Counterterrorism, Remarks at the Woodrow Wilson International Center for Scholars (Apr. 30, 2012), *available at* <http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy>.

<sup>161</sup> Becker & Shane, *supra* note 144.

<sup>162</sup> In 2009, an unnamed US official told the *New York Times* that the US had killed “just over 20” civilians in the two preceding years. Scott Shane, *C.I.A. to Expand Use of Drones in Pakistan*, N.Y. TIMES (Dec. 3, 2009), <http://www.nytimes.com/2009/12/04/world/asia/04drones.html?pagewanted=all>. Five months later, officials claimed the number since 2008 remained under 30. David S. Cloud, *CIA Drones Have Broader List of Targets*, L.A. TIMES (May 5, 2010),

A recent exposé in the *New York Times* partially helped to explain the White House's astonishingly low estimates by revealing that the Obama administration considers "all military-age males [killed] in a strike zone" to be "combatants . . . unless there is explicit intelligence posthumously proving them innocent."<sup>163</sup> How the US would go about gathering such posthumous evidence is unclear, in part because drone victims' bodies are frequently dismembered, mutilated, and burned beyond recognition.<sup>164</sup> And importantly, there is little evidence that US authorities have engaged in any effort to visit drone strike sites or to investigate the backgrounds of those killed.<sup>165</sup> Indeed, there is little to suggest that the US regularly takes steps even to identify all of those killed or wounded.

Consistent with an apparent lack of diligence in discovering the identities of those killed, there is also evidence that the US has tried to undermine individuals and groups that are working to discover more about those killed. In August 2011, the *New York Times* first

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<http://articles.latimes.com/2010/may/05/world/la-fg-drone-targets-20100506>. A recent article comparing statements given to the press by US officials found that the Obama administration's civilian death estimates over the last two years have vacillated between 0 and 50. See Justin Elliott, *Obama Administration's Drone Death Figures Don't Add Up*, PROPUBLICA (June 18, 2012), <http://www.propublica.org/article/obama-drone-death-figures-dont-add-up>.

<sup>163</sup> Becker & Shane, *supra* note 144.

<sup>164</sup> Newspaper accounts of drone strikes sometimes note that the bodies of strike victims are too damaged to be identified. See, e.g., *Drone Strike Kills 14 in NWA*, NEWS (July, 24, 2012), <http://www.thenews.com.pk/Todays-News-13-16297-Drone-strikes-kill-14-in-NWA> ("[B]odies were damaged beyond recognition."); Haji Mujtaba, *US Drone Attack Kills 10 in Pakistan: Officials*, REUTERS (Feb. 8, 2012), <http://in.reuters.com/article/2012/02/08/pakistan-drone-idINDEE81701N20120208> ("Almost all the men were burnt beyond recognition."); *US Drone Attack Kills 10 in North Waziristan*, DAILY TIMES (Feb. 9, 2012), [http://www.dailytimes.com.pk/default.asp?page=2012%5C02%5C09%5Cstory\\_9-2-2012\\_pg7\\_4](http://www.dailytimes.com.pk/default.asp?page=2012%5C02%5C09%5Cstory_9-2-2012_pg7_4) ("Almost all the men were burnt beyond recognition," a villager said.). Several interviewees also told us that the bodies recovered from strike sites are mutilated and burned beyond recognition. See, e.g., Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) ("[T]heir bodies were totally destroyed. . . . We can't say that it is exactly four persons [that were killed]. It could be five or six as well because they were cut into pieces. We couldn't identify them."); *supra* Chapter 3: Living Under Drones.

<sup>165</sup> US officials told the *New York Times* that the CIA and NSA investigate drone casualties by watching the aftermath of strikes by video, and "track[ing] the funerals that follow." Shane, *C.I.A. is Disputed on Civilian Death Toll in Drone Strikes*, *supra* note 157. They further "intercept cell phone calls and emails discussing who was killed." *Id.* The sufficiency of this method of post-strike investigation is questionable, given frequently poor cell signals in the area, and given that most households do not have the electricity or infrastructure to support an internet connection. See Tayyeb Afridi, *Would Social Media Bring Change to Pakistan's Tribal Area?*, KUTNEWS AUSTIN (May 25, 2011), <http://kutnews.org/post/would-social-media-bring-change-pakistan%E2%80%99s-tribal-area> (noting that social media and internet service are generally unavailable in FATA due to lack of electricity, and high cost); Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012).

reported on efforts by Pakistani human rights lawyer Shahzad Akbar and by *TBIJ*, an independent non-profit news reporting agency based at City University in London,<sup>166</sup> to document civilian drone casualties. The *Times* reported then that “anonymous US officials” accused Akbar of “working to discredit the drone program at the behest of . . . ISI, the Pakistani spy service.”<sup>167</sup> The *Times* further reported that these officials argued that the Bureau’s data were “suspect” because of links to Akbar.<sup>168</sup> *TBIJ* released a report a few months later on the US practice of targeting rescuers and funeral-goers.<sup>169</sup> Another anonymous official dismissed the report’s findings with the statement, “[l]et’s be under no illusions—there are a number of elements who would like nothing more than to malign these efforts and help Al Qaeda succeed.”<sup>170</sup> The US has never provided any evidence that might link Akbar to the ISI, or that might justify its allegation against *TBIJ*, relying instead on mainstream media sources to re-publish serious but anonymous accusations made by its own officials.<sup>171</sup>

Even before the Obama administration’s novel definition of a “combatant” was revealed,<sup>172</sup> a number of journalists who regularly cover drone strikes already recognized

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<sup>166</sup> *TBIJ* was founded to produce “high quality investigations for press and broadcast media with the aim of educating the public and the media on both the realities of today’s world and the value of honest reporting.” *About the Bureau*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/who/> (last visited Sept. 8, 2012). It was founded in 2010 with a grant from the David and Elaine Potter Foundation, a British charity dedicated to promoting “reason, education, and human rights” around the world. DAVID & ELAINE POTTER FOUNDATION, <http://www.potterfoundation.com/> (last visited Sept. 8, 2012).

<sup>167</sup> Shane, *C.I.A. is Disputed on Civilian Death Toll in Drone Strikes*, *supra* note 157.

<sup>168</sup> *Id.*

<sup>169</sup> Chris Woods & Christina Lamb, *Obama Terror Drones: CIA Tactics in Pakistan Include Targeting Rescuers and Funerals*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 4, 2012), <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>.

<sup>170</sup> Scott Shane, *US Said to Target Rescuers at Drone Strike Sites*, N.Y. TIMES (Feb. 5, 2012), <http://www.nytimes.com/2012/02/06/world/asia/us-drone-strikes-are-said-to-target-rescuers.html>.

<sup>171</sup> Scott Shane, the author of both articles, was criticized by Harvard’s Nieman Foundation for Journalism for attributing personal attacks to anonymous sources, which they said violates the *New York Times*’ ethical policies governing the use of confidential sources. John Hanrahan, *Why is the New York Times Enabling a US Government Smear Campaign Against Reporters Exposing the Drone Wars?*, NIEMAN WATCHDOG (May 11, 2012), [http://www.niemanwatchdog.org/index.cfm?fuseaction=ask\\_this.view&askthisid=00562&forumaction=post](http://www.niemanwatchdog.org/index.cfm?fuseaction=ask_this.view&askthisid=00562&forumaction=post). In written correspondence with *Nieman Watchdog*, Shane defended his use of the anonymous quotes by explaining that these anonymous comments were all he was able to get from the US, and that he has to use them in order to “include some voice from the other side.” *Id.*

<sup>172</sup> Becker, *supra* note 144.



that the sweeping official claims of all-“militant” casualties were likely untrue.<sup>173</sup> Nonetheless, most major Western and Pakistani news agencies still tend to rely on anonymous government sources and to report that strikes have killed “militants” or “suspected militants.”<sup>174</sup> Some of the media agencies update their reports later to reflect contrary information if and when it emerges, but others, including major wire services, have at times let their initial reports stand even after credible accounts of civilian casualties have subsequently come to light.<sup>175</sup>

## CONFLICTING MEDIA REPORTS

Media reports on drone strikes also often contradict one another on a range of strike details, including the nationalities of victims, the number of persons killed, and the types of structures targeted. For example, a May 24, 2012 strike in Khassokhel, Mir Ali was reported by the *Associated Press* as a strike on a “militant hideout” that killed “10

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<sup>173</sup> Interview with W.K., journalist with major western news source (anonymized initials), and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012); Interview with G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>174</sup> After the *New York Times* piece, media sources have continued to rely on anonymous government sources and tend to report that strikes have killed “militants” or “suspected militants.” See, e.g., Nasir Habib, *Suspected Drone Attack Kills 12 in Pakistan*, CNN (July 23, 2012), <http://edition.cnn.com/2012/07/23/world/asia/pakistan-drone-attack/index.html>; Salman Masood & Ihsanullah Tipu Mehsud, *15 Killed in US Drone Strike in Pakistan*, N.Y. TIMES (July 6, 2012), [http://www.nytimes.com/2012/07/07/world/asia/15-killed-in-us-drone-strike-in-pakistan-aimed-at-taliban.html?\\_r=1](http://www.nytimes.com/2012/07/07/world/asia/15-killed-in-us-drone-strike-in-pakistan-aimed-at-taliban.html?_r=1); *US Drone Strike ‘Kills At Least Five’ in North Waziristan*, EXPRESS TRIBUNE (June 26, 2012), <http://dawn.com/2012/06/26/us-drone-strike-kills-at-least-five-in-north-waziristan/> (reprinting Agence France-Presse story); *Drone Strike Kills 4 in Pakistan Ahead of Allen Talks*, CNN (June 26, 2012), <http://edition.cnn.com/2012/06/26/world/asia/pakistan-drone-strike/index.html>; *US Drone Kills Nine in North Waziristan*, NATION (July 6, 2012), <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/islamabad/06-Jul-2012/us-drone-strike-kills-4-in-nwaziristan> (reprinting Agence France-Presse story); *US Drone Kills Seven Militants in North Waziristan: Officials*, DAWN (July 29, 2012), <http://dawn.com/2012/07/29/us-drone-strike-kills-four-in-north-waziristan-2/> (reprinting Agence France-Presse story); *US Drone Strike Kills Six Militants in Pakistan: Officials*, EXPRESS TRIBUNE (July 1, 2012), <http://tribune.com.pk/story/401902/us-drone-strike-kills-six-militants-in-pakistan-officials/> (reprinting Agence France-Presse story); *US Drone Kills 12 Suspected Militants in Pakistan*, REUTERS (July 23, 2012), <http://uk.reuters.com/article/2012/07/23/uk-pakistan-drone-idUKBRE86M13G20120723>; Mushtuq Yusufzai, *US Drone Kills 8 Suspected Militants in Pakistan Hideout*, MSNBC.COM (July 1, 2012), <http://worldnews.nbcnews.com/news/2012/07/01/12504073-us-drone-kills-8-suspected-militants-in-pakistan-hideout?lite>.

<sup>175</sup> See *Conflicting Media Reports*, *infra* Chapter 2: Numbers.

alleged militants,” most of whom were “Uzbek insurgents.”<sup>176</sup> A *Reuters* wire released at around the same time reported that the strike was on “suspected Islamist militants” and killed ten people, while the *Agence France-Presse* reported that there were five “insurgents.”<sup>177</sup> Neither *Reuters* nor *AFP* made any mention of the victims’ nationality.<sup>178</sup> The *BBC*, for its part, reported that the strike was on a “house,” and that it had killed “at least eight people” of “Turkmen origin.”<sup>179</sup> Within twenty-four hours, a number of other reputable sources, both western and Pakistani, reported that the strike had actually hit a mosque during morning prayers,<sup>180</sup> and that some sources, at least, contended that the dead included local Waziri villagers.<sup>181</sup> Some western media outlets updated their reports to reflect these new allegations,<sup>182</sup> while others ignored the new information.<sup>183</sup> The *Associated Press* referenced the May 24 strike in a separate article four days later, but failed to mention the possibility that a mosque had been struck.<sup>184</sup>

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<sup>176</sup> Rasool Dawar, *Pakistan Officials Say US Drone Kills 10 Militants*, AP WORLDSTREAM (May 24, 2012).

<sup>177</sup> See Hasbanullah Khan, ‘Five Militants Killed’ by US Drone in Pakistan, *AGENCE FRANCE-PRESSE* (May 23, 2012), [http://www.google.com/hostednews/afp/article/ALeqM5h\\_NYzU3o4KUWtBouMGdzKeOhqjw?docId=CNG.12419227fd3472cf2255b588417525f8.341](http://www.google.com/hostednews/afp/article/ALeqM5h_NYzU3o4KUWtBouMGdzKeOhqjw?docId=CNG.12419227fd3472cf2255b588417525f8.341); *US Drone Kills 10 in Pakistan*, *IRISH TIMES* (May 24, 2012), <http://www.irishtimes.com/newspaper/breaking/2012/0524/breaking8.html>.

<sup>178</sup> See *supra* note 177 and accompanying text. The *AFP* article did mention, however, that in addition to “insurgents” being killed, there were reports that “a nearby mosque where three worshippers believed to be Central Asian nationals were wounded.” See Khan, *supra* note 177.

<sup>179</sup> The article did mention that “a nearby mosque was also damaged.” *US Drone ‘Kills 8’ in Pakistan*, *BBC NEWS* (May 24, 2012), <http://www.bbc.co.uk/news/world-asia-18186093>.

<sup>180</sup> See, e.g., *Drone Strike Hits Pakistan Mosque, Say Locals*, *CHANNEL 4* (May 24, 2012), <http://www.channel4.com/news/us-drone-attack-hits-pakistan-mosque>; Malik Mumtaz Khan & Mushtaq Yusufzai, *10 Killed in Drone Attack on NWA Mosque*, *NEWS* (May 25, 2012), <http://www.thenews.com.pk/Todays-News-13-14861-10-killed-in-drone-attack-on-NWA-mosque>; *US Drone Strike Hits Mosque: 10 Killed*, *NATION* (May 25, 2012), <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/25-May-2012/us-drone-strike-hits-mosque-10-killed>.

<sup>181</sup> See, e.g., *Drone Strike Hits Pakistan Mosque, Say Locals*, *supra* note 180; Khan & Yusufzai, *supra* note 180.

<sup>182</sup> See, e.g., Khan, *supra* note 177; Mushtaq Yusufzai, *Pakistan Official: US Drone Strike Hits Mosque; 10 Killed*, *MSNBC.COM* (May 23, 2012), [http://worldnews.msnbc.msn.com/\\_news/2012/05/23/11839215-pakistan-official-us-drone-strike-hits-mosque-10-killed?lite](http://worldnews.msnbc.msn.com/_news/2012/05/23/11839215-pakistan-official-us-drone-strike-hits-mosque-10-killed?lite).

<sup>183</sup> Chris Brummitt & Riaz Khan, *Pakistan Convicts Doctor Who Helped Find bin Laden*, *AP WORLDSTREAM* (May 24, 2012), <http://bigstory.ap.org/content/pakistan-convicts-doctor-who-helped-find-bin-laden-o>; Haji Mujtaba, *UPDATE 2-US Drone Strike Kills 10 in Northwest Pakistan—Officials*, *REUTERS* (May 24, 2012), <http://www.reuters.com/article/2012/05/24/us-pakistan-drone-idUSBRE84N03I20120524>.

<sup>184</sup> Rasool Dawar, *Associated Press, Pakistan: US Missiles Kill 5 Militants in NW*, *GUARDIAN* (May 28, 2012), <http://www.guardian.co.uk/world/feedarticle/10261577>.

Instead, *AP* wrote that “[t]he attack took place in a militant hideout” and that “[m]ost of those killed were Uzbek insurgents,” citing a Pakistani intelligence source.<sup>185</sup>

The discrepancies in these reports are the result of numerous factors—primarily the US government’s opaqueness, compounded by the investigation obstacles faced by independent actors. As described in Chapter 1 (Background and Context), Federally Administered Tribal Areas (FATA) is closed to all outsiders, including Pakistani citizens from outside the agencies. This means that few researchers or non-local journalists can actually visit North Waziristan to investigate drone strike casualties independently. When they do, they are often accompanied by Pakistani military forces who have an interest in controlling their access to information and influencing their reporting.<sup>186</sup>

Most journalists writing on drone strikes thus rely instead on a combination of intelligence and military leaks, government sources who refuse to go on the record by name, and, sometimes, local Waziri correspondents, or “stringers.”<sup>187</sup> All of these sources have the potential to be unreliable. First, the reliability of intelligence and security reports, especially anonymous ones, should be questioned in light of their political interests and the documented history of such officials incorrectly reporting basic facts. For instance, Pakistani security officials initially reported that the well-known March 17, 2011 drone strike in Datta Khel destroyed a “house” where “a group of some three dozen alleged Taliban fighters were meeting.”<sup>188</sup> Convincing evidence indicates that the strike was actually on an open-air bus depot, where prominent civilian tribal leaders were holding a *jirga*.<sup>189</sup> “Official” reports from the local government are also problematic because they come through the local political agent, an office

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<sup>185</sup> *Id.*

<sup>186</sup> The Pakistani military occasionally helicopters embedded journalists from American media outlets into FATA for just a few hours at a time. Interview with G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with K.N., journalist with major western news source (anonymized initials) in Islamabad, Pakistan (Mar. 5, 2012).

<sup>187</sup> Interview with G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>188</sup> *Dozens Die as US Drone Hits Pakistan Home*, AL JAZEERA (Mar. 17, 2011), <http://www.aljazeera.com/news/asia/2011/03/20113178411386630.html>. AFP also reported a security official’s claim about missiles striking a “militant training centre.” *Militants Killed in Pakistan Drone Strikes*, ABC NEWS (Mar. 17, 2011), <http://www.abc.net.au/news/2011-03-17/militants-killed-in-pakistan-drone-strikes/2654524>.

<sup>189</sup> See March 17, 2011 Strike Narrative, *infra* Chapter 3: Living Under Drones.

notoriously insulated from the community in which it sits and which many suspect will report whatever seems politically expedient at the time.<sup>190</sup>

Local stringers are in many ways a significant improvement over government sources because they have access to people and places unavailable to those outside of FATA.<sup>191</sup> Yet they also face a range of unique pressures and challenges that can limit their usefulness to journalists on the outside.<sup>192</sup> First, some locals are reluctant to speak to stringers about strikes at all, because years of living with ISI, Taliban, and US intelligence operatives in their midst have left them justifiably fearful of retaliation from all sides of the conflict. The ISI, for instance, is widely believed responsible for forcibly disappearing and illegally detaining FATA citizens suspected of “militant” ties.<sup>193</sup> Paid CIA informants are also rumored to have planted drone-targeting chips on neighbors.<sup>194</sup> Lastly, the Taliban is believed to have avenged drone strikes by killing those it believes to be US spies.<sup>195</sup> Like local contacts, stringers themselves are also under strong pressure from competing local interests, living under constant threat of violence from both armed non-state actors and the Pakistani military if they fail to report information favorable to one side or the other.<sup>196</sup> Indeed, the Tribal Union of Journalists FATA

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<sup>190</sup> Interview with Samina Ahmad, International Crisis Group, in Islamabad, Pakistan (Feb. 28, 2012); Interview with W.K., journalist with major western news source (anonymized initials) and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012); Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012).

<sup>191</sup> Interview with journalists W.K., journalist with major western news source (anonymized initials) and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012).

<sup>192</sup> *Id.*; Interview with journalist G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with journalist K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>193</sup> See, e.g., Waseem Ahmad Shah, *Illegal Detentions: Court Tells Army to Rein In Errant Agencies*, DAWN (Apr. 13, 2011), <http://dawn.com/2012/04/13/illegal-detentions-court-tells-army-to-rein-in-errant-agencies/>; Declan Walsh, *Court Challenges Put Unusual Spotlight on Pakistani Spy Agency*, N.Y. TIMES (Feb. 6, 2012), <http://www.nytimes.com/2012/02/07/world/asia/isi-in-pakistan-faces-court-cases.html?pagewanted=all>.

<sup>194</sup> See Beyond Killing: Civilian Impacts of US Drone Strike Practices, *infra* Chapter 3: Living Under Drones.

<sup>195</sup> See, e.g., Taliban Shoot Dead Four ‘US Spies’ in North Waziristan, DAWN (Mar. 21, 2011), <http://dawn.com/2011/03/21/taliban-shoot-dead-four-us-spies-in-north-waziristan/>.

<sup>196</sup> See, e.g., Amirzada Afridi, *FATA Journalists: The Forgotten Scribes of a Secret War*, EXPRESS TRIBUNE (Sept. 10, 2011), <http://tribune.com.pk/story/249142/fata-journalists-the-forgotten-scribes-of-a-secret-war/>; Ikram Junaidi, *FATA Journalists on Razor’s Edge*, DAWN (Mar. 1, 2012), <http://dawn.com/2012/03/01/fata-journalists-on-razors-edge/> (“President [of the] Tribal Union of Journalists Safdar Hayat Dawar . . . alleged that both the military and Taliban forced media persons to file stories of their choice, adding [that] both didn’t care about human rights.”); Rahimullah Yusufzai, *Pakistani Journalists Under Siege*, NEWSLINE (Feb. 29, 2012), <http://www.newsline magazine.com/2012/02/pakistani-journalists-under-siege/>; Micah Zenko, *The*

reports that at least ten journalists or stringers have been killed since 2005,<sup>197</sup> and that those still working in the area are subject to intimidation and coercion.<sup>198</sup>

While many outside journalists are conscious of these pressures on their local sources and of the hidden agenda behind government reports, they have very limited options for getting information out of FATA.<sup>199</sup> Corroborating or challenging the divergent reports they receive from officials, stringers, and locals is difficult. As a result, journalists often find themselves in the position of having to choose between reporting “official” casualty figures that they consider untrustworthy, or higher numbers from civilian sources that they may be unable to corroborate.<sup>200</sup> Those who work for major news outlets and wire services tend to spend more time embedded with military and intelligence officials and are thus more likely to report “official” accounts.<sup>201</sup> Those who are not escorted into FATA by the military rely more on locals and stringers.<sup>202</sup> The result is that different journalists with different contacts get different stories, make different decisions about who to trust, and frequently end up publishing conflicting accounts of each strike.

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*Courage of Pakistani Journalists*, ATLANTIC (Sept. 20, 2011), <http://www.theatlantic.com/international/archive/2011/09/the-courage-of-pakistani-journalists/245358/>.

<sup>197</sup> *Tribal Union of Journalists FATA Martyred*, TRIBAL UNION OF JOURNALISTS FATA, <http://www.tuj.com.pk/martyred.html> (last visited May 25, 2012).

<sup>198</sup> See, e.g., *Government Urged to Ensure Security of Journalists in FATA*, DAILY TIMES (Mar. 2, 2012), [http://www.dailytimes.com.pk/default.asp?page=2012%5Co3%5Co2%5Cstory\\_2-3-2012\\_pg7\\_19](http://www.dailytimes.com.pk/default.asp?page=2012%5Co3%5Co2%5Cstory_2-3-2012_pg7_19).

<sup>199</sup> Interview with journalists W.K., journalist with major western news source (anonymized initials) and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012); Interview with journalist G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012).

<sup>200</sup> Interview with journalists W.K., journalist with major western news source (anonymized initials) and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012); Interview with journalist G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with journalist K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>201</sup> Interview with journalist G.Z., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 7, 2012); Interview with journalist K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

<sup>202</sup> Interview with journalists W.K., journalist with major western news source (anonymized initials) and journalists with Pakistani news outlets, in Islamabad, Pakistan (Mar. 3, 2012); Interview with journalist K.N., journalist with major western news source (anonymized initials), in Islamabad, Pakistan (Mar. 5, 2012).

## OTHER CONSIDERATIONS THAT MAY LEAD TO CONFLICTING REPORTS

### LIMITED FIRST-HAND KNOWLEDGE

Even when journalists are able to get information directly from local residents or stringers, there is no guarantee that those locals actually know the full extent of the casualties around them, even among their own neighbors. Many traditional Waziri families live in large, high-walled, multi-family compounds in which women and young children work, eat, and sleep separately from men.<sup>203</sup> It is generally unacceptable to ask direct questions to a male family member about female relatives, or to photograph women.<sup>204</sup> As a result, male community members may not know details about one another's families or households, including the exact number of people who live there, and so may not be able to say how many people were inside a home before it was hit by a drone strike. The result is that neighbors and second-hand witnesses may, in some cases, underreport drone strike casualties simply because they do not know the full extent of a given strike's toll.

### UNREPORTED STRIKES

At the time of this writing, the US is believed to have conducted 344 total strikes in Pakistan, 52 between June 17, 2004 and January 2, 2009 (under President Bush),<sup>205</sup> and 292 strikes between January 23, 2009 and September 2, 2012 (under President Obama).<sup>206</sup> Those numbers, which *TBIJ* has pieced together from available media

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<sup>203</sup> See, e.g., Interview with Ibrahim Shah, in Islamabad, Pakistan (May 9, 2012) (telling us he lives in a large extended family compound of 50-60 relatives).

<sup>204</sup> *Population Demography*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=56&Itemid=92](http://fata.gov.pk/index.php?option=com_content&view=article&id=56&Itemid=92) (last visited Sept. 1, 2012) (noting that in FATA "tribal custom forbids the disclosure of information about women to outsiders").

<sup>205</sup> *The Bush Years: Pakistan Strikes 2004-2009*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/the-bush-years-2004-2009/> (last visited Sept. 1, 2012).

<sup>206</sup> *Covert War On Terror—The Data*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/category/projects/drone-data/> (last visited Sept. 16, 2012).

reports,<sup>207</sup> may underestimate the total number of strikes, especially during the early years of the drone program.

Between 2004 and 2007, the Pakistani government under President Musharraf attempted to hide the fact of US strikes (and Pakistan's role in them) by contending that the strikes were either Pakistani military operations, car bombs, or accidental explosions.<sup>208</sup> Many of those claims were contradicted within days or weeks by anonymous leaks and eyewitness accounts,<sup>209</sup> and by local journalists gathering evidence at the scenes of the attacks.<sup>210</sup> In one unusually well-publicized incident, an

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<sup>207</sup> *Covert US Strikes in Pakistan, Yemen, and Somalia—Our Methodology*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/> (last visited Sept. 1, 2012).

<sup>208</sup> Gareth Porter, *Why Pakistani Military Demands a Veto on Drone Strikes*, INTERPRESS SERVICE (Aug. 16, 2011), <http://ipsnews.net/news.asp?idnews=56873>; see also *Accidental Blast While Assembling Bomb Kills Eight*, GULF NEWS (Nov. 6, 2005) (reporting Pakistani army officials' claim that the November 5, 2005 strike was caused by militants who "set off a blast while making bombs at their compound"), <http://gulfnews.com/news/world/pakistan/accidental-blast-while-assembling-bombs-kills-eight-1.443552>; *CIA Drone Kills al-Qaeda Operative*, MSNBC.COM (May 14, 2005) (reporting Pakistani officials claim May 8, 2005 strike was car bomb explosion), [http://www.msnbc.msn.com/id/7847008/ns/us\\_news-security/t/cia-drone-kills-al-qaida-operative/#.T9VqdeJYvAs](http://www.msnbc.msn.com/id/7847008/ns/us_news-security/t/cia-drone-kills-al-qaida-operative/#.T9VqdeJYvAs); Anwarullah Khan, *82 Die as Missiles Rain on Bajaur: Pakistan Owns Up to Strike; Locals Blame US Drones*, DAWN (Oct. 31, 2006) (reporting Pakistani officials insist October 30, 2006 strike on a *madrassa* that killed 69 children was a Pakistan Army operation), <http://archives.dawn.com/2006/10/31/top1.htm>; Ismail Khan, *Senior Al Qaeda Commander Killed*, DAWN (Dec. 3, 2005) (reporting Pakistani authorities claim December 1, 2005 strike was "the result of an explosion inside the house"), <http://archives.dawn.com/2005/12/03/top4.htm>; Iqbal Khattak, *Nek Killed in Missile Strike*, DAILY TIMES (June 19, 2004) (reporting the Pakistani military and intelligence sources claim to have carried out June 14, 2004 strike using "US-provided night-capable helicopter"), [http://www.dailytimes.com.pk/default.asp?page=story\\_19-6-2004\\_pg1\\_1](http://www.dailytimes.com.pk/default.asp?page=story_19-6-2004_pg1_1); *US Drone Attack? It Was Us, Says Pakistan Army*, REUTERS (Jan. 19, 2007) (reporting Pakistani military insists January 19, 2007 strike was conducted by "helicopter gunships"), <http://www.reuters.com/article/2007/01/19/us-pakistan-usa-idUSSP30752020070119>.

<sup>209</sup> See, e.g., Ismail Khan, *supra* note 208 (contradicting official reports to quote witnesses saying that both Nov. 5, 2005 and Dec. 1, 2005 strikes were drone operations, and that the first had killed a woman and children); Ismail Khan & Dilawar Khan Wazir, *Night Raid Kills Nek, Four Other Militants: Wana Operation*, DAWN (Jun. 19, 2004) (speculating that June 18, 2004 strike may have been a targeted missile from a "spy drone"), <http://archives.dawn.com/2004/06/19/top1.htm>; Dana Priest, *Surveillance Operation in Pakistan Located and Killed al Qaeda Official*, WASH. POST (May 15, 2005) (revealing that May 8, 2005 strike was conducted by a CIA Predator drone), <http://www.washingtonpost.com/wp-dyn/articles/A60743-2005May15.html>.

<sup>210</sup> Local FATA journalist Hayatullah Khan was the first to gather conclusive evidence of US involvement in a drone strike when he photographed Hellfire missile shrapnel in the rubble of a December 2005 strike that killed two children. See *A Journalist in the Tribal Areas*, FRONTLINE (Oct. 3, 2006), <http://www.pbs.org/wgbh/pages/frontline/taliban/tribal/hayatullah.html>; see also *House-Owner Called After Missile Attack*, DAWN (Dec. 5, 2005), <http://archives.dawn.com/2005/12/05/top3.htm>. Khan was abducted four days afterward on December 5, 2005, and his body dumped in a ditch six months later with

official in the Musharraf regime reportedly asserted that the Pakistani military had conducted a strike on a religious school in Bajaur that killed over 80 people, including 69 children.<sup>211</sup> One of Musharraf's aides reportedly told a Pakistani media source that the government believed "it would be less damaging" to claim it had killed 82 people than it would be to reveal that it had agreed to let the US carry out strikes on Pakistani soil.<sup>212</sup> Musharraf's administration was reported to admit that the strike had been a US operation only after political backlash from the strike turned out to be much greater than the government had anticipated.<sup>213</sup> Considering the Musharraf government's apparent efforts to cover up the US's role in drone strikes, and the fact that drones often target remote or isolated areas, it is possible that other strikes from the 2004-2007 period have yet to be identified.

Our team's fieldwork in Pakistan documented at least one incident that might fit this pattern. We interviewed 15 Waziris, including four survivors and four more who visited the strike site within hours or days of the attack, who described to us what they believed to have been a drone strike that took place on June 10, 2006.<sup>214</sup> The attack took place in

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gunshot wounds to the back of the head and government-issued handcuffs on his wrists. *See A Journalist in the Tribal Areas*, *supra*. Many major Pakistani news outlets speculated that the Musharraf regime abducted and killed Khan in retaliation for exposing their fabrications and complicity with US strikes. *See* Cable from Ambassador Ryan C. Crocker, US Embassy Islamabad, Subject: Fata: Missing Pakistani Journalist Found Dead in Waziristan (Jun. 20, 2006), *available at* <http://www.cablegatesearch.net/cable.php?id=06ISLAMABAD11675&q=hayatullah%20khan>.

<sup>211</sup> Anwarullah Khan, *supra* note 208; *see* Yousuf Ali, *Most Bajaur Victims Were Under 20*, NEWS (Nov. 5, 2006), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=4043&Cat=13&dt=11/5/2006>; Porter, *supra* note 208.

<sup>212</sup> *Americans Bombed the Bajaur Madrassa*, DAILY TIMES (Nov. 27, 2006), [http://www.dailytimes.com.pk/default.asp?page=2006%5C11%5C27%5Cstory\\_27-11-2006\\_pg1\\_3](http://www.dailytimes.com.pk/default.asp?page=2006%5C11%5C27%5Cstory_27-11-2006_pg1_3) (quoting Musharraf aide).

<sup>213</sup> *Id.*; Porter, *supra* note 208.

<sup>214</sup> *See* Interview with Yaser Abdullah (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Masood Afwan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012); Interview with Marwan Aleem (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Aftab Gul Ali (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Khalil Arshad (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Umar Ashraf (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Ajmal Bashir (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Mohsin Haq (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Dawood Ishaq (anonymized name) in Islamabad, Pakistan (Mar. 8, 2012); Interview with Maher Jabbar (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Dannesh Jameel (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Shahbaz Kabir (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Haidar Nauman (anonymized name) in Islamabad, Pakistan (Mar. 9, 2012); Interview with Noor Shafeeq (anonymized name) in Islamabad, Pakistan (Feb. 26, 2012); Interview with Arman Yousef (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).



the early morning of June 10 on a workers' bunkhouse in a chromite mining camp in the mountains near Datta Khel. In the bunkhouse, a large group of young miners and woodcutters were asleep. Missiles killed 22 and badly injured four. The press described the incident as a helicopter gunship attack carried out by the Pakistani military,<sup>215</sup> based on statements by Pakistani officials claiming responsibility.<sup>216</sup> The survivors and those killed were asleep before the first explosion and knocked unconscious shortly thereafter. In light of the classification by media sources (helicopter strike), the lack of available physical evidence given the remoteness of the location, the lack of eyewitness testimony to the source of the strike, and the significant passage of time since the attack, our research team could not determine whether this incident was a US drone strike or Pakistani helicopter strike, and so chose not to include this event as a drone strike.<sup>217</sup> Nonetheless, given the extensive loss of life, this incident should be investigated thoroughly by competent authorities.

## STRIKE DATA AGGREGATORS

The three most well-known and widely quoted sources of aggregated strike data are the *Year of the Drone* project by the New America Foundation think tank;<sup>218</sup> *The Long War*

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<sup>215</sup> The Pakistani military asserted that the June 10, 2006 attack was carried out by "4 gunship helicopters and artillery," and that "explosive material in [the building] started to explode," killing the "militants" inside. *Security Forces Kill 20 Militants Near Pak-Afghan Border*, PAK TRIBUNE (June 11, 2006), <http://paktribune.com/news/Security-forces-kill-20-militants-near-Pak-Afghan-border-146479.html>.

<sup>216</sup> That Pakistani authorities accepted responsibility for the attack should not be viewed as dispositive. In several instances between 2005 and 2007, missile strikes initially claimed by authorities to have been executed by the Pakistani military were later shown to have been drone strikes. See, e.g., David Rohde & Mohammed Khan, *Ex-Fighter for Taliban Dies in Strike in Pakistan*, N.Y. TIMES (June 19, 2004), <http://www.nytimes.com/2004/06/19/international/asia/19STAN.html>; see also Ismail Khan, *Senior Al Qaeda Commander Killed*, DAWN (Dec. 2, 2005), <http://archives.dawn.com/2005/12/03/top4.htm>; Ishtiaq Mahsud, *Tribe: US, Not Pakistan, Hit Village*, WASH. POST (Jan. 19, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/19/AR2007011900472.html>; *3 Killed in Mysterious Explosion in North Waziristan: Tribesmen Warn of Ending Peace Deal*, DAILY TIMES (Apr. 28, 2007), [http://www.dailytimes.com.pk/default.asp?page=2007%5C04%5C28%5Cstory\\_28-4-2007\\_pg7\\_1](http://www.dailytimes.com.pk/default.asp?page=2007%5C04%5C28%5Cstory_28-4-2007_pg7_1).

<sup>217</sup> One piece of evidence requiring further research is the observation, by one interviewee, that a piece of shrapnel bore British identification. Arman Yousef (anonymized name), who lost his son in the incident, told our researchers, "[w]e collect parts of the missiles. When my son was killed, I saw a part of the missile—it said 'Made in Britain.'" Interview with Arman Yousef (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>218</sup> *About the Long War Journal*, LONG WAR JOURNAL, <http://www.longwarjournal.org/about.php> (last visited July 31, 2012).

*Journal*, a blog and project of the Foundation for Defense of Democracies;<sup>219</sup> and *TBIJ*, a London-based journalism non-profit.<sup>220</sup> Each of these organizations, in seeking to track and aggregate strikes and their impacts, fulfills an important public transparency role. Their data have been invaluable in public debates about drone and targeted killing policies. Given the US government's failure to provide even basic facts about the strikes, these non-governmental sources are essential.

Nevertheless, the data sets of aggregator organizations have limits. Because consistently reliable information on drone strikes is impossible to come by, none of the online databases that track drone strike reports can provide wholly accurate data either. All three aggregators state that their data is sourced from largely the same universe of publicly available press reports in major western and Pakistani media outlets.<sup>221</sup>

Nonetheless, to determine how many people died in a particular strike and determine whether they were civilians or "militants," each organization must navigate a morass of contradictory press accounts and opaque intelligence reports, and make several subjective decisions about which sources are more reliable than others. Each uses a different set of categories and labels to classify the victims. *Long War Journal* uses "civilians" or "Taliban/Al Qaeda," or "leaders and operatives from Taliban, Al Qaeda,

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<sup>219</sup> *About the Bureau*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/who/> (last visited Jul. 31, 2012).

<sup>220</sup> *The Year of the Drone*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones> (last visited July 31, 2012); Pakistan Body Count also tracks suicide bombings and drone attacks. See PAKISTAN BODY COUNT, <http://www.pakistanbodycount.org/>.

<sup>221</sup> See, e.g., *Covert Strikes in Pakistan, Yemen, and Somalia—Our Methodology*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/> (sources include, *inter alia*, research publications, governmental documents, and media sources that include "CNN, MSNBC, ABC News, Fox News, Reuters, the BBC, Associated Press, the Guardian, the Telegraph, the Independent, TIME, the Wall Street Journal, the Washington Post, the New York Times, the Los Angeles Times, the Nation, the Atlantic, Salon, Xinhua, Army Times, Navy Times, Bloomberg, AFP, NPR, Al Jazeera, and Al Arabiya"); Roggio & Mayer, *supra* note 157 (stating that *Long War Journal* data is obtained from "press reports from the Pakistani press (*Daily Times*, *Dawn*, *Geo News*, *The News*, and other outlets), as well as wire reports (*AFP*, *Reuters*, etc.), as well as reporting from the *Long War Journal*"); *The Year of the Drone: An Analysis of US Drone Strikes in Pakistan, 2004-2012*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones> (last visited Sept. 16, 2012) (stating that its database "draws only on accounts from reliable media organizations with deep reporting capabilities in Pakistan, including the New York Times, Washington Post, and Wall Street Journal, accounts by major news services and networks—the Associated Press, Reuters, Agence France-Presse, CNN, and the BBC—and reports in the English-language newspapers in Pakistan—the *Daily Times*, *Dawn*, the *Express Tribune*, and the *News*—as well as those from Geo TV, the largest independent Pakistani news network.").

and allied extremist groups.”<sup>222</sup> New America Foundation uses “militant,” “unknown” or “civilians.”<sup>223</sup> *TBIJ* uses total killed or injured and “civilians,” with no express category for non-civilians.<sup>224</sup> Each aggregator places different weight on different types of primary sources. As a result, the three data aggregators each come to different conclusions about who has been and is being killed by US drone strikes in Pakistan.

For instance, New America Foundation’s *Year of the Drone* project reports that somewhere between 1,584 and 2,716 “militants” have been killed in Pakistan since 2004, and between 152 and 191 civilians (and 130-268 “unknowns”).<sup>225</sup> *The Long War Journal* (which does not keep data for 2004 and 2005) reports that drones have killed 2,396 “leaders and operatives from Taliban, Al Qaeda, and allied extremist groups” (which we will refer to as “Taliban/Al Qaeda”) in Pakistan since 2006, and 138 civilians.<sup>226</sup> With the exception of high-value named targets (which are few<sup>227</sup>), neither provides information about the “militant” victims that would indicate whether they were actually lawful targets under international law. *TBIJ*, which does not use the “militant” label in its data sets, reports that drones have killed between 474 and 881 Pakistani civilians since 2004, out of 2,562 to 3,325 total deaths.<sup>228</sup>

To explain the discrepancies in these figures, we briefly analyze in the section below the methodologies used by each of the three strike-tracking sources to cull and categorize strike reports.

### THE LONG WAR JOURNAL

*The Long War Journal*, a project run by the Foundation for the Defense of Democracies, claims that 138 civilians have been killed between 2006 and the present. Unlike the New America Foundation and *TBIJ*, discussed below, *The Long War Journal* does not make its data available in a strike-by-strike format. Instead, it publishes blog posts about new

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<sup>222</sup> Roggio & Mayer, *supra* note 157.

<sup>223</sup> *The Year of the Drone*, *supra* note 221.

<sup>224</sup> *Covert War on Terror—The Data*, *supra* note 206.

<sup>225</sup> *The Year of the Drone*, *supra* note 221.

<sup>226</sup> Roggio & Mayer, *supra* note 157. *Long War Journal* does not keep drone strike data for the years 2004 and 2005. *Id.*

<sup>227</sup> See Bergen & Rowland, *supra* note 152; Entous, *supra* note 149.

<sup>228</sup> *Covert War on Terror—The Data*, *supra* note 206.

strikes soon after they are initially reported, and maintains a series of regularly updated statistical graphs.<sup>229</sup> The strike information in its blog posts is based on reports by major media outlets and on the *Journal's* own investigations,<sup>230</sup> which appear to consist primarily of conversations with unnamed “US intelligence officials.”<sup>231</sup> One analysis of drone tallies asserts that *The Long War Journal's* methodology places great weight on US intelligence sources, especially when distinguishing between Taliban/Al Qaeda and civilian casualties.<sup>232</sup> According to *The Long War Journal's* managing editor, Bill Roggio, for the purposes of categorizing strike deaths, all those killed are counted as “Taliban/Al Qaeda” unless “they are identified as civilians.”<sup>233</sup>

This raises two major concerns about the accuracy of *The Long War Journal's* statistical claims. First, because *The Long War Journal* does not make its data visible in a strike-by-strike format, it is impossible to tell whether and where its editors have logged credibly reported civilian casualties, or to tell whether they update older strike data regularly to reflect new information as it comes to light. The only strike-specific information available on its website comes in the form of blog posts written by managing editor Bill Roggio.<sup>234</sup> Those posts usually appear within twenty-four hours of each new strike, citing initial reports from major media outlets that almost invariably assert that only “Taliban/Al Qaeda” were killed.<sup>235</sup> Second, *The Long War Journal's*

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<sup>229</sup> See LONG WAR JOURNAL, [www.longwarjournal.org](http://www.longwarjournal.org).

<sup>230</sup> Roggio & Mayer, *supra* note 157.

<sup>231</sup> See, e.g., Bill Roggio, *Latest US Drone Strike Kills 10 ‘Militants’ in South Waziristan*, LONG WAR JOURNAL (June 3, 2012), [http://www.longwarjournal.org/archives/2012/06/latest\\_us\\_drone\\_strike.php](http://www.longwarjournal.org/archives/2012/06/latest_us_drone_strike.php); Bill Roggio, *North Waziristan Drone Strike Kills 4 ‘Militants’*, LONG WAR JOURNAL (June 13, 2012), [http://www.longwarjournal.org/archives/2012/06/us\\_drone\\_strike\\_kill\\_7.php](http://www.longwarjournal.org/archives/2012/06/us_drone_strike_kill_7.php); Bill Roggio, *US Drones Kill 15 in North Waziristan*, LONG WAR JOURNAL (June 4, 2012), [http://www.longwarjournal.org/archives/2012/06/us\\_drone\\_kill\\_15\\_in.php](http://www.longwarjournal.org/archives/2012/06/us_drone_kill_15_in.php).

<sup>232</sup> Avery Plaw, Matthew S. Fricker, & Brian Glyn Williams, *Practice Makes Perfect? The Changing Civilian Toll of CIA Drone Strikes in Pakistan*, 5 PERSPECTIVES ON TERRORISM 51, 58 (Dec. 2011) (observing that “the *Long War Journal* relies heavily on U.S. intelligence sources.”). Plaw, Fricker, and Williams have generated numerous reports using their own strike database, currently known as the UMassDRONE project, but have not made it available to the public. See, e.g., *id.*; Williams, Fricker, & Plaw, *supra* note 158, at 8.

<sup>233</sup> See Sharon Weinberger, *Pakistani Scholar Disputes US Drone Death Tallies*, AOL NEWS (May 19, 2010) (quoting Bill Roggio as saying that “I’m using the opposite approach . . . I only count when they are identified as civilians.”), <http://www.aolnews.com/2010/05/19/pakistani-scholar-disputes-low-drone-death-tallies/>.

<sup>234</sup> See LONG WAR JOURNAL, [www.longwarjournal.org](http://www.longwarjournal.org).

<sup>235</sup> See, e.g., Roggio, *Latest US Drone Strike Kills 10 ‘Militants’ in South Waziristan*, *supra* note 231; Roggio, *North Waziristan Drone Strike Kills 4 ‘Militants’*, *supra* note 231; Roggio, *US Drones Kill 15 in North Waziristan*, *supra* note 231; Bill Roggio, *US Drones Strike in Miramshah’s Bazaar, Kill 3*

practice of labeling all drone victims as “Taliban/Al Qaeda” unless they are specifically identified as civilians,<sup>236</sup> combined with its reliance on demonstrably untrustworthy government reports corroborated by comments from anonymous US intelligence sources, raises questions about whether its drone strike statistics underestimate civilian deaths.

## NEW AMERICA FOUNDATION

New America Foundation’s *Year of the Drone* project—the most widely cited in the US of the three strike-tracking sources—currently estimates that 152 to 191 civilians have been killed by drones since 2004, only slightly higher than *The Long War Journal*’s estimate.<sup>237</sup> One of the New America Foundation’s directors, Peter Bergen, has made headlines recently as a national security analyst for CNN, using New America Foundation’s data to argue that civilian death rates due to drone strikes have dropped to single-digit percentages,<sup>238</sup> and that drones have caused no civilian deaths in Pakistan in 2012.<sup>239</sup> Scrutiny of both assertions has since revealed omissions and inconsistencies in New America Foundation’s dataset, calling its widely publicized conclusions into question.<sup>240</sup>

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*Militants*, LONG WAR JOURNAL (June 14, 2012),  
[http://www.longwarjournal.org/archives/2012/06/us\\_drones\\_strike\\_in\\_1.php](http://www.longwarjournal.org/archives/2012/06/us_drones_strike_in_1.php).

<sup>236</sup> Weinberger, *supra* note 233 (quoting *Long War Journal* analyst Bill Roggio).

<sup>237</sup> Civilian death toll estimates are a recent addition to the *Year of the Drone* website, which, until August 2012, tallied all drone-related deaths as “militant” and “others.” See *Year of the Drone*, *supra* note 221 (as it appeared through August 12, 2012) (copy on file with authors).

<sup>238</sup> Bergen, along with fellow New America Foundation analyst Jennifer Rowland, stated in March 2012 that the 2011 civilian drone strike casualty rate in Pakistan was 7%. Peter Bergen & Jennifer Rowland, *CIA Drone War in Pakistan in Sharp Decline*, CNN (Mar. 28, 2012), [http://us.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html?hpt=op\\_t1](http://us.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html?hpt=op_t1). In June 2012, Bergen and Rowland said the rate was actually 5.5%, but did not point out the adjustment or explain how they arrived at the lower figure. Peter Bergen & Jennifer Rowland, *Obama Ramps Up Covert War in Yemen*, CNN (June 12, 2012), <http://edition.cnn.com/2012/06/11/opinion/bergen-yemen-drone-war/index.html?iref=allsearch>. In July 2012, they raised the 2011 casualty rate figure to 6%, but again did not explain the adjustment. Peter Bergen & Jennifer Rowland, *Drones Decimating Taliban in Pakistan*, CNN (July 4, 2012), <http://edition.cnn.com/2012/07/03/opinion/bergen-drones-taliban-pakistan/index.html?iref=allsearch>.

<sup>239</sup> See, e.g., Peter Bergen & Jennifer Rowland, *Civilian Casualties Plummet in Drone Strikes*, CNN (July 14, 2012), <http://edition.cnn.com/2012/07/13/opinion/bergen-civilian-casualties/index.html>.

<sup>240</sup> See Conor Friedersdorff, *CNN’s Bogus Drone-Deaths Graphic*, ATLANTIC MONTHLY (July 6, 2012), <http://www.theatlantic.com/politics/archive/2012/07/cnns-bogus-drone-deaths-graphic/259493/>; see

First, contrary to claims made on its website and in its publications, New America Foundation's strike data do not appear to be "updated regularly" to include the most up-to-date information about the number and identities of victims killed in drone strikes.<sup>241</sup> Several of New America's strike descriptions going back to 2006 fail to incorporate a number of credible (and in some cases, high-profile) reports of civilian casualties. For example, New America Foundation reports that a strike on October 31, 2011 killed three to four "militants," and makes no mention of "civilian" or "unknown" casualties.<sup>242</sup> That strike, however, was widely reported to have killed two civilian teenagers, 16-year old Tariq Aziz and his cousin Waheed Khan—a fact that has been reported in a variety of western and Pakistani media outlets including *BBC*, *ABC*, *The Guardian*, and *Dawn*.<sup>243</sup> Similarly, the New America Foundation website reports that a June 15, 2011 strike on a vehicle outside Tapi village killed three to eight "militants," and makes no mention of "civilian" or "other" casualties.<sup>244</sup>

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also Conor Friedersdorff, *Flawed Analysis of Drone Strike Data is Misleading Americans*, ATLANTIC MONTHLY (July 18, 2012), <http://www.theatlantic.com/politics/archive/2012/07/flawed-analysis-of-drone-strike-data-is-misleading-americans/259836/> (citing to primary research carried out by Sarah Knuckey and Christopher Holland, contributors to this report); Chris Woods, *Analysis: CNN Expert's Civilian Drone Death Numbers Don't Add Up*, THE BUREAU OF INVESTIGATIVE JOURNALISM (July 17, 2012), <http://www.thebureauinvestigates.com/2012/07/17/analysis-cnn-experts-civilian-drone-death-numbers-dont-add-up/>.

<sup>241</sup> Peter Bergen & Jennifer Rowland, *CIA Drone War in Pakistan in Sharp Decline*, CNN (Mar. 28, 2012), [http://us.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html?hpt=op\\_t1](http://us.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html?hpt=op_t1) (claiming website is "up-to-date"); PETER BERGEN & KATHERINE TIEDEMANN, *THE YEAR OF THE DRONE: AN ANALYSIS OF US DRONE STRIKES IN PAKISTAN, 2004-2010* (2010), available at <http://counterterrorism.newamerica.net/sites/newamerica.net/files/policydocs/bergentiedemann2.pdf>; *The Year of the Drone*, *supra* note 221.

<sup>242</sup> 2011: *The Year of the Drone*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones/2011>.

<sup>243</sup> See, e.g., Pratap Chatterjee, *The CIA's Unaccountable Drone War Claims Another Casualty*, GUARDIAN (Nov. 11, 2011), <http://www.guardian.co.uk/commentisfree/cifamerica/2011/nov/07/cia-unaccountable-drone-war>; Orla Guerin, *Pakistani Civilian Victims Vent Anger Over US Drones*, BBC (Nov. 3, 2011), <http://www.bbc.co.uk/news/15553761>; Nick Schiffrin, *Was Teen Killed by CIA Drone a Militant—or Innocent Victim?*, ABC NEWS (Dec. 31, 2011), <http://abcnews.go.com/Blotter/tariq-khan-killed-cia-drone/story?id=15258659#.T8LWW5lYvuV>; *UK Drone Strikes Must Stop: UK Lawyer*, DAWN (Nov. 8, 2011), <http://dawn.com/2011/11/08/us-drone-strikes-must-stop-american-lawyer/>. New America Foundation claims that its reporting is based "on accounts from reliable media organizations with deep reporting capabilities in Pakistan, including the New York Times, Washington Post, and Wall Street Journal, accounts by major news services and networks—the Associated Press, Reuters, Agence France-Presse, CNN, and the BBC—and reports in the leading English-language newspapers in Pakistan—the Daily Times, Dawn, the Express Tribune, and the News." *The Year of the Drone*, *supra* note 221.

<sup>244</sup> 2011: *The Year of the Drone*, *supra* note 242.

However, within days of the attack, at least some credible Pakistani media outlets reported that the strike killed civilians, later identified as Akram Shah, Sherzada, Umar (or Amar) Khan, Irshad Khan, and Atiq-ur-Rehman (Tariq).<sup>245</sup> We detail the circumstances of that strike in the Narrative Section of the Living Under Drones Chapter of this report.<sup>246</sup>

In July 2012, an article by *TBIJ* also pointed out several other glaring omissions from New America Foundation's data.<sup>247</sup> These included the confirmed deaths of dozens of children in 2006,<sup>248</sup> and seven civilian deaths confirmed by an *AP* news investigation<sup>249</sup> to which Bergen himself, along with co-author Jennifer Rowland, had cited in their CNN piece.<sup>250</sup> *TBIJ* had brought several of these errors to New America's attention over the previous two years, but New America Foundation had not made any changes or updates in response until very recently. In August 2012, possibly in response to *TBIJ*'s criticisms, New America Foundation updated its website and incorporated some reports of civilian deaths that it had previously omitted, including the 69 children killed in a single strike in 2006.<sup>251</sup> Others, such as the seven civilian casualties on August 14, 2010 that have been confirmed by an independent *AP* investigation,<sup>252</sup> were still absent at this writing.<sup>253</sup> "The cumulative effect of all these omissions and errors," observed *TBIJ*'s

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<sup>245</sup> See, e.g., *NWA Tribesmen Protest Drone Attack Casualties*, NEWS (June 17, 2011), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=52979&Cat=7&dt=6/17/2011> (describing the victims, which it identified as four, as a "driver," an "owner of an auto spare-parts shop," a "student," and a man "who was running a medical store"); *Tribesmen Protest Drone Attacks*, DAWN (June 17, 2011), <http://dawn.com/2011/06/17/tribesmen-protest-drone-attacks/> (noting, two days after the strike, that "enraged tribesmen blocked Bannu-Miramshah Road on Thursday [June 16] to protest killing of innocent people"). Note, though, that initial accounts in Western media depicted those killed as militants. See, e.g., *Drones Said to Kill 15 Militants in Pakistan*, BOSTON.COM (June 16, 2011); *15 Killed in Two Suspected Drone Strikes*, CNN (June 15, 2011), <http://edition.cnn.com/2011/WORLD/asiapcf/06/15/pakistan.drone.strike/index.html>; Hasbanullah Khan, *US Drone Kill Eight Militants in Pakistan*, AFP (June 15, 2011), <http://www.google.com/hostednews/afp/article/ALeqM5jJGoBfRYzeaAzuAc88glioBa3Ysg?docId=CNG.921d971040a618e5fd16673c1ea984a7.501&hl=en&lr=all>; see also *infra* Chapter 3: Living Under Drones.

<sup>246</sup> *Id.*

<sup>247</sup> Woods, *Analysis: CNN Expert's Civilian Drone Death Numbers Don't Add Up*, *supra* note 240.

<sup>248</sup> At the time *TBIJ* published its article, New America Foundation's total overall civilian casualty figures failed to include the deaths of 69 children killed in a single US drone strike in October 2006, whose names and ages had been published by Pakistani newspapers in the weeks after the attack.

<sup>249</sup> See Sebastian Abbot, *New Light on Drone War's Death Toll*, ASSOCIATED PRESS (Feb. 25, 2012).

<sup>250</sup> Bergen & Rowland, *Civilian Casualties Plummet in Drone Strikes*, *supra* note 239.

<sup>251</sup> *The Year of the Drone*, *supra* note 221.

<sup>252</sup> Abbot, *supra* note 249.

<sup>253</sup> 2010: *The Year of the Drone*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones/2010> (last visited Sept. 9, 2012).

Chris Woods, “is that [New America Foundation’s] data substantially under-estimates both the overall numbers of those killed, and the reports of civilians who have died in Pakistan strikes.”<sup>254</sup>

In addition to its failure to update its database regularly, the underlying data relied upon by New America Foundation must be scrutinized. New America Foundation’s *Year of the Drone* project is a valuable resource. However, because its data consist of a collection of news reports, the conclusions that can definitively be drawn from analyzing that dataset are limited and must be attenuated in important ways. For example, when Bergen and Rowland asserted in their July 14, 2012 *CNN* column that New America’s data showed no civilian deaths in 2012,<sup>255</sup> our team reviewed every news article New America linked to on its website in support of its 2012 drone strike statistics.<sup>256</sup> The inadequacies in this underlying data (detailed below) mean that it should not be used to support the conclusions drawn by Bergen and Rowland (and New America Foundation) that there have been no civilian deaths in US drone strikes in Pakistan in 2012:

- First, the articles cited by New America Foundation rely to an overwhelming extent on information provided by anonymous officials. Our team’s review of the dataset for 2012 (the most recent strike considered being July 6, 2012) found that anonymous officials are cited as a source for the allegation of the number of “militants” killed in 88% of articles referenced by New America Foundation, and are the *only* source of this information in 74% of the articles. When framed as a breakdown of sources per strike, anonymous officials are the only source of the number of “militants” killed in 16 of the 27 drone strikes. This heavy reliance on anonymous officials is troubling given the demonstrated unreliability of official reporting;<sup>257</sup>

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<sup>254</sup> Woods, *Analysis: CNN Expert’s Civilian Drone Death Numbers Don’t Add Up*, *supra* note 240.

<sup>255</sup> Bergen & Rowland, *Civilian Casualties Plummet in Drone Strikes*, *supra* note 239.

<sup>256</sup> See *The Year of the Drone*, *supra* note 221; At the time our review was conducted, New America Foundation had reported 27 strikes in 2012, the most recent on July 6, 2012. Of the 107 links cited in support of New America’s data, ten were broken, and 11 corresponded to more than one strike. This left 86 articles from 13 western and Pakistani news agencies to support Bergen’s July 14 statement. It bears noting that *TBIJ* cites 344 sources for its data on the same 27 strikes. See *Obama 2012 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2012/01/11/obama-2012-strikes/>.

<sup>257</sup> See also *supra* notes 156-175 and accompanying text (discussing the demonstrated unreliability of US official reports of all “militant” death tolls). Pakistani intelligence officials, who are often cited as sources for strike information, may be similarly unreliable and prone to overstate “militant” casualties and understate civilian casualties because of the negative public perception in Pakistan that they are complicit in US killings of civilians.



- Second, the conclusion that no civilians have been killed in 2012 overlooks the problem of identification referenced in a number of the articles in the dataset. In 15 articles, it was noted that those killed could not be identified or that the identities of victims were not known. For example, in one such instance, an anonymous official stated that: “Fifteen militants were killed in a dawn strike on a compound. The bodies of those killed were unable to be identified.” Furthermore, 18 articles in the dataset refer to the object of attack as being “destroyed,” reinforcing concerns about how the number of persons killed and their identities could be known.

Thus, what *can* fairly be concluded from analyzing New America Foundation’s dataset is that, according to anonymous officials quoted in a set of collected news reports, there have been no civilian deaths reported in 2012.

New America Foundation’s finding of no civilians killed in 2012 is also troubling given that “reputable news sources”<sup>258</sup> have suggested the possibility of civilian casualties in six of the 27 strikes that inform New America Foundation’s 2012 statistics.<sup>259</sup> Those sources include *Reuters*, *Agence France-Presse*, *The News*, and *Dawn*,<sup>260</sup> all of which New America Foundation has found reliable on other occasions when they reported only “militant” casualties.<sup>261</sup> Bergen and Rowland’s July 14 *CNN* piece does not explain why they chose to disregard those news sources when they report civilian casualties.<sup>262</sup> Instead, Bergen and Rowland attempt to head off criticism by singling out *TBIJ* and dismissing their contradictory estimate of three to 24 civilian casualties as coming “in part from reports provided by an unreliable Pakistani news outlet as well as the claims of a local Taliban commander.”<sup>263</sup> *TBIJ* explained in response that the “unreliable Pakistani news outlet” must refer to either *Dawn*, *The Nation*, or *The News*, all of which

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<sup>258</sup> Bergen & Rowland, *Civilian Casualties Plummet in Drone Strikes*, *supra* note 239 (explaining that New America Foundation’s data is drawn from “reputable news sources”).

<sup>259</sup> According to *TBIJ*, there were indications of civilian casualties in strikes on February 9, 2012; May 5, 2012; May 24, 2012; June 2, 2012; June 3, 2012; and July 6, 2012. *Obama 2012 Pakistan Strikes*, *supra* note 256. *TBIJ* also reports possible civilian casualties in strikes on July 23, 2012 and July 29, 2012, which took place after Bergen’s article was published. *Id.*

<sup>260</sup> See, e.g., Hasbanullah Khan, *Five Militants Killed by US Drone in Pakistan*, AGENCE FRANCE-PRESSE (May 24, 2012); Khan & Yusufzai, *supra* note 180; *Twenty Die in Double Drone Attack*, DAWN (July 7, 2012), <http://dawn.com/2012/07/07/twenty-die-in-double-drone-attack/>; *US Drone Strike Kills Militant in Pakistan, Officials Say*, JERUSALEM POST (Feb. 2, 2012), <http://www.jpost.com/LandedPages/PrintArticle.aspx?id=257117>.

<sup>261</sup> See *The Year of the Drone*, *supra* note 221.

<sup>262</sup> See Bergen & Rowland, *Civilian Casualties Plummet in Drone Strikes*, *supra* note 239.

<sup>263</sup> *Id.*

New America Foundation draws from on a regular basis, and that the Taliban commander's claim (which appeared in only one of the six strikes in which civilian casualties were reported, and which referred to only two civilians) appeared in an article from *Reuters*.<sup>264</sup> Bergen and Rowland did not say where they believe the other part of *TBIJ's* estimate came from.<sup>265</sup>

Conor Friedersdorf of the *Atlantic Monthly* has questioned the reliance of Bergen and Rowland and the New America Foundation on "getting an unnamed official to state the number of deaths" as "deep reporting" worthy of inclusion in their database.<sup>266</sup> In particular, Friedersdorf juxtaposes that reliance with the journalists' apparent exclusion of further reporting above and beyond anonymous official quotes as unreliable.<sup>267</sup> For example, neither the *Year of the Drone* website nor any of Bergen and Rowland's articles mentions the reported deaths of between three and eight civilian worshippers at a mosque on May 24, 2012. The deaths were reported by both *The News*, a prominent Pakistani newspaper, and the UK's *Channel 4*.<sup>268</sup> Both quoted detailed descriptions of the strike and of the civilian casualties directly from a local eyewitness that *The News* identifies by name. That level of detail and local investigation constitutes a far "deeper" report than the terse descriptions from anonymous officials, with one exception, that appear in the articles relied upon by New America Foundation, which in turn simply state the number of "militants" or "suspected militants" killed and their nationalities.<sup>269</sup>

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<sup>264</sup> Woods, *Analysis: CNN Expert's Civilian Drone Death Numbers Don't Add Up*, *supra* note 240.

<sup>265</sup> Bergen & Rowland, *Civilian Casualties Plummet in Drone Strikes*, *supra* note 239.

<sup>266</sup> Friedersdorf, *Flawed Analysis of Drone Strikes is Misleading Americans*, *supra* note 240.

<sup>267</sup> *Id.*

<sup>268</sup> *Drone Strike Hits Pakistan Mosque, Say Locals*, *supra* note 180; Khan & Yusufzai, *supra* note 180; Woods, *Analysis: CNN Expert's Civilian Drone Death Numbers Don't Add Up*, *supra* note 240. French wire service Agence France-Presse reported the damage to the mosque and said that worshippers there may have been injured. Hasbanullah Khan, *US Drone Strike Kills 8 in Pakistan*, AGENCE FRANCE-PRESSE (May 24, 2012).

<sup>269</sup> Haq Nawaz Khan & Richard Leiby, *US Drone Strike in Pakistan Kills 10 Suspected Militants*, WASH. POST (May 24, 2012), [http://www.washingtonpost.com/world/asia\\_pacific/us-drone-strike-kills-10-suspected-militants-in-pakistan/2012/05/24/gJQAQbpRmU\\_story.html](http://www.washingtonpost.com/world/asia_pacific/us-drone-strike-kills-10-suspected-militants-in-pakistan/2012/05/24/gJQAQbpRmU_story.html); Salman Masood, *Drone Strikes Continue in Pakistan as Tension Increases and Senate Panel Cuts Aid*, N.Y. TIMES (May 24, 2012), [http://www.nytimes.com/2012/05/25/world/asia/pakistan-says-us-drone-strike-kills-suspected-militants.html?\\_r=1&ref=world](http://www.nytimes.com/2012/05/25/world/asia/pakistan-says-us-drone-strike-kills-suspected-militants.html?_r=1&ref=world); Haji Mujtaba, *US Drone Strike Kills 10 in Northwest Pakistan: Officials*, REUTERS (May 24, 2012), <http://www.reuters.com/article/2012/05/24/us-pakistan-drone-idUSBRE84No3I20120524>; *Pakistan Says US Drone Kills 10 Militants*, USA TODAY (May 24, 2012), <http://www.usatoday.com/news/world/story/2012-05-24/Pakistan-drone/55179756/1?csp=34news>. The *New York Times* went deeper than the other reports, and provides information about the strike from local residents reached by telephone, who stated that some of the strike victims were "Uzbek fighters who belonged to the Islamic Movement of Uzbekistan." Masood, *supra*.

## THE BUREAU OF INVESTIGATIVE JOURNALISM

*The Bureau of Investigative Journalism* maintains a much more dynamic database than either New America Foundation or *The Long War Journal*, updating its strike information frequently to reflect new information as it comes to light.<sup>270</sup> This frequent updating, together with *TBIJ*'s own investigations, makes its data far more reliable than other aggregating sources. While *TBIJ*'s data are also highly transparent and its investigations more thorough than others, its aggregation of information from news articles faces the same problems as described above, and its full body of strike data is not, and indeed cannot be, wholly accurate (nor does *TBIJ* purport that it is).

As of August 1, 2012, *TBIJ* estimated that between 482 and 849 civilians have been killed by drones in Pakistan since 2004. That estimate represents the full range of civilian casualties credibly reported in reliable sources, some of which *TBIJ* has corroborated with its own field investigations in Pakistan and with information gathered by "credible researchers and lawyers."<sup>271</sup> The use of these corroborating sources to supplement data drawn from press accounts sets *TBIJ* apart from both *The Long War Journal* and New America Foundation.

*TBIJ*'s media datasets are also more thorough and comprehensive than both New America Foundation and *The Long War Journal*. As discussed above, New America Foundation linked to only 107 news articles in support of its data on the first 27 strikes of 2012, of which eleven were duplicates.<sup>272</sup> *TBIJ*, by contrast, links to 344 sources cited in support of those same 27 strikes, and provides information on a handful of additional possible strikes that have not yet been verified.<sup>273</sup> *The Long War Journal* does not reveal all of the sources used to compile its database, and rarely cites to more than two

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<sup>270</sup> For example, *TBIJ*'s entry for a recent cluster of strikes that took place on July 29, 2012 was updated two days later to include the names of three local villagers killed in the attack, once those names were reported by *The News*, a major Pakistani daily newspaper. See *Obama 2012 Pakistan Strikes*, *supra* note 256; *Three Drone Victims Laid to Rest in FR Bannu*, NEWS (July 31, 2012), <http://www.thenews.com.pk/Todays-News-2-123753-Three-drone-victims-laid-to-rest-in-FR-Bannu>. Over two weeks after the attack took place, *New America Foundation* still had not reported it, and *The Long War Journal* had limited its report to include only the subset of missile strikes that hit an alleged Uzbek compound. See Bill Roggio, *6 Uzbeks Killed in North Waziristan Drone Strike*, LONG WAR JOURNAL (July 29, 2012), [http://www.longwarjournal.org/archives/2012/07/six\\_uzbeks\\_killed\\_in.php](http://www.longwarjournal.org/archives/2012/07/six_uzbeks_killed_in.php); *The Year of the Drone*, *supra* note 221.

<sup>271</sup> *Covert Strikes in Pakistan, Yemen, and Somalia—Our Methodology*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/> (last updated March 27, 2012).

<sup>272</sup> See *The Year of the Drone*, *supra* note 221.

<sup>273</sup> See *Obama 2012 Pakistan Strikes*, *supra* note 256.

or three external sources in any given report.<sup>274</sup> *TBIJ* is also more transparent than either New America Foundation or *The Long War Journal* in its reporting, providing both high and low estimates of civilian and unspecified deaths for each strike. It also quotes heavily from reports that contradict one another, thus giving a full picture of the range of conflicting stories about each strike.<sup>275</sup>

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<sup>274</sup> Bill Roggio, *US Drones Kill 10 in Mir Ali Strike*, LONG WAR JOURNAL (May 24, 2012), [http://www.longwarjournal.org/archives/2012/05/us\\_drones\\_kill\\_10\\_in\\_1.php](http://www.longwarjournal.org/archives/2012/05/us_drones_kill_10_in_1.php).

<sup>275</sup> *Id.*; See, e.g., *Obama 2011 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/> (last visited Sept. 14, 2012).

## CHAPTER 3: LIVING UNDER DRONES

Much of the public debate about drone strikes in Pakistan has focused narrowly on whether strikes are ‘doing their job’—i.e., whether the majority of those killed are “militants.”<sup>276</sup> That framing, however, fails to take account of the people on the ground who live with the daily presence of lethal drones in their skies and with the constant threat of drone strikes in their communities. Numerous other reports have highlighted the disastrous impacts of Taliban and other armed actor operations in Pakistan.<sup>277</sup> Those impacts must also factor into the formulation of governance and military policy in Federally Administered Tribal Areas (FATA). This report, however, aims to draw attention to a critical gap in understanding, specifically about life under drones and the socio-economic impacts of drone strikes on civilians in North Waziristan. Available evidence suggests that these impacts are significant, and challenges the prevailing US government and media narrative that portrays drones as pinpoint precision weapons with limited collateral impact. It is crucial that broader civilian impacts and the voices of those affected be given due weight in US debates about drones.

The most direct impacts of strikes, in addition to injuries and killings, include property damage, and often severe economic hardship and emotional trauma for injured victims and surviving family members. Importantly, those interviewed for this report also described how the presence of drones and capacity of the US to strike anywhere at any time led to constant and severe fear, anxiety, and stress, especially when taken together with the inability of those on the ground to ensure their own safety. Further, those interviewed stated that the fear of strikes undermines people’s sense of safety to such an extent that it has at times affected their willingness to engage in a wide variety of activities, including social gatherings, educational and economic opportunities, funerals, and that fear has also undermined general community trust. In addition, the US practice of striking one area multiple times, and its record of killing first responders, makes both community members and humanitarian workers afraid to assist injured victims.

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<sup>276</sup> See Numbers, *infra* Chapter 2: Numbers.

<sup>277</sup> *Id.*

## VOICES FROM BELOW: ACCOUNTS OF THREE DRONE STRIKES

The most immediate consequence of drone strikes is, of course, death and injury to those targeted or near a strike. The missiles fired from drones kill or injure in several ways, including through incineration,<sup>278</sup> shrapnel,<sup>279</sup> and the release of powerful blast waves capable of crushing internal organs.<sup>280</sup> Those who do survive drone strikes often suffer disfiguring burns and shrapnel wounds, limb amputations, as well as vision and hearing loss.<sup>281</sup>

This section sets out firsthand narrative accounts of three specific drone strikes for which there is considerable evidence of significant civilian casualties.<sup>282</sup> The narratives draw upon interviews, as well as corroborating evidence from other independent

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<sup>278</sup> See, e.g., Yancy Y Phillips & Joan T. Zajchuk, *The Management of Primary Blast Injury*, in CONVENTIONAL WARFARE: BALLISTIC, BLAST AND BURN INJURIES 297 (1991) (“The thermal pulse from a detonation may burn exposed skin, or secondary fires may be started by the detonation and more serious burns may be suffered.”); *AGM-114N Metal Augmented Charge (MAC) Thermobaric Hellfire*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/systems/munitions/agm-114n.htm> (last visited Aug. 17, 2012) (“The new [AGM-114N Thermobaric Hellfire] warhead contains a fluorinated aluminum powder layered between the warhead casing and the PBXN-112 explosive fill. When the PBXN-112 detonates, the aluminum mixture is dispersed and rapidly burns. The resultant sustained high pressure is extremely effective against enemy personnel and structures.”); *Explosions and Blast Injuries: A Primer for Clinicians*, CENTER FOR DISEASE CONTROL AND PREVENTION, <http://www.bt.cdc.gov/masscasualties/explosions.asp> (last visited on Sept. 17, 2012) (outlining one of the types of blast injuries as “burns (flash, partial, and full thickness”).

<sup>279</sup> See, e.g., Phillips & Zajchuk, *supra* note 278, at 296 (“[V]ictims of an open-air blast will usually also have penetrating or non-penetrating secondary blast injuries from fragments or objects that have been hurled through the air from the force of the blast.”); David Hambling, *Why was Pakistan Drone Strike so Deadly?*, WIRED (June 24, 2009), <http://www.wired.com/dangerroom/2009/06/why-was-pakistan-drone-strike-so-deadly/> (describing how drone-launched missiles have a thick steel casing surrounding an explosive core, such that “when the bomb detonates, the casing blows up like a balloon before bursting and spraying high-velocity steel fragments in all directions. It is these fragments, rather than blast, that do most of the damage”); *Explosions and Blast Injuries*, *supra* note 278 (identifying “penetrating ballistic (fragmentation) or blunt injuries” as a possible type of blast injury).

<sup>280</sup> See, e.g., Phillips, *supra* note 278, at 296 (“[T]he detonation of explosive munitions can create pressure waves that are powerful enough to injure the internal organs of casualties who are directly exposed to them. This injury—called primary blast injury (PBI)—may debilitate or kill the casualty by causing severe damage to the gas-containing organs of the body.”); *AGM-114N Metal Augmented Charge*, *supra* note 278 (describing the improved killing power of the “AGM-114 Hellfire missile [which] has a sustained pressure wave [that] propagates throughout a structure to extend the lethal effects of the warhead detonation.”); *Explosions and Blast Injuries*, *supra* note 278 (listing “blast lung,” and “abdominal hemorrhage and perforation” among injuries resulting from blasts).

<sup>281</sup> See *supra* notes 278- 280 and accompanying text; Norman Rich, *Missile Injuries*, 139 AM. J. OF SURGERY 414 (1980).

<sup>282</sup> In addition to the three strikes highlighted in this section, Appendix A provides brief narratives from strike survivors and individuals who have witnessed or lost relatives in drone strikes.

investigations, media accounts, and submissions to the United Nations, and courts in the UK and Pakistan.

The narratives provide detailed and stark accounts of the consequences such strikes have on those hit, those near, and their families.

### MARCH 17, 2011

On the morning of March 17, 2011, the US deployed a drone to fire at least two missiles into a large gathering near a bus depot in the town of Datta Khel, North Waziristan. To this day, US officials publicly insist that all those killed were insurgents.<sup>283</sup> That position, however, is contradicted by a range of other sources, including the Pakistani military,<sup>284</sup> an independent investigation by the *Associated Press*,<sup>285</sup> interviews with attorneys, and the testimony of nine witnesses, survivors, and family members gathered

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<sup>283</sup> Salman Masood & Pir Zubair Shah, *CIA Drones Kill Civilians in Pakistan*, N.Y. TIMES (Mar. 17, 2011), <http://www.nytimes.com/2011/03/18/world/asia/18pakistan.html> (“American officials on Thursday sharply disputed Pakistan’s account of the strikes and the civilian deaths, contending that all the people killed were insurgents.”); see also Sebastian Abbot, *AP Impact: New Light on Drone War’s Death Toll*, GUARDIAN (Feb. 25, 2012), <http://www.guardian.co.uk/world/feedarticle/10112674> (“US officials who were shown the AP’s findings [of civilian deaths in the ten deadliest attacks in North Waziristan between August 2010 and February 2012, including the March 17, 2011 incident] rejected the accounts of any civilian casualties, but declined to be quoted by name.”); Scott Shane, *Contrasting Reports of Drone Strikes*, N.Y. TIMES (Aug. 11, 2011), <http://www.nytimes.com/2011/08/12/world/asia/12droneside.html> (quoting an unnamed US official as stating: “There’s no question the Pakistani and US government have different views on the outcome of this strike. The fact is that a large group of heavily armed men, some of whom were clearly connected to Al Qaeda and all of whom acted in a manner consistent with A.Q.-linked militants, were killed.”). The US position appears to reflect the Obama administration’s controversial practice of classifying “all military-age males in a strike zone as combatants . . . unless there is explicit intelligence posthumously proving them innocent.” Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

<sup>284</sup> See Masood & Shah, *supra* note 283 (quoting Pakistani military chief, General Ashfaq Parvez Kayani, as saying immediately after the strike: “It is highly regrettable that a jirga of peaceful citizens, including elders of the area, was carelessly and callously targeted with complete disregard to human life.”).

<sup>285</sup> See Abbot, *supra* note 283.

for this report. This evidence suggests that at least 42 were killed, mostly civilians,<sup>286</sup> and another 14 injured.<sup>287</sup>

According to those we interviewed, on March 17, some 40 individuals gathered in Datta Khel town center. They included important community figures and local elders, all of whom were there to attend a *jirga*—the principal social institution for decision-making and dispute resolution in FATA. The *jirga* on March 17 was convened to settle a dispute over a nearby chromite mine.<sup>288</sup> All of the relevant stakeholders and local leaders were in attendance, including 35 government-appointed tribal leaders known as *maliks*, as well as government officials, and a number of *khassadars* (government employees administered at the local level by *maliks* who serve as a locally recruited auxiliary police force).<sup>289</sup> Four men from a local Taliban group were also reportedly present, as their involvement was necessary to resolve the dispute effectively.<sup>290</sup> Malik Daud Khan, a respected leader and decorated public servant, chaired the meeting.<sup>291</sup>

The *jirga* had been convened in Datta Khel’s Nomada bus depot,<sup>292</sup> an open space in the middle of town large enough to accommodate over 40 people as they sat in two large circles about 12 feet apart.<sup>293</sup> Though drones were hovering daily over North Waziristan, those at this meeting said they felt “secure and insulated” from the threat of drones, because in their assessment at the time, “drones target terrorists or those working

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<sup>286</sup> *Obama 2011 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/> (last visited Sep. 14, 2012); Abbot, *supra* note 283.

<sup>287</sup> See *Obama 2011 Pakistan Strikes*, *supra* note 286.

<sup>288</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012). Chromite is a valuable resource in the region, and a major source of employment. According to the FATA government website, 31,830 tons of chromite were produced in 2003-04, the latest date for which figures are available. *Department of Minerals*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA SECRETARIAT, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=78&Itemid=81](http://fata.gov.pk/index.php?option=com_content&view=article&id=78&Itemid=81) (last visited Aug. 17, 2012).

<sup>289</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>290</sup> Sebastian Abbot, *AP Impact: New Light on Drone War’s Death Toll*, ASSOCIATED PRESS (Feb. 26, 2012), <http://news.yahoo.com/ap-impact-light-drone-wars-death-toll-150321926.html>.

<sup>291</sup> *More Petition High Court Against Drone Attacks*, DAWN (May 9, 2012), <http://dawn.com/2012/05/10/more-petition-high-court-against-drone-attacks/> (reporting on the petition of Noor Khan, son of Malik Daud Khan, in the Peshawar High Court against the Federation of Pakistan, Pakistan’s Ministry of Foreign Affairs, and Pakistan’s Ministry of Defence).

<sup>292</sup> Chris Woods & Christina Lamb, *Obama Terror Drones: CIA Tactics in Pakistan Include Targeting Rescuers and Funerals*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 4, 2012), <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>.

<sup>293</sup> Interview with Mohammad Nazir Khan, in Islamabad, Pakistan (Feb. 26, 2012).



against the government.”<sup>294</sup> This, in contrast, was a *jirga*, a government-sanctioned meeting, held to ensure “no problems occurred in [the] area and no-one would pose problems for the government.”<sup>295</sup> According to a Pakistani military commander in North Waziristan, Brigadier Abdullah Dogar, the *maliks* had even taken care to alert the local military post of the planned *jirga* ten days beforehand.<sup>296</sup>

At approximately 10:45 am, as the two groups were engaged in discussion, a missile fired from a US drone hovering above struck one of the circles of seated men.<sup>297</sup> Ahmed Jan, who was sitting in one of two circles of roughly 20 men each, told our researchers that he remembered hearing the hissing sound the missiles made just seconds before they slammed into the center of his group.<sup>298</sup> The force of the impact threw Jan’s body a significant distance, knocking him unconscious, and killing everyone else sitting in his circle.<sup>299</sup> Several additional missiles were fired, at least one of which hit the second circle.<sup>300</sup> In all, the missiles killed a total of at least 42 people.<sup>301</sup> One of the survivors from the other circle, Mohammad Nazir Khan, told us that many of the dead appeared to have been killed by flying pieces of shattered rocks.<sup>302</sup> Another witness, Idris Farid, recalled that “everything was devastated. There were pieces—body pieces—lying around. There was lots of flesh and blood.”<sup>303</sup>

Khalil Khan, the only son of Malik Hajji Babat, one of the *khassadars* present at the *jirga*, was in the Datta Khel bazaar when he heard about the strike.<sup>304</sup> “We were told in plain words that none of the elders that had attended survived. They were all destroyed, all finished.”<sup>305</sup> Khalil Khan immediately went to the Nomada depot to try to find his

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<sup>294</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb.26, 2012).

<sup>295</sup> *Id.*

<sup>296</sup> Chris Woods & Christina Lamb, *Obama Terror Drones: CIA Tactics in Pakistan Include Targeting Rescuers and Funerals*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 4, 2012), <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>.

<sup>297</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012); Interview with Mohammad Nazir Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*; see also Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb.26, 2012).

<sup>301</sup> See *Obama 2011 Pakistan Strikes*, *supra* note 286; Abbot, *supra* note 283.

<sup>302</sup> Interview with Mohammad Nazir Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>303</sup> Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>304</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb.26, 2012).

<sup>305</sup> *Id.*

father.<sup>306</sup> When he arrived at the scene of the strike, he found injured victims and the bus depot in flames.<sup>307</sup> Unable to identify the body parts lying on the ground, all Khalil Khan could do was “collect pieces of flesh and put them in a coffin.”<sup>308</sup> Idris Farid, who survived the strike with a severe leg injury, explained how funerals for the victims of the March 17 strike were “odd and different than before.”<sup>309</sup> The community had to collect [the victims’] body pieces and bones and then bury them like that,” doing their best to “identify the pieces and the body parts” so that the relatives at the funeral would be satisfied they had “the right parts of the body and the right person.”<sup>310</sup>

The trauma of the strike was felt not only by those who witnessed its immediate aftermath, but also by the families left behind. Nearly all of those killed were the heads of large households, who used the government allowances they received through their positions as *maliks* and *khassadars* to support their households and fund small businesses. Malik Daud Khan, who led the *jirga*, was a government-appointed counselor for all of North Waziristan, serving as a political liaison between the Pakistani government and military and the other tribal leaders.<sup>311</sup> He oversaw *jirgas* throughout the region, and used his allowance, “which was respectable for a decent family,” to support six sons and the sons of his brothers.<sup>312</sup> Another *malik*, Ismail Khan, left behind a family of eight, of whom only two are males old enough to work.<sup>313</sup> The *khassadar* Hajji Babat also left behind another household of eight; his son now struggles to support them.<sup>314</sup> Because these men held government positions reserved for elders with “experience and years of wisdom,” their sons cannot take over their offices.<sup>315</sup> The sons have little hope of finding employment that would provide a standard of living afforded by the allowance of a *malik* or a *khassadar*.<sup>316</sup> Babat’s son, Khalil Khan, who spent over a decade working as a driver in the United Arab Emirates, told our research team that he often thinks of trying to go abroad again so that he can earn money to support

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>310</sup> *Id.*

<sup>311</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *See id.*

himself.<sup>317</sup> “[But] if I go,” he worries, “what will happen to my family?”<sup>318</sup> The Pakistani government offered to compensate the families with three *lakhs* (300,000 rupees, or approximately US \$3,200) for each man killed, but most did not take the compensation.<sup>319</sup> “[O]ur elders were worth much more than that. . . . [W]e had lost an entire community of elders.”<sup>320</sup>

Some men who survived are now unable to work or earn the living they could before the strike. Ahmed Jan, a *malik* who used to supplement his allowance by working as a driver, woke up in a hospital in Peshawar after the strike and learned he needed five to six *lakhs* (approximately US \$5,300 to US \$6,350) worth of surgery to implant a rod in his leg and to stop the bleeding from his nose and face.<sup>321</sup> Since then, he has lost most of his hearing and the use of one foot.<sup>322</sup> Unable to operate a car, he now depends on his sons, who are also drivers, to support his household.<sup>323</sup> Idris Farid, in addition to living with rods implanted in his leg, told us that the trauma of the strike has caused him to forget “the little bit of education that I [had] gotten when I was little,” and has left him terrified of loud noises “because I think it might be a drone.”<sup>324</sup>

The precise number of people who died in the March 17, 2011 strike has never been determined, though nearly all available sources—including the survivors with whom our researchers spoke—put it at close to 40 or higher.<sup>325</sup> An independent investigation by the *Associated Press* put the number at 42.<sup>326</sup> Pakistani intelligence officials initially

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<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012); *see also* Interview with Mohammad Nazir Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>320</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>321</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>325</sup> *See, e.g.*, Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012). (estimating 37 dead); Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012) (estimating at least 35 and fewer than 40 dead); *US Drone Strike ‘Kills 40’ in Pakistani Tribal Region*, BBC (Mar. 17, 2011), <http://www.bbc.co.uk/news/world-south-asia-12769209>; Tom Wright & Rehmat Mehsud, *Pakistan Slams US Drone Strike*, WALL ST. J. (Mar. 18, 2011), *available at* <http://online.wsj.com/article/SB10001424052748703818204576206873567985708.html>.

<sup>326</sup> Abbot, *supra* note 290 (noting the names of all 42 and identifying 38 of them as civilians and tribal police). Unnamed US officials disputed this number, telling the *Associated Press* “the total of dead was roughly half what villagers reported” and citing as evidence “the number visible in the monitoring before and during the attack.” *Id.* However, all other available sources—including eyewitnesses, locals, and Pakistani intelligence—report numbers closer to the *Associated Press* figure. *See, e.g.*, *Dozens Die as US*

reported that 12 or 13 of the dead were Taliban “fighters,”<sup>327</sup> but the *Associated Press* investigation found that it was likely only four.<sup>328</sup> Of those four, only one, Sherabat Khan, has ever been identified by name.<sup>329</sup> *TBIJ*, in separate investigations, has so far obtained the names of 24 civilians killed who died in the strike.<sup>330</sup>

## JUNE 15, 2011

On June 15, 2011, the US launched between two and six missiles from a drone at a car travelling on the road between Miranshah and Sirkot in North Waziristan, killing five people. *The News*, a leading Pakistani newspaper, identified four of the victims in a story it ran two days later.<sup>331</sup> We were provided evidence of five victims in our interviews, as we detail below; *TBIJ* (in its own separate investigations) also identified five victims:<sup>332</sup> Shahzada (or ‘Sherzada’, no other name), Akram Shah, Atiq-ur-Rehman

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*Drone Hits Pakistan Home*, AL JAZEERA (Mar. 17, 2011), <http://www.aljazeera.com/news/asia/2011/03/20113178411386630.html>; Kathy Gannon, Kimberly Dozier & Sebastian Abbot, *AP Exclusive: Timing of US Drone Strike Questioned*, YAHOO! NEWS (Aug. 2, 2011), <http://news.yahoo.com/ap-exclusive-timing-us-drone-strike-questioned-161145779.html>; Katherine Tiedemann, *Daily Brief: Pakistani Army Chief Condemns Deadly US Drone Strike*, FOREIGN POL’Y (Mar. 18, 2011), [http://afpak.foreignpolicy.com/posts/2011/03/18/daily\\_brief\\_pakistani\\_army\\_chief\\_condemns\\_deadly\\_us\\_drone\\_strike](http://afpak.foreignpolicy.com/posts/2011/03/18/daily_brief_pakistani_army_chief_condemns_deadly_us_drone_strike).

<sup>327</sup> Masood & Shah, *supra* note 283.

<sup>328</sup> Abbot, *supra* note 290.

<sup>329</sup> See, e.g., *Out of the Blue: A Growing Controversy Over the Use of Unmanned Aerial Strikes*, ECONOMIST (July 30, 2011), <http://www.economist.com/node/21524916>; Zia Khan, *Waziristan Drone Attack: Taliban Faction Threatens Scrapping Peace Deal*, EXPRESS TRIBUNE (Mar. 21, 2011), <http://tribune.com.pk/story/135711/waziristan-drone-attack-taliban-faction-threatens-scrapping-peace-deal/>.

<sup>330</sup> *Obama 2011 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, *supra* note 286 (“The leader of the *jirga*, Malik Daud Khan, aged 45 was among those killed. . . . In July 2011 the Bureau’s field researchers additionally identified the following as slain civilians: Gul Akbar; Mohammad Sheen; Lewanai; Mir Zaman; Din Mohammad; Malik Tareen; Noor Ali; Zare Jan; Sadiq; Mustaqeem; Khangai; Gulnaware; Faenda Khan; and Dindar Khan, Umark Khan, Wali Khan, Sadar and Bakhtar, all five from the Khassadar police force. In sworn affidavits from multiple witnesses to the strike, filed in the London High Court in March 2012, five further civilians were identified by name: Ismail Khan, father of Imran Khan; khassadar Hajji Babat, father of Khalil Khan; Khnay Khan, father of Mir Daad Khan; and Gul Mohammed and his son Ismael.”).

<sup>331</sup> *NWA Tribesmen Protest Drone Attack Casualties*, NEWS (June 17, 2011), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=52979&Cat=7&dt=6/17/2011> (noting the occupations and the names of four of the victims: Akram Shah, Umar Khan, Shahzada, and Tariq (Atiq-ur-Rehman)).

<sup>332</sup> *Obama 2011 Pakistan Strikes*, *supra* note 286.

(nicknamed Tariq), Irshad Khan, and Umar (or Amar) Khan. According to initial press reports, anonymous Pakistani officials stated that all those killed in the strike were “militants.”<sup>333</sup> US officials did not comment, even after the dead men’s families and tribesmen made international news by blocking an important roadway in protest.<sup>334</sup> We interviewed five family and community members who testified that they knew those killed.<sup>335</sup> Together, the five interviewees provided information on each of the five victims, who they said were civilians.<sup>336</sup> Based on its own research, as well as media accounts, *TBIJ*, citing the names of each of the men above, has reported that at least five civilians were killed in the strike.<sup>337</sup>

According to those we interviewed, on June 15, Akram Shah drove with his cousin, Sherzada, into the city of Miranshah.<sup>338</sup> Akram, a father of three in his mid-thirties, was a former taxi driver who worked for the Pakistani Water and Power Development Authority as a driver.<sup>339</sup> Sherzada was a student in his late teens or early twenties.<sup>340</sup>

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<sup>333</sup> See, e.g., *15 Killed in Two Suspected Drone Attacks*, CNN (June 15, 2011), <http://edition.cnn.com/2011/WORLD/asiapcf/06/15/pakistan.drone.strike/index.html>; Hasbanullah Khan, *US Drone Kills Eight Militants in Pakistan*, AGENCE FRANCE-PRESSE (June 15, 2011), [http://www.google.com/hostednews/afp/article/ALeqM5gopljIE1s-roP9oOdcLQtEy9\\_6-A?docId=CNG.e930608f878ab4d4954c1738240ae4f3.321](http://www.google.com/hostednews/afp/article/ALeqM5gopljIE1s-roP9oOdcLQtEy9_6-A?docId=CNG.e930608f878ab4d4954c1738240ae4f3.321).

<sup>334</sup> See, e.g., *NWA Tribesmen Protest Drone Attack Casualties*, *supra* note 331 (noting that hundreds of tribesmen protested and “chanted slogans against the United States for killing innocent tribal people in the drone attacks.”); *Tribesmen Protest Drone Attacks*, DAWN (June 17, 2011), <http://dawn.com/2011/06/17/tribesmen-protest-drone-attacks/> (noting, two days after the strike, that “enraged tribesmen blocked Bannu-Miramshah Road on Thursday [June 16] to protest killing of innocent people in US drone attacks in North Waziristan Agency”).

<sup>335</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012); Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012); Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012); Interview with Azhar Aslam (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>336</sup> *Id.* Atiq-ur-Rehman (or Tariq) was known to all five interviewees; Sherzada was known by four of the interviewees; Akram was known by three of the interviewees; Umar (or Amar) and Irshad were each known by one interviewee.

<sup>337</sup> *Obama 2011 Pakistan Strikes*, *supra* note 286 (noting that its own researchers in Waziristan reported that “civilians belonging to the Zangbar family...were killed...include[ing] Shahzada,” citing links to seven media reports (two articles in *Dawn* and one each in *The News*, CNN, Boston.com, AFP, BBC News) as well as the UK Charity Reprieve and the South Asian Terrorism Portal (satp.org), and concluding based upon its review of all this information that 5-6 civilians were killed in the strike).

<sup>338</sup> Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012).

<sup>339</sup> *Id.*; Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012); *NWA Tribesmen Protest Drone Attack Casualties*, *supra* note 331.

<sup>340</sup> Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012); Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

Both he and Akram Shah lived in the small village of Spulga, some 15 kilometers outside of Miranshah, in a large extended-family compound headed by another cousin, a prominent *malik*.<sup>341</sup> Atiq-ur-Rehman, a young pharmacist, ran the Razmak Medical shop in the Miranshah bazaar.<sup>342</sup> Irshad Khan, a teenage student, worked in Atiq-ur-Rehman's pharmacy.<sup>343</sup> Umar Khan ran a local auto parts store.<sup>344</sup> That evening, the five men—Akram Shah, Sherzada, Irshad Khan, Atiq-ur-Rehman, and Umar Khan—set out from Miranshah toward Spulga and the nearby village of Sirkot in Akram's car.<sup>345</sup>

When the car was just two or three kilometers from Sirkot, it was struck by a missile.<sup>346</sup> According to some press accounts, the drone operators missed their first five missile firing attempts and chased Akram's car down the road, finally destroying it with a sixth and final missile.<sup>347</sup> Other accounts state that Umar Khan escaped from the back seat after the car was hit, only to be killed by a missile seconds later as he tried to get away from the wreckage.<sup>348</sup> Nadeem Malik was at the mosque some two kilometers away when he heard "the noise of the bombardment," and rushed to the site of the strike.<sup>349</sup> Several witnesses described the destruction of the car,<sup>350</sup> which Abdul Qayyum Khan likened to "a sandwich bent in half."<sup>351</sup> Sayed Majid, whose cousin and two other relatives were killed in the strike, and Abdul Qayyum Khan, Atiq-ur-Rehman's father,

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<sup>341</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>342</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012); Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); Reprieve, Complaint Against the United States of America for the Killing of Innocent Citizens of the Islamic Republic of Pakistan to the UN Human Rights Council 10 (Feb. 23, 2012), *available at* [http://reprieve.org.uk/media/downloads/2012\\_02\\_22\\_PUB\\_drones\\_UN\\_HRC\\_complaint.pdf?utm\\_source=Press+mailing+list&utm\\_campaign=89f3db0a75-2012\\_02\\_23\\_drones\\_UN\\_complaint&utm\\_medium=email](http://reprieve.org.uk/media/downloads/2012_02_22_PUB_drones_UN_HRC_complaint.pdf?utm_source=Press+mailing+list&utm_campaign=89f3db0a75-2012_02_23_drones_UN_complaint&utm_medium=email) [hereinafter Complaint to UNHRC].

<sup>343</sup> Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>344</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); *see also* NWA Tribesmen Protest Drone Attack Casualties, *supra* note 331.

<sup>345</sup> *See* Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012); *see also* NWA Tribesmen Protest Drone Attack Casualties, *supra* note 331; Complaint to UNHRC, *supra* note 342, at 10.

<sup>346</sup> *See* Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>347</sup> *Eight Killed in Waziristan Drone Attacks*, PAK TRIBUNE (June 16, 2011), <http://paktribune.com/news/Eight-killed-in-Waziristan-drone-attacks-240425.html>.

<sup>348</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>349</sup> Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>350</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012) ("[the car] was destroyed. Fully destroyed. It was burned."); *see also* interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>351</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

told our research team that the victims' bodies were badly burned.<sup>352</sup> Khan spoke with local villagers who had seen the strike take place and who told him that they had collected the charred body parts from the wreckage.<sup>353</sup>

Khan was working five hours away in Peshawar on the evening the strike occurred.<sup>354</sup> A cousin called him shortly after it happened to say that he needed to return to the village as soon as possible, but would not tell him why.<sup>355</sup> Khan tried to find a ride back with a relative that night, aware that something was wrong, but with no idea that his son—a “peaceful guy” who was “very attached” to him—had been killed in a US drone strike.<sup>356</sup> It was not until Abdul Qayyum Khan arrived in Sirkot and from a distance saw his neighbors filing into his home that he realized the gravity of what might have happened.<sup>357</sup> “I thought I would have a heart attack,”<sup>358</sup> he recalls. “I started weeping. Lots of people there were weeping. . . . [Atiq-ur-Rehman’s wife] was weeping fiercely.”<sup>359</sup>

Ibrahim Shah, Akram’s Shah’s brother, was also working in Peshawar that evening when he received the news.<sup>360</sup> Trying to spare him the shock, his relatives called to say only that his brother had been injured in an accident, waiting until much later that night to call again and tell Ibrahim that his brother had in fact been killed in a drone strike.<sup>361</sup> Ibrahim took ten days off work to come back to the village, where he joined other villagers and family members of the deceased in a large protest a few hours before the funeral.<sup>362</sup> They lined up four of the victims’ coffins across the main Bannu-Miranshah road, and staged a procession and rally asserting that the deceased men were not terrorists.<sup>363</sup>

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<sup>352</sup> See, e.g., *id.*; Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); see also *Eight Killed in Waziristan*, *supra* note 347; *NWA Tribesmen Protest Drone Attack Casualties*, *supra* note 331.

<sup>353</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012).

<sup>361</sup> *Id.*

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*; Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); see also *NWA Tribesmen Protest Drone Attack Casualties*, *supra* note 245; *Tribesmen Protest Drone Attacks*, *supra* note 245.

Just over a year after the strike, the families of those killed are still struggling to deal with the difficulty of losing loved ones. Atiq-ur-Rehman, a young man when he was killed, left behind a wife and four children, two boys and two girls, ranging in age from four months to four years.<sup>364</sup> According to Atiq-ur-Rehman's father, a driver who now supports his dead son's entire family, some of the children seem to understand that their father was killed, but they do not talk about it.<sup>365</sup> Akram, who was in his mid-30s at the time of the strike, also left behind a wife and three sons.<sup>366</sup> According to Akram's brother, Akram's wife became mentally unwell after his death, and now suffers from hypertension and headaches.<sup>367</sup> She and Akram's sons are supported by a relative.<sup>368</sup> Abdul Qayyum Khan told our research team, "[w]e will ask...America just to quit their forces from Pakistan...but we will never curse them because it is of no use. We will ask nothing of them. In my point of view, this is a futile effort. My son will not come back. My son is dead."<sup>369</sup>

### JANUARY 23, 2009

Just three days after taking office, the Obama administration carried out its first drone strikes in Pakistan. The strikes, launched on January 23, 2009, targeted two houses, one in the village of Zeraki, North Waziristan, and one in Wana, South Waziristan.<sup>370</sup> Citing an unnamed Pakistani security official, *The Washington Post* reported the following day that the attacks struck "suspected terrorist hideouts" and killed "at least 10 insurgents, including five foreign nationals and possibly even 'a high-value target.'"<sup>371</sup> Other initial

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<sup>364</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>365</sup> *See id.*

<sup>366</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>367</sup> Interview with Ibrahim Shah, in Peshawar, Pakistan (May 9, 2012).

<sup>368</sup> *See id.*

<sup>369</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>370</sup> *Obama 2009 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/obama-2009-strikes/> (last visited Aug. 22, 2012).

<sup>371</sup> R. Jeffrey Smith, Candace Rondeaux & Joby Warrick, *2 US Airstrikes Offer a Concrete Sign of Obama's Pakistan Policy*, WASH. POST (Jan. 24, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/23/AR2009012304189.html>. Pakistani media reported the strikes in similar terms. *See US Drone Attacks Kill 14 in Waziristan: First Obama-Era Strikes in Tribal Areas*, DAWN (Jan. 23, 2009), <http://archives.dawn.com/archives/33530>; *Twenty Killed in US Drone Strikes in N, S Waziristan*, GEO PAKISTAN (Jan. 23, 2009), <http://www.geo.tv/1-23-2009/33388.htm> (noting that the missile in North Waziristan targeted the house of "Khalil" and that foreigners were killed).



media accounts also reported that those killed by the strikes were “militants.”<sup>372</sup> The *Long War Journal*, which does not provide separate data on individual strikes, wrote a post on its website about the two attacks on January 23, 2009.<sup>373</sup> On the Zeraki strike, it reported that ten people (without identification or classification) had been killed and that the target of the strike was “a compound run by a local named Khalil.”<sup>374</sup>

Within a few days of the Zeraki strike, some sources in Pakistan published information that questioned the initial narrative. These sources cited the funeral for the victims, attended by “thousands of tribesmen,”<sup>375</sup> as well as information from official and other sources recognizing the death of three children and at least four civilians between the Zeraki and Wana strikes.<sup>376</sup> Two years later, Islamabad attorney Shahzad Akbar filed a suit on behalf of over a dozen Waziri residents who had been affected directly by drone strikes. One of the named plaintiffs in the suit was Faheem Qureshi, a fourteen-year boy

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<sup>372</sup> See, e.g., *Deadly Missiles Strike Pakistan*, BBC NEWS (Jan. 23, 2009), <http://news.bbc.co.uk/2/hi/7847423.stm> (citing officials as saying “[f]our Arab militants” were killed in the strike”); Ewen MacAskill, *President Orders Air Strikes on Villages in Tribal Area*, GUARDIAN (Jan. 23, 2009), <http://www.guardian.co.uk/world/2009/jan/24/pakistan-barack-obama-air-strike> (while referencing reports that interviewed local interviewers, described the strikes as against “suspected militants.”); Juan Cole, *Obama’s Vietnam?*, SALON (Jan. 26, 2009), [http://www.salon.com/2009/01/26/obama\\_85/](http://www.salon.com/2009/01/26/obama_85/) (claiming that the owner of the home “hosted a party of five alleged al-Qaida operatives in the guesthouse on his property,” and referencing Pakistani press accounts that claimed the strike killed “four Arab fighters and a Punjabi militant”). We were unable to find updated information in the *Washington Post* about these strikes.

<sup>373</sup> Bill Roggio, *US Strikes al Qaeda in North and South Waziristan*, LONG WAR JOURNAL (Jan. 23, 2009), available at [http://www.longwarjournal.org/archives/2009/01/us\\_strikes\\_al\\_qaeda.php#ixzz1MJhxXvwL](http://www.longwarjournal.org/archives/2009/01/us_strikes_al_qaeda.php#ixzz1MJhxXvwL).

<sup>374</sup> *Id.*

<sup>375</sup> Mushtaq Yusufzai et. al., *Thousands Attend Funeral of Drone Victims*, NEWS (Jan. 25, 2009), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=19872&Cat=13&dt=1/25/2009> (noting that “thousands of tribesmen on Saturday attended the funeral prayers of the victims of Friday’s drone attacks in the North and South Waziristan Agencies,” and that “[they] were critical of the reporting of the international wire agencies....[and] claimed that all those killed in the attack were innocent and local villagers, who had nothing to do with militancy or Taliban”).

<sup>376</sup> Mushtaq Yusufzai, *US Missile Strikes Kill 20 in Waziristan*, THE NEWS (Jan. 24, 2009) (maintaining that militants were killed in the Zeraki strike, but asserting that Khalil Dawar, the owner of the house and others present were civilians, and that of the 20 killed in the Zeraki and Wana strikes “a majority [] were local tribesmen”) <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=19836&Cat=13&dt=1/24/2009>; see also *Death Toll From Frontier Drone Strikes Rises to 22*, DAWN (undated article), <http://archives.dawn.com/archives/124483> (referring to January 23, 2009 Zeraki drone strike as occurring on “Friday” and January 24, 2009 funeral as occurring on “Saturday” and noting that the two strikes killed “three children and at least four civilians”).

who lost his left eye and suffered a fracture skull in the Zeraki blast.<sup>377</sup> The suit led to some additional reporting on the January 23 strikes, which emphasized that at least some of the victims were civilians.<sup>378</sup> In light of developments over the past three years, *TBIJ* now reports that in the Zeraki strike at least seven and as many as 11 civilians were killed, of a total of between seven and 15 total dead; the New America Foundation reported that five to six civilians were killed, in addition to four “militants.”<sup>379</sup> While ambiguity remains about some of those killed in the Zeraki strike, available evidence indicates that the attack killed numerous civilians, raising important questions about whether the US complied with basic principles of proportionality and proper precautions in attack. Our analysis focuses on the strike in Zeraki, Mir Ali, North Waziristan, though much of the initial coverage treated the two strikes together, since they both happened on the same day.<sup>380</sup>

We interviewed Faheem Quereshi, a 14-year old who survived the strike, his doctor, his cousin Ejaz Ahmad, who visited the strike site the following day, and the attorneys representing victims in the matter. We also reviewed physical and documentary evidence (including a complaint to the U.N.), media reports, and drone data aggregators. The narrative in this section is based on these sources. We have not been able to find an official US government statement about the strike,<sup>381</sup> nor were we able to

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<sup>377</sup> Hasnain Kazim, *Relatives of Pakistani Drone Victims to Sue CIA*, DER SPIEGEL (Jan. 21, 2011), <http://www.spiegel.de/international/world/striking-back-at-the-us-relatives-of-pakistani-drone-victims-to-sue-cia-a-740638.html> (focusing on civilian victims, and noting “a lawsuit initiated by Karim Khan, a 43-year-old who lost his son and brother...[and joined by] [t]en other residents of Waziristan ...[including] 14-year-old Fahim Qureshi, who on Jan. 23, 2009, lost his left eye, suffered a fractured skull and was hit by several shards in the stomach.”).

<sup>378</sup> *Id.*; see also Devi Boerema, *Trying to Find the Truth Behind US Drone Strikes*, RADIO NETHERLANDS WORLDWIDE (Aug. 17, 2011), <http://tswi.org/english/article/trying-find-truth-behind-us-drone-strikes> (discussing civilian victims of drone strikes and noting that Shahzad Akbar “represents Fahim Qureshi and his family” in litigation in Pakistan).

<sup>379</sup> *Obama 2009 Pakistan Strikes*, *supra* note 370 (finding that seven to 15 were killed in the strike, including seven to 11 civilians); *2009: The Year of the Drone*, NEW AMERICA FOUNDATION, <http://counterterrorism.newamerica.net/drones/2009> (identifying at least nine killed, including between five and six civilians).

<sup>380</sup> While we focus on the civilians harms in the Zeraki incident, evidence also suggests there have been civilian casualties in the second strike in Wana, South Waziristan, although that strike was beyond the scope of this report. See CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, CIVILIANS IN ARMED CONFLICT: CIVILIAN HARM AND CONFLICT IN NORTHWEST PAKISTAN 20-21 (2010); *Obama 2009 Pakistan Strikes*, *supra* note 370.

<sup>381</sup> The initial report by the *Washington Post* noted White House press secretary Robert Gibbs’ refusal to answer questions about the strikes. Smith, Rondeaux & Warrick, *supra* note 371 (“I’m not going to get into these matters.”).

locate any on-the-record statements about the strike by the Pakistani government, although media sources cited anonymous authorities.<sup>382</sup>

On the night of January 23, 2009, in the village of Zeraki in North Waziristan, relatives and neighbors gathered for tea and conversation in the *hujra*<sup>383</sup> of an elder named Mohammad Khalil. Media sources have described Khalil in different ways, ranging from a “tribal notable”<sup>384</sup> to someone “reported to be associated with Tehrik-i-Taliban Pakistan of Baitullah Mehsud.”<sup>385</sup> Some media sources suggest that Khalil may have invited Taliban or Al Qaeda fighters to his *hujra*,<sup>386</sup> a charge denied by both Faheem and Ejaz, who told our researchers that they believed that those in the house were innocent and not involved in terrorism.<sup>387</sup>

On the day of the strike, Khalil’s adult guests included his relatives Khushdil Khan, the owner of a hardware store in Mir Ali, and Mansoor-ur-Rehman, a former driver who had worked in the United Arab Emirates, as well as his neighbors Ubaid Ullah, Rafiq Ullah, and Safat Ullah.<sup>388</sup> Also in the *hujra* were Khalil’s nephews, twenty-one-year-old Azaz-el-Rehman Qureshi and sixteen-year-old Faheem Qureshi.<sup>389</sup> His female family members were present, as were children, but they were in a nearby space, separate from the men, as is common in Waziri culture.<sup>390</sup>

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<sup>382</sup> See, e.g., *supra* notes 371 and 372 and accompanying text.

<sup>383</sup> The *hujra* is the main meeting area in a Waziri home, usually where Waziri men entertain visitors. See Numbers, *supra* Chapter 2: Numbers.

<sup>384</sup> Cole, *supra* note 372; see also Complaint to UNHRC, *supra* note 342, at 5, 6 (describing Khalil, or Khaleel, as “a retired schoolteacher”).

<sup>385</sup> *US Drone Attacks Kill 14 in Waziristan*, *supra* note 371; see also *Death Toll From Frontier Drone Strikes rises to 22*, *supra* note 376 (depicting Khalil as a “tribesman and Taliban sympathizer”).

<sup>386</sup> Cole, *supra* note 372 (asserting that Khalil “hosted a party of five alleged al-Qaida operatives in the guest house on his property”); Yusufzai, *US Missile Strikes Kill 20 in Waziristan*, *supra* note 376 (citing sources that asserted that “Khalil himself was not a militant, but had good relations with the Taliban and was considered a trustworthy tribal host of Taliban fighters in the area.”).

<sup>387</sup> See Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>388</sup> Complaint to UNHRC, *supra* note 342, at 5-6; see also Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>389</sup> Complaint to UNHRC, *supra* note 342, at 5-6.; see also Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>390</sup> See Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012); see also *supra* Methodology (describing *purda*, the practice of separation of men and women).

At about 5:00 that evening, they heard the hissing sound of a missile and instinctively bent their heads down.<sup>391</sup> The missile slammed into the center of the room, blowing off the ceiling and roof, and shattering all the windows.<sup>392</sup> The immense pressure from the impact cracked the walls of the attached house, as well as those of the neighboring houses.<sup>393</sup> Our research team reviewed photographs that Faheem showed us, which he said showed the destruction to the home. Faheem, who stated that he was approximately ten footsteps away from the center of the *hujra*, suffered a fractured skull and received shrapnel wounds and burns all over the left side of his body and face.<sup>394</sup> All others in the *hujra*—at least seven, but as many as 15 people—were killed.<sup>395</sup>

In the moments after the strike, Faheem said he “could not think.”<sup>396</sup> “I felt my brain stopped working and my heart was on fire,” stated Faheem.<sup>397</sup> “My entire body was burning like crazy.”<sup>398</sup> Faheem wanted to splash water on his face, but he could not find any.<sup>399</sup> After a few minutes of confusion, he stumbled out of the gate of his *hujra*, where neighbors found him.<sup>400</sup> They quickly gathered Faheem into a pickup truck and rushed him to a government hospital in Mir Ali, a ten-minute drive away, according to Faheem.<sup>401</sup> Medics there bandaged his wounds and transferred him to another hospital in Bannu, the closest major city outside FATA, where doctors operated to remove shrapnel from his abdomen and repair damage to his leg, arm, and eyes.<sup>402</sup> Following the surgery, Faheem was transferred to a private hospital in Peshawar, where he remained for at least 23 days.<sup>403</sup> In the end, Faheem lost his left eye, which has since been replaced by an artificial one; he also lost his hearing in one ear as a result of

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<sup>391</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>392</sup> *See id.*

<sup>393</sup> *Id.*

<sup>394</sup> *See id.*; Complaint to UNHRC, *supra* note 342, at 5-6.

<sup>395</sup> Interview with Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); *see* Complaint to UNHRC, *supra* note 342, at 5-6.

<sup>396</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

<sup>399</sup> *Id.*

<sup>400</sup> *See id.*

<sup>401</sup> *Id.* Faheem noted that villagers ordinarily do not search the rubble of a strike for at least half an hour after impact, because they fear a second missile will strike the rescuers. *Id.*

<sup>402</sup> *Id.*; *see* Complaint to UNHRC, *supra* note 342, at 5-6.

<sup>403</sup> *Id.*

damage to his eardrum.<sup>404</sup> His vision in his right eye is still blurred, requiring ongoing treatment, and he now has only limited mobility.<sup>405</sup>

Faheem's cousin Ejaz Ahmad, who lives just a few kilometers away, did not attend the gathering in the *hujra* that evening, and was instead at a friend's home.<sup>406</sup> He discovered the next morning that his paternal uncle, Khush Dil Khan, in whose hardware store Ejaz worked, died in the strike.<sup>407</sup> "The bodies were completely destroyed," Ejaz stated.<sup>408</sup> "All we could retrieve was the torso and upwards."<sup>409</sup>

Those who dug through the rubble retrieved a small handful of items that the dead had on their persons at the time of the attack; Faheem still carries these around with him as reminders of the uncles and cousin he lost.<sup>410</sup> When the strike happened, Faheem's cousin, Azaz-el-Rehman Qureshi, was preparing to move to the United Arab Emirates to work as a driver, and had just finished his final preparations, including obtaining a passport and having new clothes made.<sup>411</sup> Faheem showed our research team an identification card (in the name of Azaz-el-Rehman Qureshi, which we copied),<sup>412</sup> a pair of business cards for a Mir Ali fabric store, and a cargo service slip that Azaz was carrying in his pocket on the night of the strike, each with jagged tears that Faheem said he believed had been caused by missile shrapnel.<sup>413</sup> Faheem also showed us several items retrieved from the person of Mohammad Khalil, his uncle. These were an identification card in the name of Mohammad Khalil (which we copied<sup>414</sup>) and a shopping list covered in what appeared to be dried blood, listing everyday grocery items

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<sup>404</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); *see also* Complaint to UNHRC, *supra* note 342, at 5-6.

<sup>405</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>406</sup> Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

<sup>410</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>411</sup> *Id.*

<sup>412</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012) (on file with Stanford research team).

<sup>413</sup> *Id.*

<sup>414</sup> *Id.*

such as rice.<sup>415</sup> A third identification card, from his uncle Mansoor's pocket, was also shredded; Faheem said he believed this was also due to shrapnel damage.<sup>416</sup>

The mental and emotional impact of the strike has been lasting. Faheem, a top student before the strike, told us he now feels uncomfortable and distracted when he studies: “[a]t the time the drone struck, I had to take exams, but...I couldn't learn things, and it affected me emotionally....I became very short-tempered and small things annoyed me. I got angry very quickly, small things agitated me.”<sup>417</sup>

He said that he had taken medicine at one point that had helped him to focus and resume his education. Recently, however, he has once again started having difficulties studying. He plans to return to the doctor to see if he can help.<sup>418</sup> Despite battling significant challenges and frustrations, he still dreams of becoming a scientist.<sup>419</sup>

Ejaz, whose uncle and cousins were killed in the strike, and who is currently studying for an arts degree in college, said that he too “continued to go to school after the strike, but [is] tense all the time.”<sup>420</sup> He hopes to become a teacher, but at this point plans to leave his studies after one year to move abroad to join his father.<sup>421</sup> Ejaz also told us that the female members of the household who escaped the strike without physical injury have nonetheless been affected by “mental tension and anxiety,”<sup>422</sup> and explained that both he and other members of the family have trouble sleeping at night.<sup>423</sup>

Faheem's extended family has yet to recover from the economic damage caused by the strike. Mohammad Khalil left behind nine children, whom he had supported with his teacher's pension; Mansoor-ur-Rehman left behind two sons and three daughters.<sup>424</sup> The strike caused substantial damage to the family's house, reducing the *hujra* to a roofless shell and leaving large cracks in the adjacent structures.<sup>425</sup> Having lost their

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<sup>415</sup> *Id.*

<sup>416</sup> *Id.*

<sup>417</sup> *Id.* These educational impacts on segments of Waziri society are further discussed later in this Chapter. See *Beyond Killings: Civilian Impacts of US Drone Strike Practices*, *infra* Chapter 3: Living Under Drones.

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> Interview with Ejaz Ahmad, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>425</sup> *Id.*

primary breadwinners and spent an enormous sum on Faheem's medical care, the family cannot afford to rebuild.<sup>426</sup>

As the first of 292 drone strikes carried out under President Obama in Pakistan,<sup>427</sup> the January 23, 2009 strikes have received significant attention in the years that followed, including in books by two prominent American journalists. The narrative in those two books, however, focuses primarily on President Obama's role in and reaction to the strike,<sup>428</sup> rather than on the accounts of victims such as Faheem Qureshi, or the impacts of the strike on family and community members.

### BEYOND KILLING: CIVILIAN IMPACTS OF US DRONE STRIKE PRACTICES

The section below focuses on the impact that drones have on communities in North Waziristan beyond the immediately apparent death, injury, and destruction caused to those directly struck. The kinds of impacts described here are similar in numerous respects to those reported in conflict zones, or during periods of considerable violence, around the world. It is also essential to note, as described above,<sup>429</sup> that the Taliban presence in FATA has caused significant harm to civilians. However, because of the dearth of information in the US about the impacts of US drone strikes specifically, and

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<sup>426</sup> See *id.*

<sup>427</sup> *Drone Strikes in Pakistan by Year (Graph)*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/wp-content/uploads/2012/07/Strikes-Per-Year-Dash6.jpg> (last visited Aug. 22, 2012); *Obama 2009 Pakistan Strikes*, *supra* note 370.

<sup>428</sup> For example, in *Obama's Wars*, Bob Woodward writes that Obama endorsed both the January 23, 2009 strikes even though they missed their intended high-value targets. BOB WOODWARD, *OBAMA'S WARS* 93 (2010) ("Neither strike killed the intended 'HVT,' or high value target, but at least five Al Qaeda militants died. . . . The president said good. He had fully endorsed the covert action program and made it clear he wanted more."). Daniel Klaidman's *Kill or Capture* (2012) paints a different picture of Obama's reaction to news about the January 23, 2009 covert activities. According to Klaidman, Obama was informed that the Wana strike missed its target and killed civilians, including two children. Klaidman writes:

Obama was disturbed, and he grilled his counterterrorism adviser for answers. How could this have happened? What about the pinpoint accuracy of these weapons, which he had heard about all through the transition? . . . [h]ere he was, in his first week as president, presiding over the accidental killing of innocent Muslims.

DANIEL KLAIDMAN, *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY* 40 (2012).

<sup>429</sup> See Numbers, *infra* Chapter 2: Numbers.

because they tend to be framed as “precision” weapons, this section discusses their impacts on civilian populations in detail.

## IMPACTS ON WILLINGNESS TO RESCUE VICTIMS AND PROVIDE MEDICAL ASSISTANCE

There is now significant evidence that the US has repeatedly engaged in a practice sometimes referred to as “double tap,”<sup>430</sup> in which a targeted strike site is hit multiple times in relatively quick succession. Evidence also indicates that such secondary strikes have killed and maimed first responders coming to the rescue of those injured in the first strike. In a February 2012 joint investigative report, Chris Woods of *The Bureau of Investigative Journalism* (TBIJ) documented that:

[o]f the 18 attacks on attacks on rescuers and mourners reported at the time by credible media, twelve cases have been independently confirmed by our researchers. In each case civilians are reported killed, and where possible we have named them.<sup>431</sup>

Since those findings were released, several more strikes have repeated this pattern, including a strike on July 6, 2012 in which three “local people” and “tribesmen . . . carrying out rescue work” were reportedly killed and two more injured in follow-up strikes.<sup>432</sup>

Those interviewed for this report were acutely aware of reports of the practice of follow-up strikes, and explained that the secondary strikes have discouraged average civilians

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<sup>430</sup> Matthew Nasuti, *Hellfire Missile Accuracy Problems Uncovered in Pentagon Data*, KABUL PRESS (Nov. 27, 2011), <http://kabulpress.org/my/spip.php?article89242> (speculating that the “double tap” strike pattern is actually less the result of strategy than it is a cover for the less-than-pinpoint-accurate technological capacity of the missiles used in most drone strikes and noting that “[d]ouble tap means that the military fires two Hellfire missiles at each target in order to ensure that at least one hits the target”); see also Derek Gregory, *Lines of Descent*, OPEN DEMOCRACY (Nov. 8, 2011), <http://www.opendemocracy.net/derek-gregory/lines-of-descent> (reporting the “Circular Error Probable” or “radius from the aiming point within which a [laser-fired Hellfire missile] will land 50 per cent of the time” at 9-24 feet, and that of a 500lb GPS-guided JDAM bomb at 30-39 feet).

<sup>431</sup> Chris Woods, *Get the Data: Obama’s Terror Drones*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 4, 2012), <http://www.thebureauinvestigates.com/2012/02/04/get-the-data-obamas-terror-drones/>.

<sup>432</sup> *Twenty Die in Double Drone Attack*, DAWN (July 7, 2012), <http://dawn.com/2012/07/07/twenty-die-in-double-drone-attack/>; see also Chris Woods, *CIA ‘Revives Attacks on Rescuers’ in Pakistan*, THE BUREAU OF INVESTIGATIVE JOURNALISM (June 4, 2012), <http://www.thebureauinvestigates.com/2012/06/04/cia-revives-attacks-on-rescuers-in-pakistan/>.



from coming to one another's rescue, and even inhibited the provision of emergency medical assistance from humanitarian workers.

The lone survivor of the Obama administration's first strike in North Waziristan, Faheem Qureshi, stated that "[u]sually, when a drone strikes and people die, nobody comes near the bodies for half an hour because they fear another missile will strike."<sup>433</sup> He believes that he would likely not have survived if he had not managed to walk out of the smoking rubble of his *hujra* on his own, because his neighbors would have waited too long in coming to rescue him.<sup>434</sup> One interviewee told us that a strike at the home of his in-laws hit first responders: "Other people came to check what had happened; they were looking for the children in the beds and then a second drone strike hit those people."<sup>435</sup> A father of four, who lost one of his legs in a drone strike, admitted that, "[w]e and other people are so scared of drone attacks now that when there is a drone strike, for two or three hours nobody goes close to [the location of the strike]. We don't know who [the victims] are, whether they are young or old, because we try to be safe."<sup>436</sup>

When individuals do try to recover bodies, they do so with knowledge that their efforts might get them killed or maimed. Noor Behram, a journalist who has reported extensively from the area, elaborated:

[W]hat America has tried to do is attack the rescue teams . . . . So now, what the tribals do, they don't want many people going to the strike areas. Only three or four willing people who know that if they go, they are going to die, only they go in. . . . It has happened most of the times . . . [O]nce there has been a drone attack, people have gone in for rescue missions, and five or ten minutes after the drone attack, they attack the rescuers who are there.<sup>437</sup>

Another interviewee, Hayatullah Ayoub Khan, recounted a particularly harrowing incident that he said he experienced while driving between Dossali and Tal in North Waziristan.<sup>438</sup> He stated that a missile from a drone was fired at a car approximately three hundred meters in front of him, missing the car in front, but striking the road close enough to cause serious damage.<sup>439</sup> Hayatullah stopped, got out of his own car,

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<sup>433</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>434</sup> *Id.*

<sup>435</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>436</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>437</sup> Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012).

<sup>438</sup> Interview with Hayatullah Ayoub Khan (anonymized name), in Islamabad, Pakistan (Mar. 2, 2012).

<sup>439</sup> *Id.*

and slowly approached the wreckage, debating whether he should help the injured and risk being the victim of a follow-up strike.<sup>440</sup> He stated that when he got close enough to see an arm moving inside the wrecked vehicle, someone inside yelled that he should leave immediately because another missile would likely strike.<sup>441</sup> He started to return to his car and a second missile hit the damaged car and killed whomever was still left inside.<sup>442</sup> He told us that nearby villagers waited another twenty minutes before removing the bodies, which he said included the body of a teacher from Hayatullah's village.<sup>443</sup>

Crucially, the threat of the “double tap” reportedly deters not only the spontaneous humanitarian instinct of neighbors and bystanders in the immediate vicinity of strikes, but also professional humanitarian workers providing emergency medical relief to the wounded. According to a health professional familiar with North Waziristan, one humanitarian organization had a “policy to not go immediately [to a reported drone strike] because of follow up strikes. There is a six hour mandatory delay.”<sup>444</sup> According to the same source, therefore, it is “only the locals, the poor, [who] will pick up the bodies of loved ones.”<sup>445</sup>

The dissuasive effect that the “double tap” pattern of strikes has on first responders raises crucial moral and legal concerns. Not only does the practice put into question the extent to which secondary strikes comply with international humanitarian law's basic rules of distinction, proportionality, and precautions, but it also potentially violates specific legal protections for medical and humanitarian personnel, and for the wounded.<sup>446</sup> As international law experts have noted, intentional strikes on first responders may constitute war crimes.<sup>447</sup>

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<sup>440</sup> *Id.*

<sup>441</sup> *Id.*

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> Interview with Shams Mohiuddin (anonymized name and location), in Pakistan (May 2012).

<sup>445</sup> *Id.*

<sup>446</sup> See Chapter 4: Legal Analysis; *see generally* JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOL. 1: RULES (2006), available at <http://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf> (mandating the protection of medical and humanitarian personnel (Rules 25-32), the allowance and facilitation of unimpeded humanitarian relief for civilians in need, (Rule 55) and the provision of medical care for the wounded (Rules 110-11)).

<sup>447</sup> Jack Serle, *UN Expert Labels CIA Tactic Exposed by Bureau ‘a War Crime’*, THE BUREAU OF INVESTIGATIVE JOURNALISM (June 21, 2012) (noting UN Special Rapporteur for extrajudicial, summary or

## DIRECT PROPERTY DAMAGE AND ECONOMIC HARDSHIP IMPACTS

Many of the interviewees we spoke with experienced severe financial hardship as a result of strike damage to their homes, loss of a primary breadwinner, or medical costs incurred in caring for drone strike survivors.

In North Waziristan, extended families live together in compounds that often contain several smaller individual structures.<sup>448</sup> Many interviewees told us that often strikes not only obliterate the target house, usually made of mud,<sup>449</sup> but also cause significant damage to three or four surrounding houses.<sup>450</sup> Such destruction exacts a significant cost on communities, especially in a place like FATA where “underdevelopment and poverty are particularly stark,” and “savings, insurance, and social safety nets” are largely unavailable.<sup>451</sup>

A 45 year-old rural farmer who had to leave his village after a drone destroyed his house, told us how it affected his family:

A drone struck my home. . . . I [was at] work at that time, so there was nobody in my home and no one killed. . . . Nothing else was destroyed other than my house. I went back to see the home, but there was nothing to do—I just saw my home wrecked. . . . I was extremely sad, because normally a house costs around 10 *lakh*, or 1,000,000 rupees [US \$10,593], and I don’t even have 5,000 rupees now [US \$53]. I spent my whole life in that house . . . my father had lived there as well. There is a big difference between having your own home and living on rent or mortgage. . . . [I] belong to a poor family and my home has been destroyed . . . [and] I’m just hoping that I somehow recover financially.<sup>452</sup>

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arbitrary executions as observing that “if civilian ‘rescuers’ are indeed being intentionally targeted, there is no doubt about the law: those strikes are a war crime”),  
<http://www.thebureauinvestigates.com/2012/06/21/un-expert-labels-cia-tactic-exposed-by-bureau-a-war-crime/>.

<sup>448</sup> Interview with Zafar Husam (anonymized name and location), in Pakistan (May 2012); Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>449</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>450</sup> *See, e.g.*, Interview with Ghulam Faris (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (estimating that seven or eight houses around a house hit by a drone strike were affected); Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 26, 2012) (“When a drone strikes, it easily destroys a house.”).

<sup>451</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 380.

<sup>452</sup> Interview with Adil Hashmi (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

He now lives in a small rented house in Miranshah with his five sons, the oldest of whom helps support the family by selling fruits and vegetables from a vending cart.<sup>453</sup>

Drone strikes that kill civilians also exact a substantial toll on livelihoods by incapacitating the primary income earners of families.<sup>454</sup> Because men are typically the primary income earners in their families, strikes often deprive victims' families of "a key, and perhaps its only, source of income."<sup>455</sup> Families struggle to compensate for the lost income, often forcing children or other younger relatives to forgo school and enter the workforce at a young age.<sup>456</sup> Eighteen-year-old Hisham Abrar, whose cousin was killed in a drone strike, explained that "a lot of men have been killed [who are] wage earners for the house, and now the kids and the families don't have a source of income because of that."<sup>457</sup> Others in his community do what they can to help, but "they are poor, and they usually just rely on labor services—daily wage earning. That's only sufficient for themselves, so it's hard to help others. But whenever they can, they do."<sup>458</sup>

One man told us that several of his friends killed in the March 17, 2011 *jirga* strike<sup>459</sup> "left a family and children" to be cared for by family members who have to "work with their hands and feet" in hard labor to support them.<sup>460</sup> Another strike survivor explained that a friend killed in a strike:

left behind a mother, two sisters, and a young baby brother. And they now live on whatever the village gives them as charity. [The man's younger brothers] tried to go out as laborers but they cannot do it. The other village men help them. And there are sometimes these neighbors that give them food, sometimes not, but they are basically living on charity.<sup>461</sup>

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<sup>453</sup> *Id.*

<sup>454</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 380, at 26-28.

<sup>455</sup> *Id.* at 26.

<sup>456</sup> *Id.*; see Interview with Hisham Abrar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>457</sup> Interview with Hisham Abrar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>458</sup> *Id.*

<sup>459</sup> See March 17, 2011 Strike Narrative, *supra* Chapter 3: Living Under Drones.

<sup>460</sup> In Interview with Masood Afwan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012). Other relatives of those killed in the March 17, 2011 strike told of similar difficulties supporting family members due to lost income from the strike victims. See March 17, 2011 Strike Narrative, *supra* Chapter 3: Living Under Drones.

<sup>461</sup> Interview with Haroon Quddoos (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

In addition to the loss of homes and primary wage earners, several of those interviewed were burdened with enormous medical bills following strikes incurred for surgeries, mental health care, and hospital stays. Without major emergency medical centers or adequate hospitals in North Waziristan, many victims were taken to Peshawar for medical treatment, a journey that can take anywhere from hours to several days due to rough terrain and poor security.<sup>462</sup> Once there, many ended up in private hospitals, running up bills of several *lakhs* each (each *lakh* equivalent to more than US\$1000 each),<sup>463</sup> which is many times the average annual income in FATA.<sup>464</sup>

Medical bills of this magnitude can have a lasting effect on a victim's family. Sameer Rahman's nephew, for example, suffered significant injuries in a strike that took place during the holy month of Ramadan.<sup>465</sup> Family members took him to Peshawar for medical care, but struggled to raise the 280,000 rupees (\$2,960) required for his treatment.<sup>466</sup> Forced to take out emergency loans, the family has amassed enormous debt and still owes about 100,000 rupees (approximately US \$1,058).<sup>467</sup> The family of Dawood Ishaq, a father of four who lost consciousness for six days and underwent a leg amputation following a 2010 attack, had to "[take] loans from different people . . . in the village" to pay for his treatment. Dawood told us: "[m]y father had to labor hard and work in different positions to earn that money, and sometimes I've had to sell off stuff from home to make money. My kids have been sick . . . but we have to work very hard to

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<sup>462</sup> See, e.g., Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012); Interview with Fahad Mirza (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012); Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012); Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>463</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

<sup>464</sup> The per capita income in FATA stands at a meager US\$250 per year. UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, COMBATING TERRORISM: THE UNITED STATES LACKS COMPREHENSIVE PLAN TO DESTROY THE TERRORIST THREAT AND CLOSE THE SAFE HAVEN IN PAKISTAN'S FEDERALLY ADMINISTERED TRIBAL AREAS (2008), *reprinted in* COMBATING ISLAMIC MILITANCY AND TERRORISM IN PAKISTAN'S BORDER REGION 59, 64 (Nikolas J. Koppel ed., 2010).

<sup>465</sup> Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

<sup>466</sup> *Id.*

<sup>467</sup> *Id.*

earn money to pay for the expense.”<sup>468</sup> Now a double amputee, Dawood makes a living selling vegetables when he can in a market in Mir Ali.<sup>469</sup>

US authorities have not made any coordinated effort to provide compensation to strike victims in Pakistan, although compensation schemes to address civilian harm do exist in Afghanistan.<sup>470</sup> Pakistani authorities have offered limited compensation in some instances, but these offers, rejected by many Waziris on principle,<sup>471</sup> fail to address adequately the damage and loss of income the victims have sustained.<sup>472</sup>

### MENTAL HEALTH IMPACTS OF DRONE STRIKES AND THE PRESENCE OF DRONES

One of the few accounts of living under drones ever published in the US came from a former *New York Times* journalist who was kidnapped by the Taliban for months in FATA.<sup>473</sup> In his account, David Rohde described both the fear the drones inspired among his captors, as well as among ordinary civilians: “The drones were terrifying. From the ground, it is impossible to determine who or what they are tracking as they circle overhead. The buzz of a distant propeller is a constant reminder of imminent death.”<sup>474</sup> Describing the experience of living under drones as ‘hell on earth’, Rohde explained that even in the areas where strikes were less frequent, the people living there still feared for their lives.<sup>475</sup>

Community members, mental health professionals, and journalists interviewed for this report described how the constant presence of US drones overhead leads to substantial

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<sup>468</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>469</sup> *Id.*

<sup>470</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 451, at 63.

<sup>471</sup> *See, e.g.*, Interview with Khalil Khan, Noor Khan, and Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012) (“I mean, after the strike, we lost an entire community of elders, so we did not take these 3 *lakh* rupees and we didn’t take compensation because we thought we were more than that.”); Interview with Khairullah Jan, in Islamabad, Pakistan (Feb. 29, 2012) (“We think the Pakistani government has a hand, or at least a heart, in it. We are Pashtuns and we will not accept compensation for this.”); Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012) (“We don’t need any financial benefit. I don’t want to sell my son.”).

<sup>472</sup> CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT, *supra* note 451, at 51-57.

<sup>473</sup> *See* David Rohde, *The Drone War*, REUTERS (Jan. 26, 2012), <http://www.reuters.com/article/2012/01/26/us-david-rohde-drone-wars-idUSTRE80P11I20120126>.

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

levels of fear and stress in the civilian communities below.<sup>476</sup> One man described the reaction to the sound of the drones as “a wave of terror” coming over the community. “Children, grown-up people, women, they are terrified. . . . They scream in terror.”<sup>477</sup> Interviewees described the experience of living under constant surveillance as harrowing. In the words of one interviewee: “God knows whether they’ll strike us again or not. But they’re always surveying us, they’re always over us, and you never know when they’re going to strike and attack.”<sup>478</sup> Another interviewee who lost both his legs in a drone attack said that “[e]veryone is scared all the time. When we’re sitting together to have a meeting, we’re scared there might be a strike. When you can hear the drone circling in the sky, you think it might strike you. We’re always scared. We always have this fear in our head.”<sup>479</sup>

A Pakistani psychiatrist, who has treated patients presenting symptoms he attributed to experience with or fear of drones, explained that pervasive worry about future trauma is emblematic of “anticipatory anxiety,”<sup>480</sup> common in conflict zones.<sup>481</sup> He explained that the Waziris he has treated who suffer from anticipatory anxiety are constantly worrying, “when is the next drone attack going to happen? When they hear drone sounds, they run around looking for shelter.”<sup>482</sup> Another mental health professional who works with drone victims concluded that his patients’ stress symptoms are largely attributable to their belief that “[t]hey could be attacked at any time.”<sup>483</sup>

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<sup>476</sup> See, e.g. Interview with Azhar Aslam (anonymized name), in Peshawar, Pakistan (May 9, 2012) (“We have lost our peace of mind. We are not at peace. All the time we are scared. There could be a drone attack at any time. All the time, we are just scared.”); Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“There’s a sense of fear pervading around all the time.”); Interview with Iqbal Ali Mir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“We are all scared in our hearts because nobody knows who will be hit.”).

<sup>477</sup> Interview with Nasim Rahman (anonymized name), in Islamabad, Pakistan (May 9, 2012).

<sup>478</sup> Interview with Khalid Raheem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>479</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>480</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012). Anticipatory anxiety refers to a “complex combination of a future-oriented cognitive state, negative affect, and automatic arousal,” involving a “sense of uncontrollability focused on possible future threat, danger, or other upcoming potentially negative effects.” Phyllis Chua et al., *A Functional Anatomy of Anticipatory Anxiety*, 9 NEUROIMAGE 563, 563 (1998) (citing David Barlow et al., *Fear, Panic, Anxiety, and Disorders of Emotion*, 43 NEBRASKA SYMPOSIUM ON MOTIVATION 251-328 (1996)).

<sup>481</sup> See generally Abdel Aziz Mousa Thabet, Yehia Abed, & Panos Vostanis, *Emotional Problems in Palestinian Children Living In A War Zone: A Cross-Sectional Study*, 359 LANCET 1801 (2002), available at <http://www.sciencedirect.com/science/article/pii/S0140673602087093>.

<sup>482</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012).

<sup>483</sup> Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012).

Uncontrollability—a core element of anticipatory anxiety—emerged as one of the most common themes raised by interviewees. Haroon Quddoos, a taxi driver who survived a first strike on his car, only to be injured moments later by a second missile that hit him while he was running from the burning car, explained:

We are always thinking that it is either going to attack our homes or whatever we do. It's going to strike us; it's going to attack us . . . . No matter what we are doing, that fear is always inculcated in us. Because whether we are driving a car, or we are working on a farm, or we are sitting home playing . . . cards—no matter what we are doing, we are always thinking the drone will strike us. So we are scared to do anything, no matter what.<sup>484</sup>

Interviewees indicated that their own powerlessness to minimize their exposure to strikes compounded their emotional and psychological stress. “We are scared. We are worried. The worst thing is that we cannot find a way to do anything about it. We feel helpless.”<sup>485</sup> Ahmed Jan summarized the impact: “Before the drone attacks, it was as if everyone was young. After the drone attacks, it is as if everyone is ill. Every person is afraid of the drones.”<sup>486</sup> One mother who spoke with us stated that, although she had herself never seen a strike, when she heard a drone fly overhead, she became terrified. “Because of the terror, we shut our eyes, hide under our scarves, put our hands over our ears.”<sup>487</sup> When asked why, she said, “Why would we *not* be scared?”<sup>488</sup>

A humanitarian worker who had worked in areas affected by drones stated that although far safer than others in Waziristan, even he felt constant fear:

Do you remember 9/11? Do you remember what it felt like right after? I was in New York on 9/11. I remember people crying in the streets. People were afraid about what might happen next. People didn't know if there would be another attack. There was tension in the air. This is what it is like. It is a continuous tension, a feeling of continuous uneasiness. We are scared. You wake up with a start to every noise.<sup>489</sup>

In addition to feeling fear, those who live under drones—and particularly interviewees who survived or witnessed strikes—described common symptoms of anticipatory anxiety

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<sup>484</sup> Interview with Haroon Quddoos (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>485</sup> Interview with Mohsin Haq (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>486</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>487</sup> Interview with Farah Kamal (anonymized name), in Peshawar, Pakistan (May 15, 2012).

<sup>488</sup> *Id.*

<sup>489</sup> Interview with Peter Brenner (anonymized name), in Pakistan (2012).



and post-traumatic stress disorder. Interviewees described emotional breakdowns,<sup>490</sup> running indoors or hiding when drones appear above,<sup>491</sup> fainting,<sup>492</sup> nightmares and other intrusive thoughts,<sup>493</sup> hyper startled reactions to loud noises,<sup>494</sup> outbursts of anger or irritability,<sup>495</sup> and loss of appetite and other physical symptoms.<sup>496</sup> Interviewees also reported suffering from insomnia and other sleep disturbances,<sup>497</sup> which medical health professionals in Pakistan stated were prevalent.<sup>498</sup> A father of three said, “drones are always on my mind. It makes it difficult to sleep. They are like a mosquito. Even when

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<sup>490</sup> A teenager from Machi Khel described seeing “a lot of people [who] have been mentally affected” by drone strikes, and noted that sometimes people “have breakdowns where they start crying all of a sudden and they are really scared.” Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>491</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“whenever my wife sees a drone she is very confused and scared and runs inside the house”); Interview with Misbah Naseri (anonymized name), in Islamabad, Pakistan (May 9, 2012) (“We hide in different places.”); Interview with Sahar Nazir in Peshawar, Pakistan (May 15, 2012) (recounting second-hand anecdote of a woman who ran around frantically inside her home looking for places to hide when she heard a drone overhead).

<sup>492</sup> Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Haidar Nauman (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012).

<sup>493</sup> Interview with Umar Ashraf (anonymized name), Islamabad, Pakistan (Mar. 9, 2012) (describing how he has to keep himself distracted with work, otherwise “the sound of the drone stays in my brain”); Interview with Syed Akhunzada Chitan, National Assembly Member, in Islamabad, Pakistan (May 14, 2012) (describing how people wake up in the night screaming, hallucinating about drones).

<sup>494</sup> Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“Any loud noise, I get scared because I think it might be a drone.”); Interview with Fahad Mirza (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (describing frightened reactions to noise, explosions, and loud sounds).

<sup>495</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012) (“[After I was injured in the strike,] I became very short-tempered and small things annoyed me. I got angry very quickly, small things agitated me.”); Interview with Saeed Yayha (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012) (“[W]hen the [drones] are there, I can’t talk to people. I start fighting with everybody even when someone is talking to me very sweetly. I start fighting with them because of all the pressure in my head.”).

<sup>496</sup> Pakistani psychiatrists interviewed attributed the frequent patient presentation of physical symptoms (such as aches and pains and vomiting) to the common reluctance of patients to recognize or acknowledge their emotional distress. Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012); Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012); Interview with Hatim Sheikh (anonymized name), in Peshawar, Pakistan (2012); Interview with Abbas Uddin (anonymized name and location), in Pakistan (2012). Psychiatrists may refer to physiological responses to deeper psychological problems as “conversion” or “somatization” disorders. *See* AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, § 300.11, 300.81 (4th ed. 2000).

<sup>497</sup> Interview with Haroon Quddoos (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012); Interview with Saeed Yayha (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Azhar Aslam (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>498</sup> Interviews with Medical Health Professionals who requested anonymity, in Lahore, Pakistan (2012).

you don't see them, you can hear them, you know they are there.”<sup>499</sup> According to a strike survivor, “When the drone is moving, people cannot sleep properly or can't rest properly. They are always scared of the drones.”<sup>500</sup> Saeed Yayha, a day laborer who was injured from flying shrapnel in the March 17, 2011 *jirga* attack and must now rely on charity to survive, said:

I can't sleep at night because when the drones are there . . . I hear them making that sound, that noise. The drones are all over my brain, I can't sleep. When I hear the drones making that drone sound, I just turn on the light and sit there looking at the light. Whenever the drones are hovering over us, it just makes me so scared.<sup>501</sup>

Akhunzada Chitan, a parliamentarian who occasionally travels to his family home in Waziristan reported that people there “often complain that they wake up in the middle of the night screaming because they are hallucinating about drones.”<sup>502</sup>

“Drones are always on my mind. It makes it difficult to sleep. They are like a mosquito. Even when you don't see them, you can hear them, you know they are there.”

- *Mohammad Kausar (anonymized name), father of three*

Interviewees also reported a loss of appetite as a result of the anxiety they feel when drones are overhead. Ajmal Bashir, an elderly man who has lost both relatives and friends to strikes, said that “every person—women, children, elders—they are all

frightened and afraid of the drones . . . [W]hen [drones] are flying, they don't like to eat anything . . . because they are too afraid of the drones.”<sup>503</sup> Another man explained that “We don't eat properly on those days [when strikes occur] because we know an innocent Muslim was killed. We are all unhappy and afraid.”<sup>504</sup>

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<sup>499</sup> Interview with Mohammad Kausar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>500</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>501</sup> Interview with Saeed Yayha (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012).

<sup>502</sup> Interview with Syed Akhunzada Chitan, National Assembly Member, in Islamabad, Pakistan (May 14, 2012).

<sup>503</sup> Interview with Ajmal Bashir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>504</sup> Interview with Arman Yousef (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

Several Pakistani medical and mental health professionals told us that they have seen a number of physical manifestations of stress in their Waziri patients.<sup>505</sup> Ateeq Razzaq and Sulayman Afraz, both psychiatrists, attributed the phenomenon in part to Pashtun cultural norms that discourage the expression of emotional or psychological distress.<sup>506</sup> “People are proud,” Razzaq explained to us, “and it is difficult for them to express their emotions. They have to show that they are strong people.”<sup>507</sup> Reluctant to admit that they are mentally or emotionally distressed, the patients instead “express their emotional ill health through their body symptoms,” resulting in what Afraz called “hysterical reactions,” or “physical symptoms without a real [organic] basis, such as aches, and pains, vomiting, etcetera.”<sup>508</sup> The mental health professionals with whom we spoke told us that when they treat a Waziri patient complaining of generic physical symptoms, such as body pain or “headaches, backaches, respiratory distress, and indigestion,” they attempt to determine whether the patient has been through a traumatic experience. It is through this questioning that they have uncovered that some of their patients had experienced drones, or lost a relative in a drone strike.<sup>509</sup>

Mental health professionals we spoke with in Pakistan also said that they had seen numerous cases of Post-Traumatic Stress Disorder (PTSD)<sup>510</sup> among their patients from

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<sup>505</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012); Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012); Interview with Hatim Sheikh (anonymized name), in Peshawar, Pakistan (2012); Interview with Abbas Uddin (anonymized name and location), in Pakistan (2012).

<sup>506</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012); Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012).

<sup>507</sup> Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012).

<sup>508</sup> *Id.*; see Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012).

<sup>509</sup> Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012); see also Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012); Interview with Hatim Sheikh (anonymized name), in Peshawar, Pakistan (2012).

<sup>510</sup> PTSD is an anxiety disorder experienced by some individuals who have been exposed to a traumatic event. In diagnosing PTSD, psychiatrists look for three main categories of symptoms not present before the traumatic event took place: “intrusive recollection,” which can include flashbacks and nightmares; “avoidance of stimuli associated with the trauma and numbing of general responsiveness”; and persistent symptoms of anxiety or “increased arousal,” which can include difficulty sleeping, irritability, or an exaggerated startle response. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, § 309.81 (4th ed. 2000); see also John H. Casada, et. al., *Psychophysiological Responsivity in Posttraumatic Stress Disorder: Generalized Hyperresponsiveness Versus Trauma Specificity*, 44 BIOLOGICAL PSYCHIATRY 1037 (1998).

Waziristan related to exposure to drone strikes and the constant presence of drones.<sup>511</sup> For example, one psychiatrist described a female patient of his who:

was having shaking fits, she was screaming and crying . . . I was guessing there might be some stress . . . then I [discovered] there was a drone attack and she had observed it. It happened just near her home. She had witnessed a home being destroyed—it was just a nearby home, [her] neighbor's.<sup>512</sup>

Interviewees also described the impacts on children.<sup>513</sup> One man said of his young niece and nephew that “[t]hey really hate the drones when they are flying. It makes the children very angry.”<sup>514</sup> Aftab Gul Ali, who looks after his grandson and three granddaughters, stated that children, even when far away from strikes, are “badly affected.”<sup>515</sup> Hisham Abrar, who had to collect his cousin’s body after he was killed in a drone strike, stated:

When [children] hear the drones, they get really scared, and they can hear them all the time so they’re always fearful that the drone is going to attack them. . . [B]ecause of the noise, we’re psychologically disturbed—women, men, and

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<sup>511</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012). Afraz is a psychiatrist who has treated patients from Waziristan whom he has diagnosed with PTSD. *Id.* He described his patients as having “the classic PTSD symptoms: restlessness, inability to sleep, flashbacks, nightmares, [and] hyper startle reaction”. *Id.*; see also Interview with Ateeq Razzaq (anonymized name and location), in Pakistan (2012) (describing treating a number of cases of PTSD related to drones); Interview with Abbas Uddin (anonymized name and location), in Pakistan (2012).

<sup>512</sup> Interview with Abbas Uddin (anonymized name and location), in Pakistan (2012).

<sup>513</sup> One symptom frequently reported and requiring further research was of itchy eyes and skin, often in children. A number of interviewees linked these symptoms with the drone strikes. See Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (attributing itchy skin to chemicals purportedly released in drone strikes); see also Interview with Aftab Gul Ali (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012); Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012); Interview with Haidar Nauman (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012). Allergy-like symptoms can be a product of traumatic stress. See Atul Gawande, *The Itch*, NEW YORKER (June 30, 2008),

[http://www.newyorker.com/reporting/2008/06/30/o80630fa\\_fact\\_gawande#ixzz1yrmCxIAZ](http://www.newyorker.com/reporting/2008/06/30/o80630fa_fact_gawande#ixzz1yrmCxIAZ). Atul Gawande, a physician and author, is an Associate Professor at the Harvard School of Public Health and Associate Professor of Surgery at Harvard Medical School. He has written that “[s]evere stress and other emotional experiences can . . . give rise to a physical symptom like itching—whether from the body’s release of endorphins (natural opioids, which, like morphine, can cause itching), increased skin temperature, nervous scratching, or increased sweating.” *Id.*; see also Petra C. Arck, et. al, *Neuroimmunology of Stress: Skin Takes Center Stage*, 126 J. OF INVESTIGATIVE DERMATOLOGY 1697, 1701 (2006) (“stress exerts severe skin inflammation”). In the case of North Waziristan, however, it is unclear without further research whether the itchy symptoms are related to stress, or whether they have a physical cause related or unrelated to strikes.

<sup>514</sup> Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012).

<sup>515</sup> Interview with Aftab Gul Ali (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

children. . . Twenty-four hours, [a] person is in stress and there is pain in his head.<sup>516</sup>

Noor Behram, a Waziri journalist who investigates and photographs drone strike sites, noted the fear in children: “if you bang a door, they’ll scream and drop like something bad is going to happen.”<sup>517</sup> A Pakistani mental health professional shared his worries about the long-term ramifications of such psychological trauma on children:

The biggest concern I have as a [mental health professional] is that when the children grow up, the kinds of images they will have with them, it is going to have a lot of consequences. You can imagine the impact it has on personality development. People who have experienced such things, they don’t trust people; they have anger, desire for revenge . . . So when you have these young boys and girls growing up with these impressions, it causes permanent scarring and damage.<sup>518</sup>

The small number of trained mental health professionals<sup>519</sup> and lack of health infrastructure in North Waziristan exacerbates the symptoms and illnesses described here.<sup>520</sup> Several interviewees provided a troubling glimpse of the methods some communities turn to in order to deal with mental illness in the absence of adequate alternatives. One man said that “some people have been tied in their houses because of their mental state.”<sup>521</sup> A Waziri from Datta Khel—which has been hit by drone strikes over three dozen times in the last three years alone<sup>522</sup>—said that a number of individuals

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<sup>516</sup> Interview with Hisham Abrar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>517</sup> Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012).

<sup>518</sup> Interview with Sulayman Afraz (anonymized name and location), in Pakistan (2012); *See, e.g.*, William Yule, et. al., *The Long-Term Psychological Effects of a Disaster Experienced in Adolescence: 1: The Incidence and Course of PTSD*, 41 J. CHILD PSYCHOLOGY & PSYCHIATRY 503 (2003).

<sup>519</sup> One medical professional who works with Waziri drone victims said that he believed there were only a few psychiatrists in the entire province. Interview with Zafar Husam (anonymized name and location), in Pakistan (May 2012).

<sup>520</sup> The mental health professionals we spoke with all raised concerns over the limited access to health services in the region. According to an April 2008 report by the US Government Accountability Office (GAO), FATA has 41 hospitals for a population of 3.1 million, and a doctor to population ratio of 1 to 6,762. UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, COMBATING TERRORISM: THE UNITED STATES LACKS COMPREHENSIVE PLAN TO DESTROY THE TERRORIST THREAT AND CLOSE THE SAFE HAVEN IN PAKISTAN’S FEDERALLY ADMINISTERED TRIBAL AREAS 6 (2008), *available at* <http://www.gao.gov/assets/280/274592.pdf>.

<sup>521</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>522</sup> *See Obama 2010 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2011/08/10/obama-2010-strikes/> (last visited Aug. 30, 2012); *Obama 2011 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM,

“have lost their mental balance . . . are just locked in a room. Just like you lock people in prison, they are locked in a room.”<sup>523</sup> Some of those interviewed reported that, to deal with their symptoms, they were able to obtain anti-anxiety medications and anti-depressants.<sup>524</sup> One Waziri man who lost his son in a drone strike explained that people take tranquilizers to “save them from the terror of the drones.”<sup>525</sup> Umar Ashraf obtained a prescription for Lexotanil to treat “the mental issues I was facing,” and said that taking the medicine makes him feel better.<sup>526</sup> Saeed Yayha, however, said that the prescription the doctors gave him to deal with “the pressure in his head” does not work for him;<sup>527</sup> “[i]t just soothes me for half an hour but it does not last very long.”<sup>528</sup>

### IMPACTS ON EDUCATION OPPORTUNITIES

Numerous interviewees reported that drone strikes have affected young Waziris’ access to education, which is especially troubling given the impact of threats and violence by armed non-state actors against schools,<sup>529</sup> and FATA’s already low literacy rates.<sup>530</sup>

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<http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/> (last visited Aug. 30, 2012); *Obama 2012 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM, <http://www.thebureauinvestigates.com/2012/01/11/obama-2012-strikes/> (last visited Aug. 30, 2012).

<sup>523</sup> Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>524</sup> Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 26, 2012); Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012); Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012); Interview with Haroon Quddoos (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012); Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); Interview with Saeed Yayha (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012). Most did not know the names of the medicines they were taking, but Khalil Arshad showed us his prescription for Lexotanil, a benzodiazopine derivative, and Nadeem Malik showed us his package of escitalopram, an anti-depressant. *See* Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Nadeem Malik (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>525</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012). “Tranquilizer” was the word used by Abdul Qayyum’s interpreter; he likely was referring to anti-anxiety medications.

<sup>526</sup> Interview with Umar Ashraf (anonymized name), Islamabad, Pakistan (Mar. 9, 2012).

<sup>527</sup> Interview with Saeed Yayha (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012).

<sup>528</sup> *Id.*

<sup>529</sup> *See e.g.*, SOCIETY FOR THE PROTECTION OF THE RIGHTS OF CHILDREN, THE STATE OF PAKISTAN’S CHILDREN 53-54 (2012) (“Schools in the conflict affected areas of FATA and Khyber Pakhtunhwa were subjected to persistent attacks by militant forces. Countless schools were blown up causing extensive damage to educational infrastructure. Furthermore, threats of violence prevented students and teachers from attending schools. As a result, thousands of educational institutions especially girls school became nonfunctional and dropout rates increased tenfold . . .”), *available at* <http://www.sparcpk.org/SOPC/Education.pdf>.

First, some of those injured in strikes reported reduced access to education and desire to learn because of the physical, emotional, and financial impacts of the strike. Second, some families have pulled their children out of school to take care of injured relatives or to compensate for the income lost after the death or injury of a relative. Third, some families reported taking their children out of school due to fear that they would be killed in a drone strike.

One father, after seeing the bodies of three dead children in the rubble of a strike, decided to pull his own children out of school.<sup>531</sup> “I stopped [them] from getting an education,” he admitted.<sup>532</sup> “I told them we will be finished one day, the same as other people who were going [to school] and were killed in the drone attacks.”<sup>533</sup> He stated that this is not uncommon: “I know a lot of people, girls and boys, whose families have stopped them from getting [an] education because of drone attacks.”<sup>534</sup> Another father stated that when his children go to school “they fear that they will all be killed, because they are congregating.”<sup>535</sup> Ismail Hussain, noting similar trends among the young, said that “the children are crying and they don’t go to school. They fear that their schools will be targeted by the drones.”<sup>536</sup>

Mohammad Kausar, a father of three, explained: “Strikes are always on our minds. That is why people don’t go out to schools, because they are afraid that they may be the next ones to be hit.”<sup>537</sup> A college student, whose brother was killed in a drone strike, told us that in some cases, staff and teachers also “don’t come because of these drone strikes. The principal and maybe a few nominal staff come just for presence, but, apart from that, nobody comes . . . other people are scared to come to our places to teach us.”<sup>538</sup>

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<sup>530</sup> FATA has an overall literacy rate of 17.42%. *Socio Economic Indicators*, GOVERNMENT OF PAKISTAN FEDERALLY ADMINISTERED TRIBAL AREA, [http://fata.gov.pk/index.php?option=com\\_content&view=article&id=55&Itemid=91](http://fata.gov.pk/index.php?option=com_content&view=article&id=55&Itemid=91) (last visited Aug. 21, 2012).

<sup>531</sup> Interview with Najeed Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>532</sup> *Id.*

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*; *see also* Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012) (affirming that families keep their children at home because of drones).

<sup>535</sup> Interview with Noor Shafeeq (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>536</sup> Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>537</sup> Interview with Mohammad Kausar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>538</sup> Interview with Khairullah Jan, in Islamabad, Pakistan (Feb. 29, 2012).

These fears are not without a legitimate basis, as drones have reportedly struck schools in the past,<sup>539</sup> resulting in extensive damage to educational infrastructure, as well as the deaths of dozens of children.<sup>540</sup>

Children and teenagers who have stayed in school described how drones have affected their concentration and diminished their drive to study. Faheem Qureshi, the sole

“Our minds have been diverted from studying. We cannot learn things because we are always in fear of the drones hovering over us, and it really scares the small kids who go to school.”

- Faheem Qureshi, teenage drone strike victim

survivor of the first strike in North Waziristan carried out under President Obama, was one of the top four students in his class before the drone strike fractured his skull and nearly blinded him.<sup>541</sup> Now, struggling with attention, cognitive, and emotional difficulties, he described how his studies have been affected:

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<sup>539</sup> The most well-known school strike was an October 6, 2006 strike on a religious school in Bajaur that killed over 80 people, including 69 children. *See, e.g.,* Yousaf Ali, *Most Bajaur Victims Were Under 20*, NEWS (Nov. 5, 2006), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=4043&Cat=13&dt=11/5/2006>; *see also* Salman Masood, *Pakistan Says It Killed 80 Militants in Attack on Islamic School*, N.Y. TIMES (Oct. 31, 2006), [http://www.nytimes.com/2006/10/31/world/asia/31pakistan.html?\\_r=1](http://www.nytimes.com/2006/10/31/world/asia/31pakistan.html?_r=1) (reporting on a on a religious school in Bajaur, resulting in reportedly 81-82 killed, including 69 children). Possible child casualties also have been reported in a number of other strikes on schools, but have not been confirmed. *See, e.g.,* Griff Witte, *Blast Kills At Least 20 in Pakistan*, WASH. POST (June 20, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/19/AR2007061901898.html> (“Local residents said . . . that at least two missiles fired from the drone had destroyed a religious school and several adjacent houses, according to Rahimullah Yousefzai, a Peshawar-based journalist. . . . there might have been as many as 50 people in the school at the time of the blast, including children.”); *Suspected US Missile Strike Kills Eight in Pakistan*, NEWS TRACK INDIA (Oct. 23, 2008), <http://www.newstrackindia.com/newsdetails/30650> (“A local journalist and tribal elder, Malik Mumtaz, said on the telephone that all those killed and injured [in a strike on a religious school] were students aged between 12 and 18.”).

<sup>540</sup> *See* Chris Woods, *Over 160 Children Reported Among Drone Deaths*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Aug. 11, 2011), <http://www.thebureauinvestigates.com/2011/08/11/more-than-160-children-killed-in-us-strikes/> (“A CIA strike on a madrassa or religious school in 2006 killed up to 69 children . . .”); *see also* Ali, *supra* note 539.

<sup>541</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012); *see also* January 23, 2009 Strike Narrative, *supra* Chapter 3: Living Under Drones.



Our minds have been diverted from studying. We cannot learn things because we are always in fear of the drones hovering over us, and it really scares the small kids who go to school. . . . At the time the drone struck, I had to take exams, but I couldn't take exams after that because it weakened my brain. I couldn't learn things, and it affected me emotionally. My [mind] was so badly affected . . .<sup>542</sup>

Waleed Shiraz, who was disabled in a January 2008 attack that killed his father, described how the strike altered his goals and devastated his family. A political science major in college, Waleed “dreamt of either leading some school in Peshawar as a principal or becoming a lawyer or even a politician representing Pakistan.”<sup>543</sup> When the strike took place, he was home on his first holiday from the National University of Modern Languages in Islamabad, spending time with his family and studying for exams.<sup>544</sup> At the time, he planned to study languages. Since the strike, those plans have radically changed:

I can't dream of going back to college. I am unemployed. No one will give me admission into college and who is going to finance it? We are unemployed and our financial situation is extremely poor. Out of the ten kanals of land we owned [1 ¼ acres], we have sold five [5/8 acres] and the remaining five sit idle because my two younger brothers are too young. They can't go to school, because I can't afford supporting them, buying their books, and paying their fees. They are home most of the day and they are very conscious of the fact that drones are hovering over them. [The presence of drones] intimidates them. . . . My education is wasted.<sup>545</sup>

Teenager Sadaullah Wazir, also stated that he has had to give up on his dreams after losing both legs in a drone strike.<sup>546</sup> “Before the drone strikes started, my life was very good. I used to go to school and I used to be quite busy with that, but after the drone strikes, I stopped going to school now. I was happy [then] because I thought I would become a doctor.”<sup>547</sup>

Shahbaz Kabir explained that “education was always a problem in Waziristan, but, after the drone attacks, it got even worse. A lot of the children—most of the children—had to stop going to school.”<sup>548</sup> Many with whom we spoke, such as *Malik* Najeeb Saaqib,

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<sup>542</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>543</sup> Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>544</sup> *Id.*

<sup>545</sup> *Id.*

<sup>546</sup> Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>547</sup> *Id.*

<sup>548</sup> Interview with Shahbaz Kabir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

lamented the deterioration in education and expressed concern about what it meant for the future:

We want our children to get [an] education, to take [our story] to the world and get exposure for what's going on here. We lag behind because of our lack of education and lack of facilities in our area. . . .We want our girls and boys to get [a] proper education. [We want] someone to become a doctor, someone to become an air pilot, but just because of drone attack[s] we can't take them to school, can't allow them.<sup>549</sup>

Mohsin Haq, 14, explained that some of his classmates have given up on school because “[t]hey are mentally disturbed. They can’t focus. They’re just too worried about their family. They’re not sure about anything, so school doesn’t make sense to them.”<sup>550</sup> He also revealed his fears about the impacts on future generations, and his hopes for change:

[The children in my community] are very optimistic that someday, when these things do stop, they will continue with their life as they were before, start going to school again. They still dream about a bright future, about the aspiring people they want to be, the future administrators, the future principals of the schools, and teachers and future politicians. . . . Every family, everybody, they do want to think about their bright futures, their prosperous jobs, and their young kids. But they can’t think like that because of these drones, because of this uncertainty.<sup>551</sup>

### **IMPACTS ON BURIAL TRADITIONS AND WILLINGNESS TO ATTEND FUNERALS**

Interviewees stated that the US drone campaign has undermined the cultural and religious practices in North Waziristan related to burial, and made family members afraid to attend funerals.

Religion plays an important role in community life in Muslim-majority North Waziristan,<sup>552</sup> and Islam, like other religious and non-religious traditions, accords

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<sup>549</sup> Interview with Najeeb Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>550</sup> Interview with Mohsin Haq (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>551</sup> *Id.*

<sup>552</sup> Palwasha Kakar, *Tribal Law of Pashtunwali and Women’s Legislative Authority* 2-3 (Afghan Legal History Project, Harvard Law School, 2004), available at <http://www.law.harvard.edu/programs/ilsp/research/kakar.pdf> (“In the Pashtun’s mind, Pashtunwali has a religious identity in Islam . . .”).

significant respect for the dead. Many consider it the community's duty to bury the deceased as soon as possible after death,<sup>553</sup> to wash and cover the deceased,<sup>554</sup> and to hold a communal funeral service,<sup>555</sup> an event that involves recitations of prayer for the deceased and often serves as a collective coping mechanism.<sup>556</sup> Proper burial ceremonies and grieving rituals are “essential to reduc[ing] or prevent[ing] psychological distress” during times of large-scale disaster, and thus erosion of ceremonies attendant to death is likely to have a significant impact on the way communities grieve and deal with the loss of strike victims.<sup>557</sup>

Because drone strikes have targeted funerals and spaces where families have gathered to offer condolences to the deceased,<sup>558</sup> they have inhibited the ability of families to hold dignified burials. Interviewees stated that they stayed away from funerals for fear of being targeted. According to Ibrahim Qasim of Manzar Khel, “[t]here used to be funeral processions, lots of people used to participate. . . . But now, [the US has] even targeted funerals, they have targeted mosques, they have targeted people sitting together, so

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<sup>553</sup> *Id.* (“Islamic burial rituals normally require . . . prompt burial.”).

<sup>554</sup> *Id.* (“Islamic burial rituals normally require four elements: washing the body, shrouding . . .”).

<sup>555</sup> *Id.* (“Islamic burial rituals normally require . . . funeral prayers . . .”); see also Aziz Sheikh, *Death and Dying—A Muslim Perspective*, 91 J. OF ROYAL SOCIETY OF MEDICINE 138, 138-40 (1998) (detailing Islamic rituals and practices with respect to dying and noting that “often the dead will be buried within 24 hours,” and “a funeral prayer is held in the local mosque, and family and community members follow the funeral.”).

<sup>556</sup> Rajaie Batniji, Mark Van Ommeren & Benedetto Saraceno, *Mental and Social Health in Disasters: Relating Qualitative Social Science Research and the Sphere Standard*, 62 SOC. SCIENCE & MEDICINE 1853, 1855 (2006).

<sup>557</sup> Batniji, Van Ommeren & Saraceno, *supra* note 556, at 1855. See also Sue Lautze & Angela Raven-Roberts, *The Vulnerability Context: Is There Something Wrong With This Picture* (Sept. 23, 2003) (unpublished manuscript presented at the FAO International Workshop on “Food Security in Complex Emergencies, Tivoli, 23-25 September, 2003) (on file with author) (“The healing process involves psychological as well as socio-cultural practices that enable closure, e.g., bodies need to be identified and buried . . .”).

<sup>558</sup> *Drone Blitz on Pakistan Enters Third Straight Day*, GUARDIAN (June 4, 2012), <http://www.guardian.co.uk/world/2012/jun/04/15-dead-drone-pakistan>; see also Irfan Burki, *10 Killed in Two South Waziristan Drone Attacks*, NEWS (Jun. 4, 2012), <http://www.thenews.com.pk/Todays-News-13-15090-10-killed-in-two-South-Waziristan-drone-attacks> (reporting on a drone that struck people gathered for funeral prayers, resulting in the death of up to ten individuals); Chris Woods & Christina Lamb, *Obama Terror Drones: CIA Tactics in Pakistan Include Targeting Rescuers and Funerals*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Feb. 4, 2012), <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/> (reporting that between January 2009 and February 2012, “[m]ore than 20 civilians have [] been attacked in deliberate strikes on funerals and mourners.”).

people are scared of everything.”<sup>559</sup> Firoz Ali Khan provided a similar account, noting that “not many people go to funerals because funerals have been struck by drones. Many people are scared. They don’t go to funerals because of their fear.”<sup>560</sup> Dawood Ishaq, who lost both his legs in a strike, confirmed this, explaining that people are reluctant to go to the funerals of people who have been killed in drone strikes because they are afraid of being targeted.<sup>561</sup>

“They destroy human beings.... There is nobody left and small pieces left behind. Pieces. Whatever is left is just little pieces of bodies and cloth.”

- Firoz Ali Khan (anonymized), Waziri business owner

In addition, because the Hellfire missiles fired from drones often incinerate the victims’ bodies,<sup>562</sup> and leave them in pieces and unidentifiable, traditional burial processes are rendered impossible. As Firoz Ali Khan, a shopkeeper whose father-in-law’s home was struck, graphically described, “These

missiles are very powerful. They destroy human beings . . . There is nobody left and small pieces left behind. Pieces. Whatever is left is just little pieces of bodies and cloth.”<sup>563</sup> A doctor who has treated drone victims described how “[s]kin is burned so that you can’t tell cattle from human.”<sup>564</sup> When another interviewee came upon the site of the strike that killed his father, “[t]he entire place looked as if it was burned completely, so much so that even [the victims’] own clothes had burnt. All the stones in the vicinity had become black.”<sup>565</sup> Ahmed Jan, who lost his foot in the March 17 *jirga* strike, discussed the challenges rescuers face in identifying bodies: “People were trying to find the body

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<sup>559</sup> Interview with Ibrahim Qasim (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); *see also* Interview with Hisham Abrar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“A lot of people don’t go to funerals now because they’re scared of drone attacks.”).

<sup>560</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>561</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

<sup>562</sup> *See supra* note 278.

<sup>563</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>564</sup> Interview with Zafar Husam (anonymized name and location), in Pakistan (May 2012).

<sup>565</sup> Interview with Saad Afridi (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

parts. We find the body parts of some people, but sometimes we do not find anything.”<sup>566</sup>

One father explained that key parts of his son’s burial process had to be skipped over as a result of the severe damage to his body. “[A]fter that attack, the villagers came and took the bodies to the hospital. We didn’t see the bodies. They were in coffins, boxes. The bodies were in pieces and burnt.”<sup>567</sup> Idris Farid, who was injured and lost several of his relatives in the March 17 *jirga* strike, described how, after that strike, relatives “had to collect their body pieces and bones and then bury them like that.”<sup>568</sup> The difficulty of identifying individual corpses also makes it difficult to separate individuals into different graves. Masood Afwan, who lost several relatives in the March 17 *jirga* strike, described how the dead from that strike were buried: “They held a funeral for everybody, in the same location, one by one. Their bodies were scattered into tiny pieces. They...couldn’t be identified.”<sup>569</sup>

“[s]kin is burned so that you can’t tell cattle from human.”

- Zafar Husam, doctor who has treated drone victims  
(anonymized name)

### IMPACTS ON ECONOMIC, SOCIAL, AND CULTURAL ACTIVITIES

Those interviewed stated that the widespread fear of drones has led some people to shy away from social gatherings, and inhibited their willingness to carry out day-to-day activities and important community functions.<sup>570</sup>

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<sup>566</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>567</sup> Interview with Abdul Qayyum Khan, in Peshawar, Pakistan (May 9, 2012).

<sup>568</sup> Interview with Idris Farid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>569</sup> Interview with Masood Afwan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>570</sup> Importantly, virtually all the interviewees who described deterioration in community life traced it specifically to the start of the drone program. *See, e.g.*, Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012) (“Before the drones, people were happy and liked to go anywhere. Now, because of drones, people are scared and upset.”); Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“Before this we were all very happy. We lived a very good life. But after these drone attacks a lot of people are victims and have lost members of their family. A lot of

One interviewee stated that, “after the drones, people can’t go and talk with or sit with anybody at any time. And so they [face great difficulty carrying] on their business and their families.”<sup>571</sup> One man who lost a cousin in the March 17, 2011 *jirga* strike, explained:

We do not come out of our villages because it’s very dangerous to go out anywhere. . . . In past we used to participate in activities like wedding gatherings [and] different kinds of *jirgas*, different kinds of funerals. . . . We used to go to different houses for condolences, and there were all kinds of activities in the past and we used to participate. But now it’s a risk to go to any place or participate in any activities.<sup>572</sup>

The fears the interviewees described were not limited to ceremonial gatherings or other large group activities. Many said that they were afraid even to congregate in groups or receive guests in their home. Umar Ashraf, who has noticed the changes in community dynamics over the past few years, observed that “[W]e do not like to sit like this, like

“[m]ore than two can’t sit together outside because they are scared they might be struck by drones.”

- Sadaullah Wazir, teenage drone victim

friends [gesturing in front of him at the small circle of interviewer, interviewee, and translator], because we have fear, since [they] usually attack people when they sit in gatherings.”<sup>573</sup> Sameer Rahman, whose family’s house was hit in a strike, confessed that “there are

barely any guests who come anymore, because everyone’s scared.”<sup>574</sup> He also stated that he does not allow his children to visit other people’s homes when they have guests over, because he believes having guests makes it more likely that the house will be attacked.<sup>575</sup>

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them, they have mental illnesses.”); Interview with Shahbaz Kabir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“Before the drone attacks, our land was a prosperous land and people were living in a peaceful way. Now, they are all the time scared and worried about the attacks”); Interview with Abbas Kareem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“[Life] was very good. It was good. It was a life of no problems. No consequences, no fear in our hearts. We lived a very good time.”).

<sup>571</sup> Interview with Ajmal Bashir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>572</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

<sup>573</sup> Interview with Umar Ashraf (anonymized name), Islamabad, Pakistan (Mar. 9, 2012).

<sup>574</sup> Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

Sadaullah Wazir, a teenager, told us that drones have “made life quite difficult [in that] more than two can’t sit together outside because they are scared they might be struck by drones. . . . We often discuss that too many people shouldn’t sit together outside because they are vulnerable then.”<sup>576</sup> Another teenager told us:

We all used to get together, all our friends in the village. We used to have fun. But now, that’s not the case anymore. Earlier, in the village, we used to sit late into the night, till one o’clock in the morning, but now everybody’s habits have changed. Everybody goes home directly in the evening.<sup>577</sup>

Some of the Waziris interviewed described specific impacts of drone strikes on commerce and certain economic activities, a key issue that requires further research.

One college student from North Waziristan explained that “Because of these drones, people have stopped coming or going to the bazaars. . . . [I]t has affected trade to Afghanistan.”<sup>578</sup>

The owner of a shop selling toys in a North Waziristan market stated that ever since the drone strikes began, “It’s very hard for us, we just barely get by

“If I am walking in the market, I have this fear that maybe the person walking next to me is going to be a target of the drone . . . . [or] . . . . Maybe they will target the car in front of me or behind me.”

- Safdar Dawar, President of the Tribal Union of Journalists

[with what we make in the shop]. . . . People are afraid of dying. They are scared of drones.”<sup>579</sup> One man, who once owned a car that he used to transport goods to and from the rest of Pakistan, said that in the past he would agree to be hired for 200 rupees a day.<sup>580</sup> Now, however, because of drones and the risks associated with their presence, “nobody is even willing to work for 500 rupees.”<sup>581</sup> This suggests that drones may have

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<sup>575</sup> *Id.*

<sup>576</sup> Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>577</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Mar. 2, 2012).

<sup>578</sup> Interview with Khairullah Jan, in Islamabad, Pakistan (Feb. 29, 2012).

<sup>579</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>580</sup> *Id.*

<sup>581</sup> Interview with Haroon Quddoos (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

resulted in increased transportation costs for anyone dependent on goods moving in or out of FATA.

Interviewees stated that day-to-day activities, such as buying groceries or traveling to work, were nerve-wracking. Safdar Dawar, President of the Tribal Union of Journalists, the main association of journalists in the areas affected by US drones, described in simple terms how people in North Waziristan make everyday decisions about how to spend their time under the shadow of drones:

If I am walking in the market, I have this fear that maybe the person walking next to me is going to be a target of the drone. If I'm shopping, I'm really careful and scared. If I'm standing on the road and there is a car parked next to me, I never know if that is going to be the target. Maybe they will target the car in front of me or behind me. Even in mosques, if we're praying, we're worried that maybe one person who is standing with us praying is wanted. So, wherever we are, we have this fear of drones.<sup>582</sup>

Fahad Mirza, who has had several relatives badly injured in strikes, made a similar point: "We can't go to the markets. We can't drive cars. When they're hovering over us, we're all scared. One thinks they'll drop it on our house, and another thinks it'll be on our house, so we run out of our houses."<sup>583</sup>

One of the most troubling community-wide consequences of the fear of gathering is, in several interviewees' views, the erosion of the *jirga* system, a community-based conflict resolution process that is fundamental to Pashtun society.<sup>584</sup> Khalil Khan, the son of a community leader killed in the March 17, 2011 *jirga* strike, explained that "everybody after the strike seems to have come to the conclusion that we cannot gather together in large numbers and we cannot hold a *jirga* to solve our problems."<sup>585</sup> Noor Khan, whose father Malik Daud Khan presided over that *jirga* and was killed, confirmed this account:

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<sup>582</sup> Interview with Safdar Dawar, President, Tribal Union of Journalists, in Islamabad, Pakistan (Feb. 29, 2012).

<sup>583</sup> Interview with Fahad Mirza (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>584</sup> See generally *Rare Condemnation by PM, Army Chief: 40 Killed in Drone Attack*, DAWN (Mar. 18, 2011), <http://dawn.com/2011/03/18/rare-condemnation-by-pm-army-chief-40-killed-in-drone-attack/>; LUTZ RZEHAK, AFGHANISTAN ANALYSTS NETWORK, DOING PASHTO (2011), available at <http://aan-afghanistan.com/uploads/20110321LR-Pashtunwali-FINAL.pdf>; SHERZAMAN TAIZI, JIRGA SYSTEM IN TRIBAL LIFE (2007), available at <http://www.tribalanalysiscenter.com/PDF-TAC/Jirga%20System%20in%20Tribal%20Life.pdf>; HASSAN M. YOUSUFZAI & ALI GOHAR, TOWARDS UNDERSTANDING PUKHTOON JIRGA (2005), available at [http://peace.fresno.edu/docs/Pukhtoon\\_Jirga.pdf](http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf).

<sup>585</sup> Interview with Khalil Khan, Noor Khan, & Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012).



Everybody is scared, especially the elders. . . [T]hey can't get together and discuss problems . . . [I]f a problem occurs, they can't resolve it, because they are all scared that, if we get together, we will be targeted again. . . . Everybody, all the mothers, all the wives, they have told their people not to congregate together in a *jirga*. . . . [T]hey are pleading to them not to, as they fear they will be targeted.<sup>586</sup>

The *jirga* is a vitally important part of Pashtun communal and political life, providing opportunities for community input, conflict resolution, and egalitarian decision-making.<sup>587</sup> Hampering its functions could have serious implications for the communal order, especially in an area already devastated by death and destruction.

### IMPACTS ON COMMUNITY TRUST

Interviewees stated that US drone strikes have contributed to an undermining of community trust, and exacerbated tensions. Many Waziris have come to believe that paid informants help the CIA identify potential targets, including by placing small tracking devices, often referred to as “chips,” or “sims,” in vehicles or houses.<sup>588</sup> Stories about the CIA’s use of these chips were widely reported in 2009,<sup>589</sup> but we have not been able to corroborate whether any form of tracking or signaling devices were or are in fact being used. Nonetheless, many of those whom we interviewed believe that the chips

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<sup>586</sup> *Id.*

<sup>587</sup> See generally RZEHAK, *supra* note 584; TAIZI, *supra* note 584; YOUSUFZAI & GOHAR, *supra* note 584.

<sup>588</sup> See Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); Interview with Umar Ashraf (anonymized name), Islamabad, Pakistan (Mar. 9, 2012); Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012); Interview with Hayatullah Ayoub Khan (anonymized name), in Islamabad, Pakistan (Mar. 2, 2012); Interview with Sameer Rahman and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012); Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012); Interview with Khalid Raheem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012); Interview with Najeib Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>589</sup> See, e.g., Carol Grisanti & Mushtaq Yusufzai, *Taliban-Style Justice for Alleged US Spies*, NBC (Apr. 17, 2009), <http://worldblog.nbcnews.com/news/2009/04/17/4376383-taliban-style-justice-for-alleged-us-spies?lite>; Noah Schachtman, *Spy Chips Guiding CIA Drone Strikes, Locals Say*, WIRED (June 1, 2009), <http://www.wired.com/dangerroom/2009/06/spy-chips-guiding-cia-drone-strikes-locals-say/>; Declan Walsh, *Mysterious ‘Chip’ is CIA’s Latest Weapon Against al Qaida Targets Hiding in Pakistan’s Tribal Belt*, GUARDIAN (May 31, 2009), <http://www.guardian.co.uk/world/2009/may/31/cia-drones-tribesmen-taliban-pakistan>.

exist, and are afraid of being planted with a chip.<sup>590</sup> Najeeb Saaqib, for example, explained how he believes drones targets are chosen:

I think there are some other intelligence agencies, foreign intelligence agencies, also working there in the shape of our own people. They grow a large beard and take the same positions as our own people, working for those external agencies. They put a chip or something else in places, and then a drone strikes those places. That's what we think.<sup>591</sup>

Hayatullah Ayoub Khan similarly explained that “drones [select] their targets with the help of chips which are dropped in homes or cars by informants.”<sup>592</sup> Many other residents of North Waziristan gave similar accounts.<sup>593</sup> Policy analyst Samina Ahmed of the International Crisis Group also noted this widespread belief, explaining that many have told her that the Americans have “got people who throw parchiz [a local word for chips] into a car, or at the side of a house, and then the drone comes and it attacks that target.”<sup>594</sup>

These beliefs have bred a great deal of mistrust within the community, as neighbors suspect neighbors of spying for US, Pakistani, or Taliban intelligence, and of using drone strikes to settle feuds. As one resident of a drone-affected community explained: “People have internal enemies and conflicts with each other. [T]o get revenge [on] another party, they put chips on that house,” which then signals to the drones that the house is a target.<sup>595</sup> As a result, interviewees stated that communities are in a constant state of alert, and suspicious of outsiders. Sayed Majid confessed that “we do not allow [people from other villages] in the area very freely as they may have a sim [chip]. . . . [W]e have to keep an eye on strangers especially and do not let them wander freely.”<sup>596</sup> Farah Kamal put it more directly: “[P]eople start to think that other tribes are throwing

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<sup>590</sup> See *supra* note 588; see also Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012) (“[i]f you hold a sim in your finger, I’m pretty sure the missile’s going to come and hit your finger.”).

<sup>591</sup> Interview with Najeeb Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>592</sup> Interview with Hayatullah Ayoub Khan (anonymized name), in Islamabad, Pakistan (Mar. 2, 2012).

<sup>593</sup> See, e.g., Interview with Khalil Arshad (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012) (“The Pakistani government gives money to our people for those chips to place in the houses, then the Americans fire on those places.”); Interview with Noor Behram, in Islamabad, Pakistan (Mar. 9, 2012) (“Some people say it’s through GPS, some people say it’s through the chips.”); Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012) (“The chip, the sim, is what we’re looking for . . .”).

<sup>594</sup> Interview with Samina Ahmed, International Crisis Group, in Islamabad, Pakistan (Feb. 28, 2012).

<sup>595</sup> Interview with Umar Ashraf (anonymized name), Islamabad, Pakistan (Mar. 9, 2012).

<sup>596</sup> Interview with Sayed Majid (anonymized name), in Peshawar, Pakistan (May 9, 2012).

the chips. There is so much confusion and mistrust created within the tribal communities. Drone attacks have intensified existing mistrust.”<sup>597</sup>

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<sup>597</sup> Interview with Farah Kamal (anonymized name), in Peshawar, Pakistan (May 15, 2012).



## CHAPTER 4: LEGAL ANALYSIS

This section provides an overview of the debate about the legality of the US targeted killing program and drone campaign in Pakistan under both international<sup>598</sup> and US domestic law. The section is intended for a non-legal audience, and thus should not be seen as a comprehensive analysis of the complexities of international legal doctrine. It outlines the legal issues regarding:

- whether the US use of force in Pakistan violates Pakistan's sovereignty in contravention of the U.N. Charter. This is a question of *jus ad bellum*, the body of law concerning the recourse to force, and depends on whether Pakistan has consented to the strikes, or whether the US is lawfully acting in self-defense;
- when and which individuals may lawfully be targeted under applicable international human rights or humanitarian law. Regardless of one's assessment of the legality of the recourse to the use of force (*jus ad bellum*)—the use of force against a specific individual must also comply with either international humanitarian law (in the context of an armed conflict) or international human rights law (outside armed conflict). In this regard, the legality of so-called “signature strikes” is highly suspect, as are attacks resulting in significant civilian casualties, attacks on

Repeated public statements by Pakistani officials, which intensified in 2012—declaring that US strikes are illegal, counter-productive, and violate the country's sovereignty—clearly cast doubt on whether Pakistan consents to ongoing operations.

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<sup>598</sup> See Special Rapporteur on extrajudicial, summary or arbitrary executions, *Study on Targeted Killings*, Human Rights Council, UN Doc. A/HRC/14/24/Add.6 (May 28, 2010) (by Philip Alston), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf> (detailing the legal regime governing “targeted killing” in great detail, and providing an authoritative and comprehensive analysis of the legal regime governing both the legal—and illegal—use of drones to target and kill individuals in the context of counter-terrorism).

first responders and funerals, and the targeting of individuals not engaged in the Afghanistan theater, particularly those who do not pose an imminent threat;

- the extent to which the US has met its legal obligations to operate transparently and to ensure accountability for alleged rights abuses;
- whether current drone policy violates US domestic law, in light of its possible expansion of the role of the executive vis-à-vis the Congress, and the prohibition on assassination.

The US government's extreme reluctance to provide details about particular strikes or the targeted killing program in general has impeded much-needed democratic debate about the legality and wisdom of US policies and practices, and stymied understanding about their actual impacts. The US has largely refused to answer basic questions about the drone program posed in litigation or by civil society, journalists, or public officials.<sup>599</sup> US officials have made some public comments,<sup>600</sup> and there has been extensive reliance on selective, limited, and favorable leaks about the program to journalists. Yet discussions about the legality of the drones policy under both under International Humanitarian Law (IHL), the body of law governing armed conflict, and International Human Rights Law (IHRL), often require fact-dependent contextual

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<sup>599</sup> For questions and critiques from external actors, see, e.g., Special Rapporteur, *Study on Targeted Killings*, *supra* note 598; Owen Bowcott, *Drone Strikes Threaten 50 Years of International Law*, Says UN Rapporteur, *GUARDIAN* (June 21, 2012), <http://www.guardian.co.uk/world/2012/jun/21/drone-strikes-international-law-un#start-of-comments>; *US Drone Strikes 'Raise Questions' - UN's Navi Pillay*, BBC NEWS (June 8, 2012), <http://www.bbc.co.uk/news/world-asia-18363003>; Letter from Amnesty International et al. to Barack Obama, President of the United States (May 31, 2012), available at <http://www.madre.org/index/resources-12/madre-statements-57/news/letter-to-administration-pressing-for-transparency-on-drone-strikes-805.html>; *US: Transfer CIA Drone Strikes to Military*, HUMAN RIGHTS WATCH (April 20, 2012), <http://www.hrw.org/news/2012/04/20/us-transfer-cia-drone-strikes-military>.

<sup>600</sup> See e.g., John Brennan, Assistant to the President for Homeland Security and Terrorism, The Ethics and Efficacy of the President's Counterterrorism Strategy, Address at the Woodrow Wilson International Center for Scholars (Apr. 30, 2012), available at <http://www.lawfareblog.com/2012/04/brennanspeech/>; Eric Holder, Attorney General, Department of Justice, Address at Northwestern University School of Law (Mar. 5, 2012), available at <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html>; Jeh C. Johnson, General Counsel, Department of Defense, National Security Law, Lawyers and Lawyering in the Obama Administration, Address at Yale Law School (Feb. 22, 2012), available at <http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>; Harold K. Koh, Legal Advisor, Department of State, The Obama Administration and International Law, Address at the Annual Meeting of the American Society of International Law (Mar. 25, 2010), available at <http://www.state.gov/s/l/releases/remarks/139119.htm>; Stephen W. Preston, General Counsel, Central Intelligence Agency, The CIA: Lawless Rogue or Regulated Business?, Address at Stanford Law School (Feb. 21, 2012).

analysis. This report relies on information documented through extensive first-hand accounts to aid in its analysis.

## WHETHER THE US USE OF FORCE IN PAKISTAN VIOLATES PAKISTAN'S SOVEREIGNTY

Article 2(4) of the U.N. Charter prohibits the threat or use of force by one state against another.<sup>601</sup> Two exceptions to the Article 2(4) prohibition on the use of force are particularly relevant to the question of whether US targeted killings in Pakistan are lawful: (1) when the use of force is carried out with the consent of the host state;<sup>602</sup> and (2) when the use of force is in self-defense in response to an armed attack or an imminent threat, and where the host state is unwilling or unable to take appropriate action.<sup>603</sup>

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<sup>601</sup> UN Charter art. 2, para. 4. Some international lawyers interpret this language in Article 2(4) to indicate a prohibition only of a subset of acts of force—those that challenge the territorial integrity or political independence of the host state. CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 24-25 (2008). This interpretation, though, has largely been rejected by the weight of international legal opinion, which views Article 2(4) as “outlawing any transboundary use of military force.” Sean D. Murphy, *Terrorism and the Concept of ‘Armed Attack’ in Article 51 of the U.N. Charter*, 43 HARV. INT’L L.J. 41, 42 (2002). The United Kingdom articulated a version of this interpretation in the *Corfu Channel* case in the first matter adjudicated by the International Court of Justice (‘ICJ’), arguing that its intrusion on Albanian territorial waters to recover evidence regarding the destruction of two British warships did not threaten Albania’s territorial integrity or political independence, and, therefore, did not violate Article 2(4). *See generally* The *Corfu Channel* Case (Alban. v. U.K.), 1949 I.C.J. 4, 194 (Apr. 9). The ICJ rejected this claim outright; while the language leaves open the possibility of a narrow rejection based on the particular facts, the ICJ has subsequently construed Article 2(4) as a blanket ban on armed intervention. *Id.*; *see generally* *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. US), 1986 I.C.J. 14, 202 (June 27); *Case Concerning Armed Activities on the Territory of the Congo* (Dem. Rep. of Congo v. Uganda), 2005 I.C.J. 168 (Dec. 19).

<sup>602</sup> *See, e.g.*, G.A. Res. 36/103, UN Doc A/RES/36/103 (Dec. 9, 1981) (further identifying the “duty of a State to refrain from economic, political, or military activity in the territory of another State without its consent.”); Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 35; OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 114 (1991); Ashley Deeks, *‘Unwilling or Unable’: Toward a Normative Framework for Extraterritorial Self-Defense*, 51 VA. J. OF INT’L LAW 483, 492 (2012); Eliav Lieblich, *Intervention and Consent: Consensual Forcible Interventions in Internal Armed Conflicts as International Agreements*, 29 B.U. INT’L L.J. 337, 350 (2011) (“[C]onsent can be expressed in many forms, in different moments along the time continuum, and does not necessarily have to be explicit- as long as it is proven genuine.”).

<sup>603</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 45. A third exception, involving collective security under Chapter VII of the UN Charter, is inapplicable, since the US drone program in Pakistan lacks UN authorization.

**Pakistani consent:** Some analysts, citing information released by *Wikileaks*,<sup>604</sup> maintain that Pakistan had, at some prior point, tacitly supported drone strikes.<sup>605</sup> It is not known whether Pakistan continues to consent privately to the program today. Repeated public statements by Pakistani officials, which intensified in 2012—declaring that US strikes are illegal, counter-productive, and violate the country’s sovereignty<sup>606</sup>—clearly cast doubt on whether Pakistan consents to ongoing operations.

**Self-defense:** In the absence of Pakistani consent, US use of force in Pakistan may not constitute an unlawful violation of Pakistan’s sovereignty if the force is necessary in self-defense<sup>607</sup> in response to an armed attack<sup>608</sup>—either as a response to the attacks of

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<sup>604</sup> Tim Lester, *WikiLeaks: Pakistan Quietly Approved Drone Attacks, US Special Units*, CNN (Dec. 1, 2010), [http://articles.cnn.com/2010-12-01/us/wikileaks.pakistan.drones\\_1\\_drone-attacks-predator-strikes-interior-minister-rehman-malik?s=PM:US](http://articles.cnn.com/2010-12-01/us/wikileaks.pakistan.drones_1_drone-attacks-predator-strikes-interior-minister-rehman-malik?s=PM:US) (quoting former US Ambassador Anne Patterson’s recounting of a meeting with former Pakistani Prime Minister Yousaf Gilani, where he acknowledged “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.”).

<sup>605</sup> See, e.g., Mohammad I. Aslam, *Waziristan: The Drone Delusion*, 3 SOUTH ASIA JOURNAL 55 (Jan. 2012), available at <http://southasiajournal.net/issues/south-asia-journal-issue-3-january-2012/>.

<sup>606</sup> See, e.g., *President Zardari Asks US to End Drone Strikes, Remove Mistrust*, Dawn (Sept. 16, 2012), <http://dawn.com/2012/09/16/president-zardari-urges-us-to-immediately-cease-drone-strikes/> (citing the spokesman to Pakistani President Asif Ali Zardari as saying that, in a meeting with US special envoy to Afghanistan and Pakistan Marc Grossman, Zardari “reiterated his call for an end to the drone attacks, terming them counterproductive in the fight against militancy and in the battle of winning hearts”); *Pakistan Condemns ‘Illegal’ US Drone Strikes*, REUTERS (June 4, 2012), <http://tribune.com.pk/story/388730/pakistan-condemns-illegal-us-drone-strikes/> (referencing statement by the Pakistani Foreign Ministry, declaring drone strikes to be “illegal” and a violation of country’s sovereignty); *Pakistan Says US Not Listening: Drone Strikes Must Stop*, REUTERS (Apr. 26, 2012), <http://www.reuters.com/article/2012/04/26/us-pakistan-minister-drones-idUSBRE83PoAM20120426> (citing Pakistani Foreign Ministry Hina Rabbani Khar, who declared in April 2012 that “[o]n drones, the language is clear: a clear cessation of drone strikes. I maintain the position that we’d told them categorically before. But they did not listen. I hope their listening will improve.”).

<sup>607</sup> UN Charter art. 51. Note that there has been debate about whether Article 51 applies to the use of force against non-state actors; see, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, 194 (July 9) (holding that Article 51 had “no relevance” to attacks not “imputable to a foreign state.”); see also BARRY E. CARTER & ALLEN S. WEINER, *INTERNATIONAL LAW* 981 (6th ed. 2011) (“[T]he international community has generally been critical of the use of force in self-defense against non-state terrorists.”); OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 165 (1991) (expressing “substantial doubts” about whether Article 51 sanctions the use of force against terrorist groups when no state has been “guilty of an armed attack” or has “directed or controlled the terrorists in question”). But see *Legal Consequences of the Construction of Wall*, Advisory Opinion, 2004 I.C.J. 207, at 215 (July 9) (separate opinion of Judge Higgins) (“There is, with respect, nothing in the text of Article 51 that thus stipulates that self-defense is available only when an armed attack is made by a state.”).

<sup>608</sup> International Court of Justice legal precedent also casts doubt on whether terrorist acts *within* Pakistan today can constitute “armed attacks” on the US and thus are sufficient to give rise to a right to self-defense under Article 51. See *Military and Paramilitary Activities in and Against Nicaragua*, *supra*



September 11, 2001,<sup>609</sup> or as anticipatory self-defense to mitigate threats posed by non-state groups in Federally Administered Tribal Areas (FATA).<sup>610</sup> For the use of force to be lawful, the host state must also be shown to be “unwilling or unable to take [the appropriate steps, itself, against the non-state group].”<sup>611</sup> Legal experts, including the current U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, have questioned whether “killings carried out in 2012 can be justified as in response to [events] in 2001,” noting that “some states seem to want to invent new laws to justify new practices.”<sup>612</sup> “Anticipatory” self-defense has been offered as a narrow exception,<sup>613</sup> invoked to prevent an attack that is “instant, overwhelming, and leaving no

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note 601, at 195 (distinguishing an ‘armed attack’ from mere ‘frontier incidents’); *see also* GARY SOLIS, *THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR* 153 (2010) (“The SLA was no more than a criminal conspiracy.”); Mary Ellen O’Connell, *Unlawful Killing with Combat Drones* 14 (Notre Dame Law School, Legal Studies Research Paper No. 09-43, 2010) (arguing that terrorist attacks “are generally treated as criminal acts because they have the hallmarks of crime, not armed attacks that give rise to the rights of self-defense”), *available at* <http://ssrn.com/abstract=1501144>. *But see* NILS MELZER, *TARGETED KILLING IN INTERNATIONAL LAW* 52 (2008) (“[M]ost authors agree that massive terrorist attacks, such as those carried out in New York City and Washington DC on 11 September 2001, or regular terrorist attacks of a comparatively minor scale, such as the frequent Palestinian suicide bombings carried out in Israel, can potentially qualify as an ‘armed attack’ within the meaning of Article 51 UN Charter.”).

<sup>609</sup> *See, e.g.*, Brennan, *supra* note 600 (“[T]he United States is an armed conflict with al-Qa’ida, the Taliban, and associated forces, in response to 9/11 attacks, and we may also use force consistent with our inherent right to self-defense.”); Holder, *supra* note 600 (“[A]nd international law recognizes the inherent right of national self-defense. . .”); Koh, *supra* note 600 (“[T]he United States is in an armed conflict with al-Qaeda, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks, and may use force consistent with its inherent right to self-defense under international law.”).

<sup>610</sup> *See, e.g.*, Brennan, *supra* note 600 (“[W]e conduct targeted strikes because they are necessary to mitigate an actual ongoing threat — to stop plots, prevent future attacks, and save Americans lives.”); Holder, *supra* note 600 (“[T]he US government’s use of lethal force in self defense against a leader of al Qaeda or an associated force who presents an imminent threat of violent attack would not be unlawful.”).

<sup>611</sup> Deeks, *supra* note 602, at 487-88; *see also* Special Rapporteur, *Study on Targeted Killings*, *supra* 598, at ¶ 35 (“[A] targeted killing conducted by one state in the territory of a second state does not violate the second State’s sovereignty if . . . the first, targeting, State has a right under international law to use force in self-defense under Article 51 of the UN Charter, because . . . the second state is willing or unable to stop armed attacks against the first State launched from its territory.”).

<sup>612</sup> Bowcott, *supra* note 599 (citing the Special Rapporteur’s further warning that the US drone campaign threatens “50 years of international law,” and questioning whether “we [are] to accept major changes to the international legal system which has been in existence since world war two and survived nuclear threats”).

<sup>613</sup> *See, e.g.*, THOMAS M. FRANCK, *RECOURSE TO FORCE: STATE ACTION AGAINST THREATS AND ARMED ATTACKS* 2 (2002) (describing the UN Charter as a “constitutive instrument capable of organic growth”); William C. Bradford, *The Duty to Defend Them: A Natural Law Justification for the Bush Doctrine of Preventative War*, 79 NOTRE DAME L. REV. 1365 (2004); Michael Glennon, *The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter*, 25 HARV. J.L. & PUB. POL’Y 539, 557-58 (2002). Note, however, that this interpretation is in tension with the text of Article 51 of the UN Charter, which permits invocations of self-defense only in response to an armed attack. UN Charter art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if

choice of means, and no moment of deliberation.”<sup>614</sup> There is little publicly available evidence to support a claim that each of the US targeted killings in northwest Pakistan meets these standards. Indeed, on currently available evidence, known practices—such as signature strikes, and placing individuals on kill lists for extended periods of time<sup>615</sup>—raise significant questions about how the self-defense test is satisfied.

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an armed attack occurs against a Member of the United Nations.”). Many states have questioned the anticipatory self-defense doctrine. Scholar Christine Gray has observed that “the vast majority of states rejected [claims of anticipatory self-defense] before the events of 9/11.” CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 10 (2008). Writing in 2008, Gray noted that despite the position in favor of anticipatory self-defense of powerful nations such as the US, the United Kingdom, and Israel, “differences persist today.” *Id.* at 160. Gray goes on to note that states rarely expressly invoke the doctrine, “a clear indication of the doubtful status of this justification for the use of force.” *Id.* at 161.

<sup>614</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 45; *see also* Letter from Daniel Webster, US Secretary of State, to Lord Ashburton, (Aug. 8, 1842), *in* CARTER & WEINER, *supra* note 607, at 936-37. Webster’s statement, which emerged from a diplomatic incident between the US and U.K. over the killing of US citizens in British Canada in 1837 (known as the *Caroline* case), has come to be the customary international legal standard for preemptive self-defense. A recent Congressional Research Service report has noted that US authorities have sought to expand the definition of imminence in the case of non-state terrorist threats. JENNIFER ELSEA, CONG. RESEARCH SERV., 7-5700, *LEGAL ISSUES RELATED TO THE LETHAL TARGETING OF US CITIZENS SUSPECTED OF TERRORIST ACTIVITIES* 14 (2012) That report notes that this “proposed redefinition of ‘imminence’ as a requirement for justifying the use of force in self defense on the territory of another country may pose challenges to the international law regarding the use of force. The standard definition of imminence from the *Caroline* case, ‘instant, overwhelming, and leaving no choice of means and no moment for deliberation,’ appears to have been completely reversed in the case of a non-state actor). *Id.* at 20.

<sup>615</sup> Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

Further, it must be shown that the host state is “unwilling or unable to take [the appropriate steps against the non-state group].”<sup>616</sup> Pakistan has at times failed to act decisively against non-state groups,<sup>617</sup> raising questions about its ability and willingness to take necessary steps. At others, however, it has also shown a willingness to take action.<sup>618</sup> Any such action by Pakistan must, however, also comport with all IHRL and IHL concerning the use of force (see below for a discussion on *jus in bello* considerations).

U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns, has questioned whether “killings carried out in 2012 can be justified as in response to [events] in 2001.”

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<sup>616</sup> Deeks, *supra* note 602, at 487-88. See also Special Rapporteur, *Study on Targeted Killings*, *supra* 598, at ¶ 35 (“[A] targeted killing conducted by one state in the territory of a second state does not violate the second State’s sovereignty if . . . the first, targeting, State has a right under international law to use force in self-defense under Article 51 of the UN Charter, because . . . the second state is willing or unable to stop armed attacks against the first State launched from its territory.”).

<sup>617</sup> See, e.g., Jayshree Bajoria and Eben Kaplan, *Background: The ISI and Terrorism: Behind the Accusations*, COUNCIL ON FOREIGN RELATIONS (May 4, 2011), <http://www.cfr.org/pakistan/isi-terrorism-behind-accusations/p11644>; Bob Gates, *America’s Secretary of War*, CBS NEWS (May 17, 2009), [http://www.cbsnews.com/2102-18560\\_162-5014588.html?tag=contentMain;contentBody](http://www.cbsnews.com/2102-18560_162-5014588.html?tag=contentMain;contentBody) (noting Defense Secretary Robert Gates conceding that “to a certain extent, [Pakistan] play[s] both sides”); *Pakistan Helping Afghan Taliban- NATO*, BBC NEWS (Feb. 1, 2012), <http://www.bbc.co.uk/news/world-asia-16821218> (citing a leaked 2012 NATO report claiming that “Pakistan’s manipulation of the Taliban senior leadership continues unabashed.”); Declan Walsh & Eric Schmitt, *New Bold From Militants Poses Risk to US-Pakistan Ties*, N.Y. TIMES (July 30, 2012), [http://www.nytimes.com/2012/07/31/world/asia/haqqani-network-threatens-us-pakistani-ties.html?pagewanted=1&r=2&nl=todaysheadlines&emc=edit\\_th\\_20120731](http://www.nytimes.com/2012/07/31/world/asia/haqqani-network-threatens-us-pakistani-ties.html?pagewanted=1&r=2&nl=todaysheadlines&emc=edit_th_20120731) (maintaining that the Haqqani Network, a non-state group affiliated with the Taliban, operates “unmolested by the Pakistani military” in North Waziristan”).

<sup>618</sup> Interview with Samina Ahmed, International Crisis Group, in Islamabad, Pakistan (Feb. 28, 2012) (“It’s a pattern we’ve seen since 2002, where the Pakistani military has delivered foreign Al-Qaeda in return for benefits.”). Pakistan has arrested dozens of senior Al-Qaeda leaders, including Khalid Sheikh Mohammed, and undertaken operations against militant groups in Swat Valley and parts of FATA.

## CIRCUMSTANCES IN WHICH INDIVIDUALS MAY LAWFULLY BE LETHALLY TARGETED

Separately from the question of whether US use of force in Pakistan violates Pakistani sovereignty, the legality of strikes against particular individuals turns on their compliance with IHL and/or IHRL. US strikes that occur outside the context of any armed conflict are governed by IHRL law. If an armed conflict exists, both IHRL, and IHL, as the *lex specialis* (“law governing a specific subject matter”), apply.<sup>619</sup>

### THE EXISTENCE OF AN ARMED CONFLICT IN PAKISTAN

The existence of an armed conflict is determined according to objective legal criteria.<sup>620</sup> In the context of a non-international armed conflict (insofar as a “conflict” exists in Pakistan between the US and others, it is a non-international conflict because it involves non-state actors), factors such as whether the violence reaches a minimum level of intensity and duration,<sup>621</sup> and involves a sufficiently identifiable and organized non-state group,<sup>622</sup> are relevant.

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<sup>619</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 29; *see also* INTERNATIONAL COMMITTEE OF THE RED CROSS, INTERNATIONAL HUMANITARIAN LAW AND OTHER LEGAL REGIMES: INTERPLAY IN SITUATIONS OF VIOLENCE (2003), *available at* [http://www.icrc.org/eng/assets/files/other/interplay\\_other\\_regimes\\_nov\\_2003.pdf](http://www.icrc.org/eng/assets/files/other/interplay_other_regimes_nov_2003.pdf) (“In short, the participants [of the XXVIIIth Round Table on Current Problems in Humanitarian Law] agreed that the existence of an armed conflict could permit the suspension of the application of derogable human rights but only to the extent necessary, for the limited duration of exceptional events justifying their suspension and subject to compliance with certain precise conditions. At the same time, a consensus emerged that, even in this hypothesis of conflict, at least the non-derogable rules of human rights law continue to apply and to complement IHL.”).

<sup>620</sup> *See* Sylvain Vit , *Typology of Armed Conflicts in International Law: Legal Concepts and Actual Situations*, 91 INT. REV. OF THE RED CROSS 69, 72 (2009) (noting the Geneva Conventions specified that “international humanitarian law was. . . no longer based solely on the subjectivity inherent in the recognition of the state of war, but was to depend on verifiable facts in accordance with objective criteria”).

<sup>621</sup> *See* Int’l Comm. of the Red Cross, *How is the Term “Armed Conflict” Defined in International Humanitarian Law?* (Mar. 2008) (laying out customary IHL); *see also* Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts, June 8, 1977, art. 1(2), 1125 UNTS 609, *available at* <http://www.icrc.org/ihl.nsf/full/475?opendocument> (requiring that the conflict amount to more than “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”) [hereinafter Protocol II].

US officials have been quick to apply IHL without establishing that the requisite threshold for its application has been met. Yet numerous experts have raised questions about whether the US is, in fact, in an armed conflict with all of the groups whose members the US has targeted. This is because of factors such as the lack of centralization and organization within some non-state groups,<sup>623</sup> and the existence of only sporadic and isolated attacks by some groups.<sup>624</sup>

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The treaty has not yet been ratified by the US. *See id.* Nonetheless, its ratification has been recommended by both Presidents Reagan and Obama. *See* Message from Ronald Reagan, President of the US, to the Senate Transmitting a Protocol to the 1949 Geneva Conventions (Jan. 29, 1987), *available at* <http://www.reagan.utexas.edu/archives/speeches/1987/012987b.htm>; Press Release, White House, Fact Sheet: New Actions on Guantanamo and Detainee Policy (Mar. 7, 2011), *available at* [http://www.lawfareblog.com/wp-content/uploads/2011/03/Fact\\_Sheet\\_-\\_Guantanamo\\_and\\_Detainee\\_Policy.pdf](http://www.lawfareblog.com/wp-content/uploads/2011/03/Fact_Sheet_-_Guantanamo_and_Detainee_Policy.pdf). The treaty has been ratified by 166 countries. *See* Protocol II, *supra*. Further, many of its provisions have been incorporated into customary law. Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 52.

<sup>622</sup> Int'l Comm. of the Red Cross, *supra* note 621, at 5; *see* Protocol II, *supra* note 621, at art. 1(2) (holding that the conflict must pit “armed forces” against “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”); Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 52; Prosecutor v. Tadic, Case No. IT-94-1-I-A, Appeals Judgment, at ¶ 120 (July 15, 1999) (defining an organized group as one that “normally has a structure, a chain of command and a set of rules as well as outward symbols of authority.”).

<sup>623</sup> Paul Pillar, *Still Fighting Bush's GWOT*, CONSORTIUM NEWS (June 23, 2012), <http://consortiumnews.com/2012/06/23/still-fighting-bushs-gwot/> (“[T]here is no distinct entity called Al Qaeda that provides a sound basis for defining and delimiting an authorized use of military force.”); *see also* Kenneth Anderson, *Targeted Killing in U.S Counterterrorism Strategy and Law* 4 (Series on The Brookings Institution, Georgetown University Law Center and the Hoover Institution Series on Counterterrorism and American Statutory Law, No. 9, 2009), *available at* <http://www.brookings.edu/research/papers/2009/05/11-counterterrorism-anderson> (“Islamist terror appears to be fragmenting into loose networks of shared ideology and aspiration rather than vertical organizations linked by command central.”); Bruce Hoffman, *The Changing Face of Al Qaeda and the Global War on Terrorism*, 27(6) *STUD. IN CONFLICT & TERRORISM* 549, 552 (2004) (outlining that Al Qaeda is “more akin to an ideology,” “diffuse and amorphous,” and “less centralized with more opaque command and control relationships.”).

<sup>624</sup> In addition, the US policy lumps together Al Qaeda, the Taliban, and associated forces, from the TTP and Lashkar-e-Taiba to the Haqqani Network and Hezb-e-Islami Gulbuddin, all of which have different agendas and methodologies. This characterization has been challenged. *See, e.g.*, AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA: ‘TARGETED KILLING’ POLICIES VIOLATE THE RIGHT TO LIFE 12 (2012). Indeed, as one international law scholar has argued, to treat these disparate groups as a single entity would be “akin to claiming that not only could the Korean war, the Vietnam war, and the Cuban Missile Crisis . . . be considered part of a single armed conflict . . . but that anyone, or any group, suspected of holding Communist opinions, anywhere around the globe, would also be seen as party to the conflict.” NOAM LUBELL, *EXTRATERRITORIAL USE OF FORCE AGAINST NON-STATE ACTORS* 96 (2010).

## DRONE STRIKES UNDER INTERNATIONAL HUMANITARIAN LAW

If there is an armed conflict, the legality of any drone strike must then be evaluated in accordance with IHL, including particularly the fundamental principles of distinction,<sup>625</sup> proportionality,<sup>626</sup> humanity,<sup>627</sup> and military necessity.<sup>628</sup>

Distinction is particularly challenging in FATA, because fighters regularly intermingle

US officials have been quick to apply IHL without establishing that the requisite threshold for its application has been met.

with civilians, engage in routine activities and do not wear uniforms. Nonetheless, militaries engaged in an armed conflict must always attempt to distinguish between legitimate and illegitimate targets for an attack.

Generally, “the civilian population as such, as well as individuals civilians, shall not be the object of attack.”<sup>629</sup> Civilians lose this protection when they “take a direct part in hostilities.”<sup>630</sup> Under the formulation of the International Committee of the Red Cross (ICRC) of what constitutes direct participation in hostilities, the act committed must

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<sup>625</sup> Protocol II, *supra* note 621, at art. 13(2) (“The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”).

<sup>626</sup> JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOL. 1: RULES 46 (2006) (“Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.”).

<sup>627</sup> Robin Coupland, *Humanity: What is it and How Does it Influence International Law?*, 83 INT. REV. OF THE RED CROSS 969, 984, <http://www.icrc.org/eng/resources/documents/misc/57jrlm.htm> (“Humanity . . . limits, to the greatest extent possible, the effects of armed violence on people’s security and health. Importantly, it extends to restraining the capacity for armed violence so that humans can live in a peaceable, constructive society in which, for instance, family life, education and commerce, i.e., humanity-humankind, can flourish.”).

<sup>628</sup> INT’L COMM. OF THE RED CROSS, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN THE HOSTILITIES UNDER HUMANITARIAN LAW 77 (2009) (“[T]he kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.”), available at <http://www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf>.

<sup>629</sup> Protocol II, *supra* note 621, at art. 13(2).

<sup>630</sup> *Id.* at art. 13(3).

adversely and directly affect the opposing party in a concrete manner or lead to the loss of life or property as part of a campaign in support of one party to a conflict.<sup>631</sup> This definition adopts an approach focused on specific hostile acts of a certain magnitude rather than organizational membership or more indirect forms of support.<sup>632</sup> The ICRC has further distinguished between civilians who participated in specific acts and those who maintain a continuous combatant function (CCF) by virtue of involvement on a “persistently recurrent basis.”<sup>633</sup> While a civilian participating in a specific act becomes a permissible target during the execution of,<sup>634</sup> and, in some formulations, the preparation of and deployment to and from the particular act,<sup>635</sup> a person who maintains CCF status, under the ICRC formulation, may be targeted at any time. The recognition under IHL that, at times, a civilian can become akin to a regular combatant makes it “imperative that the other constituent parts of the [ICRC’s Interpretive] Guidance [on the Notion of Direct Participation in the Hostilities Under Humanitarian Law] (threshold of harm, causation, and belligerent nexus) not be diluted.”<sup>636</sup> Even when a person is deemed to be a legitimate target of an attack, the attack must also satisfy IHL’s other core requirements. At a minimum, any attack must serve a legitimate military objective, and the expected harm or risk to civilians must not outweigh the expected military objective.

The research conducted for this study raises serious concerns about the compliance of particular strikes, and targeted killing trends and practices, with IHL. These legal concerns include questions regarding:

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<sup>631</sup> INT’L COMM. OF THE RED CROSS, *supra* note 628, at 44.

<sup>632</sup> *Id.* at 46; *See also* Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 63-64.

<sup>633</sup> INT’L COMM. OF THE RED CROSS, *supra* note 628, at 44. The principle of ‘continuing combatant function’ has been criticized by those who believe it provides too little and too much protection for civilians in situations of conflict. *See, e.g.*, Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 66 (“Creation of the CCF category also raises the risk of erroneous targeting of someone who, for example, may have disengaged from their function.”); Bill Boothby, “*And For Such Time As*”: *The Time Dimension to Direct Participation in Hostilities*, 42 N.Y.U. J. INT’L. L. & POL. 741, 753-58 (2010) (questioning the ICRC formulation of CCF and counseling ‘consideration’ of the US position in opposition to the existence of the category); Human Rights Institute, Columbia Law School, Targeting Operations with Drone Technology: Humanitarian Law Implications 18-21 (Mar. 25, 2011) (Background Note for the American Society of International Law Annual Meeting), *available at* [http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/BackgroundNoteASILColumbia.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/BackgroundNoteASILColumbia.pdf).

<sup>634</sup> *Id.*

<sup>635</sup> Kenneth Watkin, *Opportunity Lost: Organized Armed Groups and the ICRC ‘Direct Participation in Hostilities’ Interpretive Guidance*, 42 N.Y.U. J. INT’L. L. & POL. 640, 692 (2010) (“Carrying out an attack or preparing to do so would constitute taking direct part in hostilities.”).

<sup>636</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 67.

- individual strikes, including those on mosques, funerals, schools, or meetings for elders to gather and resolve community disputes, where large numbers of civilians are present. Even when such strikes are aimed at one or more individuals who may be deemed legitimate military targets, the presence of large numbers of civilians in such spaces may make the strike disproportionate. Strikes that result in large numbers of civilian deaths also raise questions about whether adequate precautions in attack were taken;
- signature strikes, which reportedly are based on behavior patterns observed from on high and interpreted thousands of miles away. The practice of such strikes raises concerns about whether they are conducted with the proper safeguards to ensure that they strike lawful targets;<sup>637</sup>

“[I]f civilian ‘rescuers’ are indeed being intentionally targeted, there is no doubt about the law: those strikes are a war crime.”

- *Christof Heyns, U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions*

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<sup>637</sup> Becker & Shane, *supra* note 615.



- strikes on rescuers and first responders, as documented in the Living Under Drones Chapter.<sup>638</sup> These may violate the principle of distinction, and also contravene specific rules protecting the wounded and humanitarian assistance.<sup>639</sup> It might be that, under the ICRC formulation of the CCF test, a fighter could be lawfully targeted even while the person is at that moment rescuing someone.<sup>640</sup> However, available evidence raises very serious concerns about such strikes, given that they occur in areas where civilians are very likely to be present. The short time between first and second strikes at rescue sites further raises questions over how an individual's lawful target status could be properly determined. Evidence uncovered by our research team that humanitarian actors may not attend to strikes immediately because of second-strike fears is especially troubling.<sup>641</sup> As U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns observed, "[I]f civilian 'rescuers' are indeed being intentionally targeted, there is no doubt about the law: those strikes are a war crime;"<sup>642</sup>
- the proportionality of particular strikes, in light of the higher-end estimates of civilian casualties noted in the Numbers chapter.<sup>643</sup> Recent revelations regarding

The data we gathered, reviewed in light of parallel political events and key moments of US-Pakistani relations, suggests a troubling correlation between events of political significance and the intensity of drone strikes.

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<sup>638</sup> See *infra* Chapter 3: Living Under Drones.

<sup>639</sup> See HENCKAERTS & DOSWALD-BECK, *supra* note 626, at 79, 105, 396 (explaining the rules with regards to the search for, collection and evacuation of the wounded, sick and shipwrecked (Rule 109); Medical Personnel (Rule 25); and Humanitarian Relief Personnel (Rule 31)).

<sup>640</sup> See e.g., Robert Chesney, *Is DPH the Relevant Standard in Pakistan? An Important Element in the Debate Missing from BIJ's report*, LAWFARE (Feb. 6, 2012), <http://www.lawfareblog.com/2012/02/is-dph-the-relevant-standard-in-pakistan-an-important-element-in-the-debate-missing-from-bijs-report/>.

<sup>641</sup> See *infra* Chapter 3: Living Under Drones.

<sup>642</sup> Jack Serle, *UN Expert Labels CIA Tactic Exposed by Bureau 'a War Crime'*, THE BUREAU OF INVESTIGATIVE JOURNALISM (June 21, 2012), <http://www.thebureauinvestigates.com/2012/06/21/un-expert-labels-cia-tactic-exposed-by-bureau-a-war-crime/>.

the Obama administration's "guilt by association"<sup>644</sup> approach to counting drone-strike casualties, classifying 'all military-age males' as 'combatants' absent exonerating evidence, reinforce these concerns;<sup>645</sup>

- the necessity of particular strikes, in light of research we conducted on the timing and intensity of drone attacks between January 2010 and June 2012, as well as analysis done by the Congressional Research Service. The data we gathered, reviewed in light of parallel political events and key moments in US-Pakistani relations, suggests a troubling correlation between events of political significance and the intensity of drone strikes. Take, for example, the events that followed the arrest of CIA contractor Raymond Davis, who reportedly killed two men in Pakistan on January 27, 2010. Pakistani authorities arrested Davis on that same day, January 27. Although the US had launched six strikes in the three weeks preceding his arrest (January 6-27), it did not strike again for over three weeks after the incident. During this period, US authorities engaged in a high-level lobbying campaign to ensure the release of Davis.<sup>646</sup> Some attribute the pause in drone strikes to US efforts to secure Davis's release and/or to "avoid angering a population already riveted by the Davis arrest."<sup>647</sup> Then, in the period between February 20 and Davis's eventual release on March 16, the US launched eleven

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<sup>643</sup> See *infra* Chapter 2: Numbers; *US Drone Strikes 'Raise Questions'*, *supra* note 599 (quoting UN High Commissioner for Human Rights Navi Pillay after a June 2012 trip to Pakistan as stating that "drone attacks do raise serious questions about compliance with international law, in particular the principle of distinction and proportionality").

<sup>644</sup> Becker & Shane, *supra* note 615.

<sup>645</sup> Overly permissive criteria after the fact, together with serious public accountability and transparency deficits, provide little assurance that each use of lethal force strictly complies with the relevant law. Indeed, in many other contexts, a failure to examine carefully the legality of government use of force after a killing has led to development of a culture of impunity and heightened the risk of unlawful killing. See, e.g., U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Study on Police Oversight Mechanisms*, Human Rights Council, UN Doc A/HRC/14/24/Add.8 (May 28, 2010) (by Philip Alston), available at

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>; HUMAN RIGHTS WATCH, URBAN POLICE VIOLENCE IN BRAZIL: TORTURE AND POLICE KILLINGS IN SÃO PAULO AND RIO DE JANEIRO AFTER FIVE YEARS 13 (1993) (arguing that failure to sanction police officers, including one who had killed 44 civilians allegedly in acts of defense of human life, fostered a culture of impunity in São Paulo state, contributing to an increase in police killing, which totaled over 1400 in 1992 alone).

<sup>646</sup> Mark Mazzetti, Ashley Parker, Jane Perlez & Eric Schmitt, *American Held in Pakistan Worked With C.I.A.*, N.Y. TIMES (February 21, 2012), [http://www.nytimes.com/2011/02/22/world/asia/22pakistan.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2011/02/22/world/asia/22pakistan.html?_r=1&pagewanted=all).

<sup>647</sup> Ishtiaq Mashud, *Al Qaeda Figure Believed Killed in US Drone Strike*, WASH. TIMES (Feb. 21, 2011), <http://www.washingtontimes.com/news/2011/feb/21/al-qaeda-figure-believed-killed-us-drone-strike/?page=all>.

strikes. Following the March 16 release, with the exception of the March 17 *jirga* strike,<sup>648</sup> the US did not authorize another strike afterwards for almost a month (until April 13).<sup>649</sup> The Congressional Research Service (CRS) reached a similar conclusion: “[m]essaging to Pakistan appears to continue to be part of the [drone] program’s intent.”<sup>650</sup> Apart from the Raymond Davis incident, CRS cited two additional examples of the intensification of drone strikes related to political events.<sup>651</sup>

### **IN THE ABSENCE OF ARMED CONFLICT, ONLY INTERNATIONAL HUMAN RIGHTS LAW APPLIES**

IHRL permits the intentional use of lethal force only when strictly necessary and proportionate. Thus, “targeted killings” as typically understood (intentional and premeditated killings) cannot be lawful under IHRL, which allows intentional lethal force only when necessary to protect against a threat to life, and where there are “no other means, such as capture or non-lethal incapacitation, of preventing that threat to life.”<sup>652</sup> There is little public evidence that many of the targeted killings carried out fulfill this strict legal test. Indeed, and as described above, many particular strikes and practices suggest breaches of the test, including: signature strikes; strikes on rescuers; the administration’s apparent definition of “militant;” the lack of evidence of imminent threat; and the practice of extensive surveillance and presence on a list before killing.

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<sup>648</sup> See *infra* Chapter 3: Living Under Drones.

<sup>649</sup> For full details, refer to Appendix C. In a similar vein, strikes fluctuated significantly during the time period immediately before and after the May 2012 *New York Times* investigative piece on targeted killing. Becker & Shane, *supra* note 615. The revelations in the *Times* piece were widely perceived as a boon to Obama’s popularity at home. See, e.g., Charles Krauthammer, *Barack Obama: Drone Warrior*, WASH. POST (May 31, 2012), [http://www.washingtonpost.com/opinions/barack-obama-drone-warrior/2012/05/31/gJQAr6zQ5U\\_story.html](http://www.washingtonpost.com/opinions/barack-obama-drone-warrior/2012/05/31/gJQAr6zQ5U_story.html). The US launched nine strikes across North Waziristan in the seven days before and after the *Times* piece although it had not launched a single strike in the two weeks preceding that period and only two in the subsequent two weeks. For full details, refer to Appendix B.

<sup>650</sup> K. ALAN KRONSTADT, CONG. RESEARCH SERV., R41832, PAKISTAN-US RELATIONS 22 (2012), available at <http://fpc.state.gov/documents/organization/193708.pdf>.

<sup>651</sup> *Id.* (“major strikes closely followed ... the Administration’s July 2011 announcement on partial suspension of US military aid to Islamabad;” and “a series of drone strikes came immediately after the May 2012 NATO summit where President Obama refused to meet with his Pakistani counterpart.”).

<sup>652</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 33.

The nature and effect of the US targeted killing policy may also contravene in some instances other sections of the International Covenant on Civil and Political Rights (ICCPR),<sup>653</sup> an international human rights treaty ratified by the US. Sections of the ICCPR potentially violated by US drone practice include Article 7 (prohibition on cruel, inhumane, and degrading treatment or punishment), Article 9.1 (right to liberty and security), Article 17 (right to freedom from arbitrary or unlawful interference with privacy, family, and home), Article 21 (right to peaceful assembly), and Article 22 (right to freedom of association).<sup>654</sup> Thus, for example, Articles 21 and 22 might be violated where drone strike practices cause individuals to fear assembling in groups—as described by many interviewees—out of concern that they might be assumed to be engaged in suspicious activity that might result in a signature strike.

## US DOMESTIC LAW

US drone strikes must also comply with US domestic law. Under Article II of the US Constitution, the President wields significant authority over questions involving national security and the use of force.<sup>655</sup> The Constitution, though, also entrusts key responsibilities, including the authority to declare war, to Congress.<sup>656</sup> When acting pursuant to Congressional authorization in an area delegated to him under the Constitution, the President has relatively expansive authority to act.<sup>657</sup>

The principal domestic legislative basis offered to justify drone strikes is the Authorization to Use Military Force (AUMF), a joint resolution of both houses of Congress passed exactly one week after 9/11. The AUMF permits the President to use “all necessary and appropriate force against those nations, organizations, or persons he

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<sup>653</sup> International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

<sup>654</sup> *See generally id.*

<sup>655</sup> US Const. art. II, § 2, cl. 1 (“The President shall be Commander in Chief of the Army and Navy of the United States...”); *see* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 US 579, 645 (1952) (Jackson, J., concurring) (“I should indulge the widest latitude of interpretation to sustain [the President’s] exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society. . . . His command power is not such an absolute as might be implied from that office in a militaristic system but is subject to limitations consistent with a constitutional Republic whose law and policy-branch is a representative Congress.”).

<sup>656</sup> *See, e.g.*, US Const. art. I, § 8, cl. 1, 11 (“The Congress shall have the Power To . . . declare War.”).

<sup>657</sup> *Youngstown Sheet*, 343 U.S. at 635 (“When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum.”).

determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”<sup>658</sup> While subsequent legal and judicial developments expanded the government’s *detention* authority beyond the parameters of the AUMF,<sup>659</sup> the AUMF continues to provide the legal basis for the *use of force* against Al Qaeda. The 2012 National Defense Authorization Act (NDAA), for example, while affirming the President’s power to detain forces “associated” with Al Qaeda and Taliban and “engaged in hostilities against the United States or its coalition partners,”<sup>660</sup> notes that “nothing in this section is intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force.”<sup>661</sup> Congress, which has been more engaged recently in oversight of the drone program,<sup>662</sup> has yet to expand or limit the authorization for the executive to use force under the AUMF at this writing.

US officials have cited the AUMF to support their position that the country is at ‘war’ not only with Al Qaeda and the Taliban, but also with all alleged affiliated groups, wherever they may operate, and at any point when they emerge.<sup>663</sup> For example, Jeh Johnson, General Counsel of the Department of Defense, has stated that the US government considers the AUMF to authorize force against “associated forces.”<sup>664</sup> An associated force, according to Johnson, is “(1) an organized, armed group that has entered the fight alongside Al Qaeda, and (2) is a co-belligerent with Al Qaeda in hostilities against the

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<sup>658</sup> Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

<sup>659</sup> See, e.g., *Al-Bihani v. Obama*, 590 F.3d 866, 872 (D.C. Cir. 2010) (holding that the AUMF grants the President authority to detain individuals who are “part of forces associated with Al Qaeda or the Taliban.”); Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (2006) (defining an unlawful enemy combatant for the purposes of jurisdiction as a “a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda or associated forces)”). *Al-Bihani* and the Military Commissions Act do not consider targeted killings.

<sup>660</sup> National Defense Authorization Act Fiscal Year 2012, H.R. 1540, 112th Cong. § 1021(b)(2) (2012). Note, though, that the Constitutionality of this provision has been challenged. See, e.g., *Hedges v. Obama*, No. 12 Civ. 331(KBF), 2012 WL 3999839 (S.D.N.Y. 2012) (ruling that § 1021(b)(2) is unconstitutional and enjoining its enforcement). At the time of this writing, the 2nd Circuit judge had issued a stay on the decision pending appeal. *Hedges v. Obama*, No. 12-3176, slip op. at 1 (2d Cir. Sept. 17, 2012).

<sup>661</sup> *Id.* at § 1021(d).

<sup>662</sup> Ken Dilanian, *Congress Keeps Closer Watch on CIA Drone Strikes*, L.A. TIMES (June 25, 2012), <http://www.latimes.com/news/nationworld/world/middleeast/la-na-drone-oversight-20120625,0,7967691,full.story>.

<sup>663</sup> See, e.g., Jeh C. Johnson, General Counsel, Department of Defense, National Security Law, Lawyers and Lawyering in the Obama administration, Address at Yale Law School (Feb. 22, 2012), available at <http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448>.

<sup>664</sup> *Id.*

United States or its coalition partners.”<sup>665</sup> The plain language of the AUMF, though, would appear only to authorize the use of force against those tied to the attacks of September 11, 2001, and not *any* “associated forces” who may subsequently allegedly join with Al Qaeda.<sup>666</sup> While the AUMF would thus cover actions against Al Qaeda and the Afghan Taliban, strikes against groups not involved with the 9/11 attacks, including, for example, the Haqqani Network and TTP, would not be covered under the currently existing language.

The express legislative authorization in the AUMF, read in conjunction with the wartime powers of the executive under Article II, endow the President with expansive authority to act on use of force questions in the post-9/11 context.<sup>667</sup> In addition, the President has the authority to issue findings to authorize CIA action beyond the parameters of Congressional authorization as long as such action does not otherwise violate domestic law.<sup>668</sup> Some argue that this allows the President to authorize the CIA to take pre-emptive lethal action in self-defense against terrorists in response to an imminent threat, without first obtaining Congressional approval.<sup>669</sup> While all US presidents have embraced an executive order issued by President Gerald Ford in 1976<sup>670</sup> prohibiting political assassination,<sup>671</sup> at least two presidents have reportedly relied on classified legal memoranda to conclude that “executive orders banning assassination do not prevent the president from lawfully singling out a terrorist for death by covert action.”<sup>672</sup>

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<sup>665</sup> *Id.*

<sup>666</sup> See, e.g., Jonathan Masters, *Background: Targeted Killings*, COUNCIL ON FOREIGN RELATIONS (Apr. 30, 2012), <http://www.cfr.org/counterterrorism/targeted-killings/p9627> (quoting John Bellinger, former legal adviser for the US Department of State under Secretary of State Condoleezza Rice from 2005 to 2009 and current Adjunct Senior Fellow at the Council on Foreign Relations, who argues that the AUMF is “still tied to the use of force against people who planned, committed, and or [sic] aided those involved in 9/11.”).

<sup>667</sup> Youngstown Sheet, 343 US at 591.

<sup>668</sup> 50 USC. § 413b(a) (2006).

<sup>669</sup> W. Hays Parks, *Memorandum of Law: Executive Order 12333 and Assassination*, 27 ARMY LAWYER 4, 7-8 (1989).

<sup>670</sup> Exec. Order No. 11,905, 41 Fed. Reg. 7703 (Feb. 18, 1976).

<sup>671</sup> See, e.g., Exec. Order No. 12,036, 43 Fed. Reg. 3674 (Jan. 24, 1978) (closing the loopholes on the US assassination ban and declaring that “no employee of the United States Government shall engage in, or conspire to engage in, assassination”); Exec. Order No. 12,333, 3 C.F.R. 200 (1981).

<sup>672</sup> Barton Gellman, *CIA Weighs ‘Targeted Killing’ Missions*, WASH. POST (Oct. 28, 2001), <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A63203-2001Oct27&notFound=true>; see also Jeremy Scahill, *The Democrats’ Selective Amnesia on Assassination: Clinton Did it and Obama Does it Too*, HUFFINGTON POST (July 15, 2009), [http://www.huffingtonpost.com/jeremy-scahill/the-democrats-selective-a\\_b\\_233708.html](http://www.huffingtonpost.com/jeremy-scahill/the-democrats-selective-a_b_233708.html); *US Policy on*

To the extent that strikes may occur pursuant to executive findings authorizing CIA action beyond the parameters of Congressional authorization, the legal framework guiding CIA engagement must be examined. Many have questioned what rules govern the CIA,<sup>673</sup> with some even suggesting that the express purpose of the CIA is to safeguard vital national interests by means of covert action that may go beyond the parameters of the law.<sup>674</sup> The CIA's involvement in drone strikes in Pakistan does not absolve the US from its responsibility to adhere to binding domestic law. Although the CIA is governed by a different section of the US Code (Title 50) than that which regulates the armed forces (Title 10), the CIA "may not authorize any action that would violate the Constitution or any statute of the United States."<sup>675</sup> Director of National Intelligence James Clapper explained in a January 2012 Senate Intelligence Committee hearing that the entirety of Harold Koh's March 2010 speech at the American Society of International Law's annual conference, which laid out the legal requirements to which the US is bound and the administration's legal justification for targeted killings, applied equally to intelligence agencies.<sup>676</sup>

Executive orders to the CIA authorizing covert action (such as drone strikes), though, are not public, and thus their terms cannot be examined. Should they not provide a legal basis for actions of this sort or should the US invocation of self-defense be invalid in particular instances, individual strikes could constitute acts of illegal extrajudicial assassination. Assassination has long been condemned in the US. Thomas Jefferson wrote in a letter to James Madison in 1789 that "assassination, poison, [and perjury]" were all "legitimate purposes in the dark ages...but exploded and held in just horror in the 18<sup>th</sup> century."<sup>677</sup> As recently as 2001, the US Ambassador to Israel Martin Indyk

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*Assassinations*, CNN (Nov. 4, 2002), [http://articles.cnn.com/2002-11-04/justice/us.assassination.policy\\_1\\_assassination-prohibition-cia-lawyers?\\_s=PM:LAW/](http://articles.cnn.com/2002-11-04/justice/us.assassination.policy_1_assassination-prohibition-cia-lawyers?_s=PM:LAW/).

<sup>673</sup> See, e.g., Michael McAndrew, *Wrangling in the Shadows: The Use of United States Special Forces in Covert Military Operations in the War on Terror*, 29 B.C. INT'L & COMP. L. REV. 153, 161 (2006).

<sup>674</sup> Kathryn Stone, "All Necessary Means" *Employing CIA Operatives in a Warfighting Role Alongside Special Operations Forces* (US Army War College Strategy Research Project #0704-0188, Apr. 7, 2003), available at <http://www.fas.org/irp/eprint/stone.pdf> ("Whereas US military operations are more easily proven to be in compliance with both national and international law because they occur in the public domain, this is not the case with CIA covert operations . . . there are overriding national interests (vital interests) that must be protected outside the framework of international law.").

<sup>675</sup> 50 USC. § 413b(a)(5) (2006).

<sup>676</sup> *Senate Select Intelligence Committee Holds Hearing on Worldwide Threats*, 112th Cong. (2012) (statement of James Clapper, Director of National Intelligence).

<sup>677</sup> Letter from Thomas Jefferson to James Madison (Aug. 28, 1789), in 15 THE PAPERS OF THOMAS JEFFERSON 367 (Julian P. Boyd ed., 1958); see Philip Alston, *The CIA and Targeted Killing Beyond*

declared that “the United States government is very clearly on record as against targeted assassinations... they are extrajudicial killings, and we do not support that.”<sup>678</sup> Strikes of this sort occurring outside of authorized armed conflict would be subject to US domestic law.<sup>679</sup> If US citizens are targeted, constitutional protections and due process requirements also apply.<sup>680</sup>

## ACCOUNTABILITY AND TRANSPARENCY

International law requires states to ensure basic transparency and accountability for wrongs. States must investigate war crimes allegations, and prosecute where appropriate.<sup>681</sup> The obligation to be transparent is particularly relevant when there are civilian victims; indeed, some have argued that parties to an armed conflict are obligated to record civilian casualties.<sup>682</sup> IHRL further “places a particular emphasis on the obligation of states to investigate, prosecute and punish any alleged violation of the norms banning extrajudicial executions.”<sup>683</sup> A proper investigation requires

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*Borders* (New York Univ. Law Sch. Pub. Law & Legal Theory Research Paper Series, Working Paper No. 11-64, Sept. 16, 2011), available at <http://ssrn.com/abstract=1928963>.

<sup>678</sup> Jane Mayer, *The Predator War*, NEW YORKER (Oct. 26, 2009), [http://www.newyorker.com/reporting/2009/10/26/091026fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer).

<sup>679</sup> Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 71.

<sup>680</sup> For a discussion of the additional constitutional legal considerations involved in the targeting of US citizens, see Complaint at ¶ 41-43, *Al-Aulaqi v. Panetta*, No. 12-cv-01192-RMC (filed on 07/18/2012), as well as Memorandum in Support of Plaintiff’s Motion for a Preliminary Injunction at 8-23, *Al-Aulaqi v. Obama*, 727 F.Supp.2d 1 (D.D.C. 2010). In an interview with Jessica Yellin of CNN on September 5, 2012, President Obama recognized, in response to a question about the standards that apply to drone strikes when ‘the target is an American?’, that “[as an] American citizen, they are subject to the protections of the Constitution and due process.” *Obama Reflects on Drone Warfare* (CNN television broadcast Sept. 5, 2012), available at <http://security.blogs.cnn.com/2012/09/05/obama-reflects-on-drone-warfare/>.

<sup>681</sup> HENCKAERTS & DOSWALD-BECK, *supra* note 626, at 607 (explaining Rule 158).

<sup>682</sup> Susan Breau & Rachel Joyce, *Discussion Paper: The Legal Obligation to Record Civilian Casualties of Armed Conflict 2* (Oxford Research Group, June 2011), available at <http://www.oxfordresearchgroup.org.uk/sites/default/files/1st%20legal%20report%20formatted%20FINAL.pdf>; see also Susan Breau, Marie Aronsson, & Rachel Joyce, *Discussion Paper 2: Drone Attacks, International Law, and the Recording of Civilian Casualties of Armed Conflict 2* (Oxford Research Group, June 2011), available at <http://www.oxfordresearchgroup.org.uk/sites/default/files/ORG%20Drone%20Attacks%20and%20International%20Law%20Report.pdf>.

<sup>683</sup> Alston, *supra* note 677, at 22; see also Special Rapporteur, *Study on Targeted Killings*, *supra* note 598, at ¶ 15 (citing to the Israel High Court of Justice, *The Public Committee Against Torture et al. v. The Government of Israel, et al.*, HCJ 769/02, Judgment of 14 Dec. 2006 (PCATI) for the holding that “after each targeted killing, there must be a retroactive and independent investigation of the ‘identification of the target and the circumstances of the attack’”).



transparency: as the European Court of Human Rights explained, “[t]here must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities’ adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.”<sup>684</sup>

By failing to account adequately for their activities in any public forum and even refusing to acknowledge publicly the existence of targeted killing operations for years or to explain sufficiently their legal basis, the US has failed to meet its international legal

Partial and selective leaks to journalists and vague invocations of legal doctrine in talks in public fora are poor substitutes for proper transparency and oversight.

obligations to ensure transparency and accountability. In addition, while Article 51 of the U.N. Charter, which the US has implicitly invoked to justify strikes, requires that “measures taken by Members in the exercise of [their] right to self-defense . . . be immediately reported to the Security Council,”<sup>685</sup> the US has yet to

make such a report. Recent public disclosures and the occasional willingness by public officials to discuss the program publicly is welcome progress, but more is still required.

Partial and selective leaks to journalists and vague invocations of legal doctrine in talks in public fora are poor substitutes for proper transparency and oversight. Officials boast of the rigor of internal oversight mechanisms and decision-making processes,<sup>686</sup> but, as former U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions Professor Philip Alston concluded:

Assertions by Obama administration officials, as well as by scholars, that these operations comply with international standards are undermined by the total absence of any forms of credible transparency or verifiable accountability. The CIA’s internal control mechanisms, including the Inspector-General, have had no discernible impact; executive control mechanisms have either not been activated at all or have ignored the issue; congressional oversight has given a ‘free pass’ to

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<sup>684</sup> *Anguelova v. Bulgaria*, 38 Euro. Ct. H.R. 31, ¶ 140 (2002) (cited in Alston, *supra* note 677, at 23).

<sup>685</sup> UN Charter art. 51.

<sup>686</sup> See, e.g., Brennan, *supra* note 600 (“[T]he United States government has never been so open regarding its counterterrorism policies and legal justification.”); Preston, *supra* note 600.

the CIA; judicial review has been effectively precluded; and external oversight has been reduced to media coverage which is all too often dependent on information leaked by the CIA itself.<sup>687</sup>

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<sup>687</sup> Alston, *supra* note 677, at 118.

## CHAPTER 5: STRATEGIC CONSIDERATIONS

The central justification for US drone strikes is that they are necessary to make the US safer by disrupting “militant” activity. Proponents argue that they are an effective, accurate, and precise tool to that end. However, serious questions have been raised about the accuracy and efficacy of strikes, and the publicly available evidence that they have made the US safer overall is ambiguous at best. Considerable costs also have been documented. The under-accounted-for harm to civilians—injuries, killings, and broad impacts on daily life, education, and mental health—was analyzed in detail above, and must be factored as a severe cost of the US program.<sup>688</sup> In addition, it is clear that US strikes in Pakistan foster anti-American sentiment and undermine US credibility not only in Pakistan but throughout the region. There is strong evidence to suggest that US drone strikes have facilitated recruitment to violent non-state armed groups, and motivate attacks against both US military and civilian targets. Further, current US targeted killing and drone strike practices may set dangerous global legal precedents, erode the rule of law, and facilitate recourse to lethal force.

A significant rethinking of current policies, in light of all available evidence, the concerns of various stakeholders, and short and long-term costs and benefits, is long overdue.

### DRONE STRIKE ACCURACY AND EFFECTIVENESS IN HAMPERING ARMED VIOLENCE

The US government and advocates for US targeted killing policies put much emphasis on the precision of drone strikes, and their effectiveness in combating terrorism and making the US safer by hampering the operational capacity of “militants.” Indeed, as Peter Bergen and Jennifer Rowland have argued, “CIA drone attacks in Pakistan have undoubtedly hindered some of the Taliban’s operations, killed hundreds of their low-level fighters, and a number of their top commanders.”<sup>689</sup> The “terrorizing presence” of drones overhead has also reportedly disrupted the ability of armed non-state actors to

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<sup>688</sup> See *supra* Chapter 3: Living Under Drones.

<sup>689</sup> Peter Bergen & Jennifer Rowland, *Drones Decimating Taliban in Pakistan*, CNN (July 4, 2012), <http://edition.cnn.com/2012/07/03/opinion/bergen-drones-taliban-pakistan/index.html>.

gather and organize within Waziristan.<sup>690</sup> Documents selectively released by the US after the raid on bin Laden's Abbottabad compound indicate that bin Laden himself expressed concern about, and modified operations in response to, drone strikes.<sup>691</sup>

However, claims about accuracy and efficacy deserve serious scrutiny.

First, concerns have been raised about the technical accuracy of strikes.<sup>692</sup> More significantly, however, is the fact that the accuracy of a drone strike fundamentally hinges on the accuracy of the intelligence on which the targeting is premised. That intelligence has often been questioned. An anonymous US official cited by Tom Junod in his August 2012 *Esquire* article admitted that “[y]ou get information from intelligence channels and you don’t know how reliable it is or who the source was. The intelligence services have criteria, but most of the time the people making the decision have no idea what those criteria are.”<sup>693</sup>

Targeting decisions appear to be based on information obtained from assets and informants on the ground, signals intelligence, and aerial drone surveillance.<sup>694</sup> As Jane Mayer notes, “the precise video footage makes it much easier to identify targets. But the strikes are only as accurate as the intelligence that goes into them.”<sup>695</sup> Bob Woodward

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<sup>690</sup> David Rohde, *The Drone War*, REUTERS MAG. (Jan. 26, 2012), <http://www.reuters.com/article/2012/01/26/us-davos-reutersmagazine-dronewar-idUSTRE80P19R20120126>; see also *supra* Chapter 3: Living Under Drones.

<sup>691</sup> See, e.g., Pam Benson, *Bin Laden Documents: Fear of Drones*, CNN (May 3, 2012), <http://security.blogs.cnn.com/2012/05/03/bin-laden-documents-fear-of-drones/>.

<sup>692</sup> See *infra* Chapter 1: Background and Context (noting questions about the technical precision of drones, including the problem of latency). In particular, see discussion of lawsuit concerning software summarized in note 31.

<sup>693</sup> Tom Junod, *The Lethal Presidency of Barack Obama*, ESQUIRE (Aug. 2012), available at <http://www.esquire.com/print-this/obama-lethal-presidency-0812?page=all>.

<sup>694</sup> See Declan Walsh, *Mysterious ‘Chip’ is CIA’s Latest Weapon Against al-Qaida Targets Hiding in Pakistan’s Tribal Belt*, GUARDIAN (May 31, 2009), <http://www.guardian.co.uk/world/2009/may/31/cia-drones-tribesmen-taliban-pakistan>; see also Dashiell Bennett, *Pakistani Death Squads Target Informants Who Help Drone Attacks*, ATLANTIC WIRE (Dec. 29, 2011), available at <http://news.yahoo.com/pakistani-death-squads-target-informants-help-drone-attacks-130952142.html> (discussing how a militant group called the Khorasan Mujahedin is kidnapping, torturing, and killing those in Pakistan’s tribal areas it suspects of helping the US drones).

<sup>695</sup> Jane Mayer, *The Predator War*, NEW YORKER (Oct. 26, 2009), available at [http://www.newyorker.com/reporting/2009/10/26/091026fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer); see also UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, *Study on Targeted Killing*, ¶ 81, Human Rights Council, UN Doc A/HRC/14/24/Add.6 (May 28, 2010) (by Philip Alston), available at <http://unispal.un.org/pdfs/AHRC1424Add6.pdf> (“The precision, accuracy and legality of a drone strike depend on the human intelligence upon which the targeting decision is based.”).

explains in *Obama's Wars*, "[w]ithout the local informants...there would not be good signals intelligence so that the drones know where to target."<sup>696</sup>

Public information about the US experience in Afghanistan and Iraq, as well as in the context of rendition and the Guantanamo detentions, creates cause for concern about the reliability of the intelligence that informs lethal targeting decisions. In April 2011, for example, US forces used a predator drone to fire upon and kill two American soldiers in Afghanistan who had apparently been mistaken for Taliban fighters.<sup>697</sup> In September 2010, US special forces bombed the convoy of Zabet Amanullah, a candidate in parliamentary elections, killing him along with nine fellow election workers; US forces reportedly mistakenly believed Amanullah to be a member of the Taliban.<sup>698</sup> In both Afghanistan and Iraq, there have been documented cases of opportunistic informants providing false tips to settle scores, advance sectarian or political agendas, or to obtain financial reward.<sup>699</sup> For example, in Guantanamo, a reported 86 percent of those imprisoned were turned over to coalition forces in response to a bounty offered by the US.<sup>700</sup> Pakistani and Afghan villagers reported the bounty amount was "[e]nough money to take care of your family, your village, your tribe for the rest of your life."<sup>701</sup> For several years, the US government regularly referred to Guantanamo detainees as "the worst of the worst."<sup>702</sup> Classified as "enemy combatants," prisoners remained in US custody for significant periods of time, often years, and often without being charged. Yet of the 779

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<sup>696</sup> BOB WOODWARD, *OBAMA'S WARS* 106-07 (2010).

<sup>697</sup> Jim Miklaszewski, *2 US servicemen mistakenly killed by drone attack in Afghanistan*, NBC NEWS (April 11, 2011), [http://www.msnbc.msn.com/id/42537620/ns/world\\_news-south\\_and\\_central\\_asia/t/us-servicemen-mistakenly-killed-drone-attack-afghanistan/](http://www.msnbc.msn.com/id/42537620/ns/world_news-south_and_central_asia/t/us-servicemen-mistakenly-killed-drone-attack-afghanistan/).

<sup>698</sup> Kate Clark, *AFGHANISTAN ANALYSTS NETWORK, THE TAKHAR ATTACK: TARGETED KILLINGS AND THE PARALLEL WORLDS OF US INTELLIGENCE AND AFGHANISTAN* (2011), available at [http://aan-afghanistan.com/uploads/20110511KClark\\_Takhar-attack\\_final.pdf](http://aan-afghanistan.com/uploads/20110511KClark_Takhar-attack_final.pdf). US authorities contended that Muhammad Amin and Zabet Amanullah were the same person. *Id.* at 2. According to Clark, this assertion was demonstrated to be false when Amin was interviewed in Pakistan after the September 2, 2010 strike. *Id.*

<sup>699</sup> See, e.g., Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mission to Afghanistan, ¶¶ 14-18, Human Rights Council, UN Doc. A/HRC/11/2/Add.4 (May 6, 2009) (by Philip Alston), available at <http://www.extrajudicialexecutions.org/application/media/Afghanistan%202009%20report.pdf>; Anthony Shadid, *For an Iraqi Family, 'No Other Choice'*, WASH. POST (Aug. 1, 2003), <http://www.pulitzer.org/archives/6812>.

<sup>700</sup> *Guantánamo by the Numbers [Infographic]*, AMERICAN CIVIL LIBERTIES UNION (May 4, 2012), <http://www.aclu.org/national-security/guantanamo-numbers>.

<sup>701</sup> *Id.*

<sup>702</sup> Jeff Stein, *Rumsfeld Complained of 'Low Level' GTMO Prisoners, Memo Reveals*, WASH. POST (Mar. 3, 2011), [http://voices.washingtonpost.com/spy-talk/2011/03/rumsfeld\\_complained\\_of\\_low\\_level.html](http://voices.washingtonpost.com/spy-talk/2011/03/rumsfeld_complained_of_low_level.html).

detainees held at Guantanamo Bay since 2002, 603 have now been released.<sup>703</sup> According to the US government itself, 92% of prisoners in the facility were never Al Qaeda fighters.<sup>704</sup>

What does this mean in the targeted killing context? Human rights lawyer Clive Stafford Smith of Reprieve articulates the implications:

Just as with Guantanamo Bay, the CIA is paying bounties to those who will identify “terrorists.” Five thousand dollars is an enormous sum for a Waziri informant, translating to perhaps £250,000 in London terms. The informant has a calculation to make: is it safer to place a GPS tag on the car of a truly dangerous terrorist, or to call down death on a Nobody (with the beginnings of a beard), reporting that he is a militant? Too many “militants” are just young men with stubble.<sup>705</sup>

Tom Junod has similarly argued:

The US invaded Iraq on the pretext of evidence that was fallacious, if not dishonest. The US detained the “worst of the worst” in Guantánamo for years before releasing six hundred of them, uncharged, which amounts to the admission of a terrible mistake. The Lethal Presidency is making decisions to kill based on intelligence from the same sources. These decisions are final, and no one will ever be let go. Six hundred men. What if they had never been detained? What if, under the precepts of the Lethal Presidency, they had simply been killed?<sup>706</sup>

The trend of the US claiming to have targeted or killed the same high-value target multiple times also serves to undermine assertions about the accuracy of US intelligence. For example, although proclaimed dead in January 2009<sup>707</sup> and again in September 2009,<sup>708</sup> Ilyas Kashmiri, the alleged head of Al Qaeda’s paramilitary operations in Pakistan, gave an interview to a Pakistani journalist in October that same

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<sup>703</sup> *The Guantanamo Docket: A History of the Detainee Population*, N.Y. TIMES (July 11, 2012), <http://projects.nytimes.com/guantanamo/>.

<sup>704</sup> *Guantánamo by the Numbers*, *supra* note 700.

<sup>705</sup> Clive Stafford Smith, *We are Sleepwalking into the Drone Age, Unaware of the Consequences*, GUARDIAN (June 2, 2012), <http://www.guardian.co.uk/commentisfree/2012/jun/02/drone-age-obama-pakistan>.

<sup>706</sup> Junod, *supra* note 693.

<sup>707</sup> See, e.g., Hasnain Kazim, *Relatives of Pakistani Drone Victims to Sue CIA*, DER SPIEGEL (Jan. 21, 2011), <http://www.spiegel.de/international/world/striking-back-at-the-us-relatives-of-pakistani-drone-victims-to-sue-cia-a-740638.html>.

<sup>708</sup> See, e.g., Alex Rodriguez & Zulfiqar Ali, *Pakistani Al Qaeda Leader Killed in US Strike*, L.A. TIMES (Sept. 18, 2009), <http://articles.latimes.com/2009/sep/18/world/fg-pakistan-drone18>.

year.<sup>709</sup> Our research team spoke with a survivor of the September 2009 strike in which Kashmiri was initially reported to have died. That survivor, Sadaullah Wazir, who was 15 years old or younger at the time of the strike, lost both his legs and an eye in the strike.<sup>710</sup> Kashmiri was again proclaimed dead in June 2011,<sup>711</sup> but even this account has been contested.<sup>712</sup> Similarly, Abu Yahya Al-Libi, declared to be Al Qaeda's #2 or #3, was thought killed in a December 2009 drone strike,<sup>713</sup> only to be reportedly killed more than three years later in June 2012.<sup>714</sup> Michael Hastings of *Rolling Stone* has also traced the multiple US attempts to strike the TTP's former leader Baitullah Mehsud:

A year earlier, a drone strike killed Baitullah Mehsud, the head of the Pakistani Taliban, while he was visiting his father-in-law; his wife was vaporized along with him. But the US had already tried four times to assassinate Mehsud with drones, killing dozens of civilians in the failed attempts. One of the missed strikes, according to a human rights group, killed 35 people, including nine civilians, with reports that flying shrapnel killed an eight-year-old boy while he was sleeping. Another blown strike, in June 2009, took out 45 civilians, according to credible press reports.<sup>715</sup>

Second, the vast majority of the "militants" targeted have been low-level insurgents, killed in circumstances where there is little or no public evidence that they had the means or access to pose a serious threat to the US. In 2011, a White House evaluative

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<sup>709</sup> Syed Saleem Shahzad, *Al-Qaeda's Guerrilla Chief Lays Out Strategy*, ASIA TIMES (Oct. 15, 2009), [http://www.atimes.com/atimes/South\\_Asia/KJ15Dfo3.html](http://www.atimes.com/atimes/South_Asia/KJ15Dfo3.html).

<sup>710</sup> Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 29, 2012). Sadaullah was uncertain of his exact age; he told our research team that he believed his current age to be between 15 and 17. *Id.*

<sup>711</sup> Myra MacDonald, *Ilyas Kashmiri Reported Killed in Drone Strike in Pakistan*, REUTERS (June 4, 2011), <http://blogs.reuters.com/pakistan/2011/06/04/ilyas-kashmiri-reported-killed-in-drone-strike-in-pakistan/>.

<sup>712</sup> Rezaul H. Laskar, *Kashmiri Still Alive: Report*, HINDUSTAN TIMES (July 16, 2011), <http://www.hindustantimes.com/world-news/Pakistan/Kashmiri-still-alive-Report/Article1-721767.aspx>.

<sup>713</sup> *Sources: Drone Killed Top Qaeda Operative*, CBS NEWS (Dec. 12, 2009), <http://www.cbsnews.com/stories/2009/12/11/world/main5967266.shtml> (reporting that al-Libi, characterized as "al Qaeda's number 3" was mistakenly believed to have been killed in a strike that killed Saleh al-Somali, "one of a half dozen top Qaeda operatives").

<sup>714</sup> *White House: Al Qaeda No. 2 Leader is dead*, CNN (June 6, 2012), [http://www.cnn.com/2012/06/05/world/asia/pakistan-drone-libi/index.html?hpt=hp\\_t1](http://www.cnn.com/2012/06/05/world/asia/pakistan-drone-libi/index.html?hpt=hp_t1).

<sup>715</sup> Michael Hastings, *The Rise of the Killer Drones: How America Goes to War in Secret*, ROLLING STONE (Apr. 26, 2012), <http://www.rollingstone.com/politics/news/the-rise-of-the-killer-drones-how-america-goes-to-war-in-secret-20120416?print=true>. According to *TBIJ*, media reports placed the range of civilian deaths in the June 23, 2009 strike between 18 and 45. *Obama 2009 Pakistan Strikes*, THE BUREAU OF INVESTIGATIVE JOURNALISM (Aug. 10, 2011), <http://www.thebureauinvestigates.com/2011/08/10/obama-2009-strikes/>.

report on drone strikes, in fact, found that the CIA was “primarily killing low-level militants in its drone strikes.”<sup>716</sup> Journalist Adam Entous reached a similar conclusion in a May 2010 *Reuters* piece: based on conversations with unnamed US officials, he noted that only 14 top-tier leaders of Al Qaeda, the Taliban, or other “militant” groups and two dozen high-to-mid-level leaders had been killed, with the remaining “90 percent by some measure” of those “militant” deaths consisting of “lower-level fighters.”<sup>717</sup> In September 2012, Peter Bergen and Megan Braun, reporting New American Foundation data, stated that since 2004, 49 “militant leaders” had been killed in strikes (accounting for 2% of all drone killings); the rest were largely “low-level combatants.”<sup>718</sup>

Strikes that kill low-level fighters are of dubious value to US security interests. This is particularly true in light of revelations that the US counts all killed adult males as “combatants,” absent exonerating evidence.<sup>719</sup> In other words, claims that drones have killed hundreds of low-level fighters may well mask the deaths of civilians.

Third, analysts have raised questions about the effectiveness of “decapitation” strategies (the targeted killing or capture of an organization’s high-level leaders and mobilizers in order to incapacitate the entire group). As RAND analyst Bruce Hoffman observed in 2004, Al Qaeda is a “nimble, flexible and adaptive entity.”<sup>720</sup> The frequency with which the US claims to have killed the number two of the various “militant” groups operating in North Waziristan attests to how readily leaders have been replaced. Indeed, former director of National Intelligence Dennis Blair noted in explaining the ineffectiveness of drones, “[Al] Qaeda officials who are killed by drones will be replaced. The group’s

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<sup>716</sup> Peter Bergen & Jennifer Rowland, *CIA Drone War in Pakistan in Sharp Decline*, CNN (Mar. 28, 2012), <http://www.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html>.

<sup>717</sup> Adam Entous, *Drones Kill Low-Level Militants, Few Civilians: US*, REUTERS (May 3, 2010), <http://www.reuters.com/article/2010/05/03/us-pakistan-usa-drones-idUSTRE6424WI20100503>.

<sup>718</sup> Peter Bergen & Megan Braun, *Drone is Obama’s Weapon of Choice*, CNN (Sept. 6, 2012), <http://www.cnn.com/2012/09/05/opinion/bergen-obama-drone/index.html>.

<sup>719</sup> See Jo Becker & Scott Shane, *Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all>.

<sup>720</sup> Bruce Hoffman, *The Changing Face of Al Qaeda and the Global War on Terrorism*, 27 STUD. IN CONFLICT & TERRORISM 549, 551 (2004); see also Paul Pillar, *Still Fighting Bush’s GWOT*, CONSORTIUMNEWS.COM (June 23, 2012), <http://consortiumnews.com/2012/06/23/still-fighting-bushs-gwot/>.



structure will survive and it will still be able to inspire, finance and train individuals and teams to kill Americans.”<sup>721</sup>

Fourth, while the drone program may have inhibited “militant” organizing in certain areas, it may have also effected a shift in the location of “militant” organizing activity. Douglas Lute, Obama’s former Special Assistant and Senior Coordinator for Afghanistan and Pakistan, stated, “I don’t think anybody believes that we’ll have much more than a disruption effect on Al Qaeda . . . and its associates.”<sup>722</sup> With drone strikes focused on Waziristan, some Al Qaeda and Taliban leaders have moved to other parts of Pakistan, where they have reportedly continued to operate. Osama bin Laden was found hiding in Abbottabad; 9/11 architect Khaled Sheikh Muhammad was captured in Rawalpindi;<sup>723</sup> suspected Al Qaeda operative Abu Zubaydah was apprehended in Faisalabad;<sup>724</sup> and Mullah Omar has been widely rumored to be in Karachi.<sup>725</sup>

## US DRONE STRIKE POLICIES FOMENT ANTI-AMERICAN SENTIMENT AND MAY AID RECRUITMENT TO ARMED NON-STATE ACTORS

Admiral Mike Mullen has observed,

Each time an errant bomb or a bomb accurately aimed but against the wrong target kills or hurts civilians, we risk setting out strategy back months, if not years. Despite the fact that the Taliban kill and maim far more than we do, civilian casualty incidents such as those we’ve recently seen in Afghanistan will

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<sup>721</sup> Dennis C. Blair, *Drones Alone Are Not the Answer*, N.Y. TIMES (Aug. 14, 2011), <http://www.nytimes.com/2011/08/15/opinion/drones-alone-are-not-the-answer.html>.

<sup>722</sup> Woodward, *supra* note 696, at 284.

<sup>723</sup> See, e.g., Stephen Kurczy, *Top 5 Al Qaeda-linked Militants Pakistan Has Captured*, CHRISTIAN SCIENCE MONITOR (MAY 3, 2011), <http://www.csmonitor.com/World/Asia-South-Central/2011/0503/Top-5-Al-Qaeda-linked-militants-Pakistan-has-captured/Khalid-Sheikh-Mohammad>; Elaine Shannon & Michael Weisskopf, *Khalid Sheikh Mohammed Names Names*, TIME (Mar. 24, 2003), <http://www.time.com/time/world/article/0,8599,436061,00.html>.

<sup>724</sup> *White House Hails bin Laden Aide's Capture*, CNN (Apr. 02, 2002), [http://articles.cnn.com/2002-04-02/world/pakistan.alqaeda\\_1\\_key-terrorist-recruiter-qaeda-bin?s=PM:asiapcf](http://articles.cnn.com/2002-04-02/world/pakistan.alqaeda_1_key-terrorist-recruiter-qaeda-bin?s=PM:asiapcf).

<sup>725</sup> See, e.g., *Taliban Chief Hides in Pakistan*, WASH. TIMES (Nov. 20, 2009), <http://www.washingtontimes.com/news/2009/nov/20/taliban-chief-takes-cover-in-pakistan-populace/>.

hurt us more in the long run than any tactical success we may achieve against the enemy.<sup>726</sup>

It is clear from polling and our research team's interviews that drone strikes breed resentment and discontent toward the US, and there is evidence to suggest that the strikes have aided "militant" recruitment and motivated terrorist activity.

US drone strikes are extremely unpopular in Pakistan. A 2012 poll by the Pew Research Center's Global Attitude project found that only 17% of Pakistanis supported drone strikes. And remarkably, among those who professed to know a lot or a little about drones, 97% considered drone strikes bad policy.<sup>727</sup> As numerous analysts have noted, "[i]f the price of the drone campaign that increasingly kills only low-level Taliban is alienating 180 million Pakistanis—that is too high a price to pay."<sup>728</sup>

More than two dozen US congressmen penned a letter to President Obama in June 2012 that described drones as "faceless ambassadors that cause civilian deaths, and are frequently the only direct contact with Americans that targeted communities have."

- *Bipartisan letter signed by 26 US Members of Congress to President Obama, June 12, 2012*

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<sup>726</sup> Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, Remarks at the Kansas State University Landon Lecture Series, Kansas State University (Mar. 3, 2010), *available at* <http://www.jcs.mil/speech.aspx?id=1336>.

<sup>727</sup> PEW RESEARCH CENTER, PAKISTANI PUBLIC OPINION EVER MORE CRITICAL OF US 2 (2012), *available at* <http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/>.

<sup>728</sup> Bergen & Braun, *supra* note 718 (welcoming a reported reduction in US drone strikes in Pakistan since 2010).

The Waziris interviewed for this report almost uniformly reported having neutral or in some instances positive views of the US before the advent of the drone campaign. One 18-year-old, for example, admitted, “[f]rankly speaking, before the drone attacks, I

“When people are out there picking up body parts after a drone strike, it would be very easy to convince those people to fight against America.”

- Noor Behram, *Pakistani Photojournalist*

didn’t know anything about a country called America. I didn’t know where it was or its role in international affairs.”<sup>729</sup> But the strikes now foster the development of strongly negative views toward the US. Another interviewee explained: “Before the drone attacks, we didn’t know [anything] about America. Now everybody has come to understand and know about America . . . . Almost all people hate America.”<sup>730</sup> Noor

Khan, whose father, Daud Khan, a respected community leader, was killed when a drone struck the March 17, 2011 *jirga* over which he presided, remarked that “America on one hand claims that it wants to bring peace to the world and it wants to bring education. But look at them, what they are doing?”<sup>731</sup> One man, who has lost relatives in drone strikes, expressed his deep-seated anger toward the US, declaring that “we won’t forget our blood, for two hundred, two thousand, five thousand years—we will take our revenge for these drone attacks.”<sup>732</sup> A Waziri who lost his younger brother in a strike stated that there would be revenge: “Blood for blood. . . . All I want to say to them is . . . why are you killing innocent people like us that have no concern with you?”<sup>733</sup>

A teenage victim of a drone strike commented: “America is 15,000 kilometers away from us; God knows what they want from us. We are not rich . . . . We don’t have as much food as they do. God knows what they want from us.”<sup>734</sup> Unable to find any other explanation for why US strikes have struck innocent people in their community, some

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<sup>729</sup> Interview with Shahbaz Kabir (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>730</sup> Interview with Umar Ashraf (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012); *see also* Interview with Saad Afridi (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“Before drone attacks, I didn’t know America.”).

<sup>731</sup> Interview with Khalil Khan, Noor Khan, and Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012).

<sup>732</sup> Interview with Uzair Rashid (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>733</sup> Interview with Mehfooz Shaukat (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

<sup>734</sup> Interview with Faheem Qureshi, in Islamabad, Pakistan (Feb. 29, 2012).

Waziris believe that the US actively seeks to kill them simply for being Muslims, viewing the drone campaign as a part of a religious crusade against Islam.<sup>735</sup>

Recognizing the danger posed by a campaign that breeds such hostility, more than two dozen US congressmen penned a letter to President Obama in June 2012 that described drones as “faceless ambassadors that cause civilian deaths, and are frequently the only direct contact with Americans that targeted communities have.”<sup>736</sup>

Many of the journalists, NGO and humanitarian workers, medical professionals, and Pakistani governmental officials with whom we spoke expressed their belief that, on balance, drone strikes likely increase terrorism. Syed Akhunzada Chittan, for example, a parliamentarian from North Waziristan, expressed his conviction that “for every militant killed,” many more are born.<sup>737</sup> In another interview, a Pakistani professional told us that a professional school classmate had joined the Taliban after a drone strike killed a friend of his.<sup>738</sup> Noor Behram is a Waziri-based journalist who has spent years photographing and interviewing victims of drone strikes. Having personally witnessed the immediate aftermath of numerous strikes, he relates: “When people are out there picking up body parts after a drone strike, it would be very easy to convince those people to fight against America.”<sup>739</sup>

Numerous policy analysts, officials, and independent observers have come to similar conclusions. David Kilcullen, a former advisor to US General David Petraeus, has stated

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<sup>735</sup> Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012). Shiraz, a political science graduate who became disabled due to a drone attack, described what he believes motivated the US: “It is proven that America is working against Muslims, because every country it has waged a war against . . . is a Muslim nation.” *Id.* Fayaz Habib, a Waziri who lost his father in the March 17<sup>th</sup> *jirga* strike, told us: “It just seems that America wants to target the people of Waziristan . . . not just the people of Waziristan . . . but also in Pakistan and Iraq. They just want to target Muslims.” Interview with Khalil Khan, Noor Khan, and Imran Khan, in Islamabad, Pakistan (Feb. 26, 2012); *see also* Interview with Marwan Aleem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“The *kalima shehada* [the Islamic declaration of belief in the oneness of Allah]. . . is the reason that innocent people are being victimized. Because we are all Muslims, we are being victimized.”); Interview with Sameer Rahman (anonymized name) and Mahmood Muhammad (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

<sup>736</sup> Letter from Dennis Kucinich *et al.* to President of the US Barack Obama (June 12, 2012), *available at* [http://kucinich.house.gov/uploadedfiles/combat\\_drones\\_061212.pdf](http://kucinich.house.gov/uploadedfiles/combat_drones_061212.pdf); *see also* Jeremy Herb, *Lawmakers Want Legal Justification for Drone Strikes*, HILL (June 13, 2012), <http://thehill.com/blogs/defcon-hill/operations/232523-lawmakers-want-legal-justification-for-drone-strikes>.

<sup>737</sup> Interview with Syed Akhunzada Chittan, Pakistani Parliamentarian, in Islamabad, Pakistan (May 14, 2012).

<sup>738</sup> Interview with Zafar Husam (anonymized name), in Pakistan (May 12, 2012).

<sup>739</sup> *The Rachel Maddow Show* (MSNBC television broadcast Jun. 29, 2012).

that, “every one of these dead noncombatants represents an alienated family, a new desire for revenge, and more recruits for a militant movement that has grown exponentially even as drone strikes have increased.”<sup>740</sup> *Der Spiegel* has also reported that in Pakistan “militants profit in a gruesome way from the drone missions. After each attack in which innocent civilians die, they win over some of the relatives as supporters—with a few even volunteering for suicide attacks.”<sup>741</sup> As a May 2012 *New York Times* article succinctly put it, “[d]rones have replaced Guantánamo as the recruiting tool of choice for militants.”<sup>742</sup> Pakistani Ambassador to the US Sherry Rehman told CNN’s Christiane Amanpour in a recent interview that the drone program “radicalizes foot soldiers, tribes, and entire villages in our region,” and that “[w]e honestly feel that there are better ways now of eliminating Al Qaeda.”<sup>743</sup> It is also important to note that similar counter-productive effects have been noted in Yemen.<sup>744</sup>

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<sup>740</sup> David Kilcullen & Andrew McDonald Exum, *Death From Above, Outrage Down Below*, N.Y. TIMES (May 16, 2009), <http://www.nytimes.com/2009/05/17/opinion/17exum.html?pagewanted=all>.

<sup>741</sup> Kazim, *supra* note 707.

<sup>742</sup> Becker & Shane, *supra* note 719.

<sup>743</sup> Huma Imtiaz, *Drone Program is Counterproductive for Pakistan’s Goals: Rehman*, EXPRESS TRIBUNE (July 10, 2012), <http://tribune.com.pk/story/406195/concerns-over-drone-strikes-cannot-be-brushed-aside-sherry-rehman/>.

<sup>744</sup> Ibrahim Mothana, *How Drones Help Al Qaeda*, N.Y. TIMES (June 13, 2012), <http://www.nytimes.com/2012/06/14/opinion/how-drones-help-al-qaeda.html> (“Drones are causing more and more Yemenis to hate America and join radical militants; they are not driven by ideology but rather by a sense of revenge and despair . . . [R]ather than winning the hearts and minds of Yemeni civilians, America is alienating them by killing their relatives and friends. Indeed, the drone program is leading to the Talibanization of vast tribal areas and the radicalization of people who could otherwise be America’s allies in the fight against terrorism in Yemen.”); *see also* Sudarsan Raghavan, *In Yemen, US Airstrikes Breed Anger, and Sympathy for al-Qaeda*, WASH. POST (May 30, 2012), [http://www.washingtonpost.com/world/middle\\_east/in-yemen-us-airstrikes-breed-anger-and-sympathy-for-al-qaeda/2012/05/29/gJQAUmKIoU\\_story.html](http://www.washingtonpost.com/world/middle_east/in-yemen-us-airstrikes-breed-anger-and-sympathy-for-al-qaeda/2012/05/29/gJQAUmKIoU_story.html) (noting also that “hundreds of tribesmen have joined AQAP in the fight against the US-backed Yemeni government” and that strikes are “angering powerful tribes that could prevent AQAP from gaining strength”); Jeremy Scahill, *Washington’s War in Yemen Backfires*, NATION (Feb. 14, 2012), <http://www.thenation.com/article/166265/washingtons-war-yemen-backfires#> (“The US bombs and the Yemeni military shelling of Zinjibar have increased support for Ansar al Sharia, allowing it to fulfill its claim that it is a defender of the people in the face of an onslaught backed by America.”); Michelle Shephard, *Drone Death in Yemen of an American Teenager*, TORONTO STAR (Apr. 14, 2012), <http://www.thestar.com/news/world/article/1161432--drone-death-in-yemen-of-an-american-teenager> (attributing to Yemeni analysis Abdul Ghani al-Iryani the conclusion that the emergence of Ansar al Sharia resulted from “what they saw as American aggression”). For similar effects in other contexts, *see generally* David Jaeger, Esteban Klor, Sami Miaari & M. Daniele Paserman, *The Struggle for Palestinian Hearts and Minds: Violence and Public Opinion in the Second Intifada* (Nat’l Bureau of Econ. Research, Working Paper No. 13956, 2008), *available at* <http://www.nber.org/papers/w13956.pdf>, as well as SETH G. JONES & MARTIN C. LIBICKI, RAND CORP., *HOW TERRORIST GROUPS END: LESSONS FOR COUNTERING AL QA’IDA* (2008), *available at* [http://www.rand.org/pubs/monographs/2008/RAND\\_MG741-1.pdf](http://www.rand.org/pubs/monographs/2008/RAND_MG741-1.pdf), which posits that the “use of

While quantitative data is limited, one study, in June 2012 by the Middle East Policy Council, identified a correlation between drone strikes and terrorist attacks in the years 2004-2009. That study found it “probable that drone strikes provide motivation for retaliation, and that there is a substantive relationship between the increasing number of drone strikes and the increasing number of retaliation attacks.”<sup>745</sup> A July 2010 study by the New America Foundation revealed that almost six in ten residents of the Federally Administered Tribal Areas (FATA) now believe that suicide attacks are often or sometimes justified against the US military,<sup>746</sup> although a July 2012 journalistic assessment by Bergen and Rowland suggests that drone strikes may have contributed to reduced suicide attacks in Pakistan in 2010-2011.<sup>747</sup>

Indeed, US drone strikes have been explicitly referred to as a motive for a number of specific planned or implemented terrorist attacks. For instance, a suicide bomber who targeted a CIA compound in Khost, Afghanistan identified drones as his motivation, announcing that “[t]his [suicide] attack will be the first of the revenge operations against the Americans and their drone teams outside the Pakistani borders.”<sup>748</sup> Faisal Shahzad, who allegedly attempted to detonate a car bomb in Times Square, viewed his planned attack as retaliation for several US policies, including drone strikes.<sup>749</sup> In addition, Najibullah Zazi, an Afghan who allegedly plotted to attack New York’s subway system

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substantial US military power against terrorist groups also runs a significant risk of turning the local population against the government by killing civilians,” and, in evaluating quantitative historical data from 1968–2006 finds that “[a]gainst most terrorist groups . . . military force is usually too blunt an instrument.” *Id.* at xiv.

<sup>745</sup> Leila Hudson, Colin S. Owens & Matt Flannes, *Drone Warfare: Blowback from the New American Way of War*, MIDDLE E. POL’Y COUNCIL, 122, 126 (June 15, 2012), available at <http://www.mepc.org/journal/middle-east-policy-archives/drone-warfare-blowback-new-american-way-war>; see also David A. Jaeger & Zahra Siddique, *Are Drone Strikes Effective in Afghanistan and Pakistan? On the Dynamics of Violence between the United States and the Taliban 2* (Institute for the Study of Labor, Discussion Paper No. 6262, 2011), available at <http://ftp.iza.org/dp6262.pdf> (finding a strong, but balanced effect between vengeance attacks and deterrent effect, noting “a positive vengeance effect in the first week following a drone strike [in Pakistan and] a negative deterrent/incapacitation effect in the second week following a drone strike, when we examine the likelihood of a terrorist attack by the Taliban.”).

<sup>746</sup> NEW AMERICA FOUNDATION, SENTIMENT SURVEY QUESTIONS: DRONE STRIKES, <http://pakistanurvey.org/question/drone-strikes> (last visited Sept. 9, 2012).

<sup>747</sup> Bergen & Rowland, *supra* note 689 (citing reduced numbers of suicide bombings in 2010 and 2011 and suggesting that “strikes may have contributed to a relative decrease in violence across Pakistan”).

<sup>748</sup> Megan Chuchmach, Nick Schiffrin, & Luis Martinez, *Martyrdom Video from CIA Base Bomber Links Deadly Attack to Pakistani Taliban*, ABC NEWS (Jan. 9, 2010), <http://abcnews.go.com/Blotter/cia-base-bomber-martyrdom-video-taped-deadly-afghanistan/story?id=9521756#.T-Y-G7VfGuk>.

<sup>749</sup> Chris Dolmetsch, *Times Square Bomber Vows Revenge in Al-Arabiya Video*, WASH. POST (July 14, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/14/AR2010071404860.html>.

was “in part, motivated by drone strikes in [his] ancestral homeland[.]”<sup>750</sup> Similarly, a group responsible for the bombing of a Pakistani police academy in early 2009 cited the collaboration of Pakistani authorities with the US drone campaign.<sup>751</sup> It is also clear that some US officials themselves consider that drone strikes may influence the likelihood of terrorist activity in the US. A June 2012 deposition suggests, at least, that the New York City Police Department has monitored conversations involving individuals from “countries of concern”<sup>752</sup> following and about drone strikes,<sup>753</sup> to “find those people that were radicalized towards violence.”<sup>754</sup>

Those we interviewed in Pakistan emphasized their belief that enmity toward the US stems largely from particular US rights-violating post-9/11 policies, and could be reversed if the US changed course. Many expressed hope for reconciliation with the US, for good relations with the American people, and aspirations for a peaceful future. A victim of the March 17, 2011 *jirga* strike, for example, stated: “We don’t have any revenge or anything else to take from America if they stop the drone attacks.”<sup>755</sup> Many interviewees repeatedly implored our research team to ask the US government to stop or fundamentally change drone strike policies,<sup>756</sup> and instead assist their communities through, for example, investments in health and education infrastructure.<sup>757</sup>

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<sup>750</sup> DANIEL KLAIDMAN, *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY* 119 (2012).

<sup>751</sup> *Lahore ‘was Pakistan Taliban Op’*, BBC NEWS (Mar. 31, 2009), [http://news.bbc.co.uk/2/hi/south\\_asia/7973540.stm](http://news.bbc.co.uk/2/hi/south_asia/7973540.stm).

<sup>752</sup> Deposition of Thomas Galati, Commanding Officer of the New York City Police Department Intelligence Division 24-27, 36-37 *Handschu v. Special Services Division* (S.D.N.Y. 2012), *available at* <http://bit.ly/Sgwofr>.

<sup>753</sup> *Id.* at 37.

<sup>754</sup> *Id.* at 27.

<sup>755</sup> Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012). Of course, as we observed earlier, some experiential victims do harbor animosity toward the US.

<sup>756</sup> *See, e.g.*, Interview with Ahmed Jan, in Islamabad, Pakistan (Feb. 26, 2012) (“This is why we have come on this march to send this message across to the US to stop targeting us.”); Interview with Umar Ashraf (anonymized name), in Islamabad, Pakistan (Mar. 9, 2012) (“The first thing we want is for drones to stop.”); Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“I would like to ask that the drone strikes stop. We are sick of them.”); Interview with Marwan Aleem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (“Please stop these attacks.”). It should be noted that we spoke with some Pakistanis who, primarily due to their contempt of Taliban militants, supported drone strikes. As one Pakistani official who requested anonymity told our research team, “[s]ome people in South Waziristan who have suffered most at [the] hands of Taliban support drone strikes.” Interview with Pakistani official, in Peshawar, Pakistan (May 8, 2012).

<sup>757</sup> *See, e.g.*, Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) (in light of effect of drones on his education, appealing for aid or grant to continue his studies); Interview

## DRONES UNDERMINE US CREDIBILITY IN PAKISTAN AND THROUGHOUT THE REGION

Despite the vast foreign aid the US has invested in Pakistan, a 2012 poll by the Pew Research Center's Global Attitude project found that 74% of Pakistanis consider the US an enemy, up from 64% three years ago.<sup>758</sup> Only 45% of Pakistanis felt it important to improve relations with the US, down from 60% the previous year, and fewer support cooperation or even receiving aid from the US.<sup>759</sup>

74% of Pakistanis consider the US an enemy, up from 64% three years ago.

- Pew Research Center Global Attitude Survey 2012

The growing unpopularity of the US in Pakistan weakens the countries' bilateral relationship, makes it more difficult for Pakistani political leaders to work collaboratively with the US, and risks undermining Pakistani democracy and development. The deterioration of the Pakistani-US bilateral relationship may also place US security at risk.

Dennis Blair, former Director of National Intelligence, described how unilateral American drone attacks in Pakistan are eroding US "influence and damaging our ability to work with Pakistan to achieve other important security objectives like eliminating Taliban sanctuaries, encouraging Indian-Pakistani dialogue, and making Pakistan's nuclear arsenal more secure."<sup>760</sup> Cameron Munter, who announced his early resignation as US Ambassador to Pakistan in May 2012,<sup>761</sup> reportedly revealed to colleagues that he "didn't realize his main job was to kill people."<sup>762</sup> In previous interviews, he criticized

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with Najeeb Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012) ("I think the government or international agencies should give proper facilities like education, health, electricity so that our people can also get educations and go to universities and change the thinking and [their] mindset.").

<sup>758</sup> PEW RESEARCH CENTER, PAKISTANI PUBLIC OPINION EVER MORE CRITICAL OF US, *supra* note 727.

<sup>759</sup> *Id.*

<sup>760</sup> Blair, *supra* note 721.

<sup>761</sup> Rob Crilly, *US Ambassador to Pakistan Steps Down Early*, TELEGRAPH (May 8, 2012), <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/9252189/US-ambassador-to-Pakistan-steps-down-early.html>.

<sup>762</sup> Becker & Shane, *supra* note 719.



the US use of drones, arguing that the attacks need to be more “judicious.”<sup>763</sup> Although Secretary of State Hilary Clinton strongly supports drone strikes, she reportedly also has “complained to colleagues about the drones-only approach at Situation Room meetings.”<sup>764</sup> The *New York Times* reported in May 2012, “some officials felt the urgency of counterterrorism strikes was crowding out consideration of a broader strategy against radicalization.”<sup>765</sup>

The focus on drones also risks undermining Pakistan’s development by incentivizing undemocratic decision-making and fostering instability. In 2009, Anne Patterson, US Ambassador to Pakistan, discussed the risks of the US drone strategy in a cable sent to the Department of State. She noted, “Increased unilateral operations in these areas risk destabilizing the Pakistani state, alienating both the civilian government and military leadership, and provoking a broader governance crisis within Pakistan without finally achieving the goal [of eliminating the Al Qaeda and Taliban leadership].”<sup>766</sup> Pakistan High Commissioner to the United Kingdom Wajid Shamsul Hasan told *The Bureau of Investigative Journalism (TBIJ)*:

What has been the whole outcome of these drone attacks is, that you have rather directly or indirectly contributed to destabilizing or undermining the democratic government. Because people really make fun of the democratic government—when you pass a resolution against drone attacks in the parliament, and nothing happens. The Americans don’t listen to you, and they continue to violate your territory.<sup>767</sup>

The US strikes have also contributed to the delegitimization of NGOs that are perceived as Western, or that receive US aid, including those providing much-needed services, such as access to water and education, and those administering the polio vaccine; this perception has been exploited by Taliban forces.<sup>768</sup>

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<sup>763</sup> Adam Entous, Siobhan Gorman, & Matthew Rosenberg, *Drone Attacks Split US Officials*, WALL ST. J. (June 4, 2011), <http://online.wsj.com/article/SB10001424052702304563104576363812217915914.html>.

<sup>764</sup> Becker & Shane, *supra* note 719.

<sup>765</sup> *Id.*

<sup>766</sup> Cable from US Embassy in Islamabad to State Department (Sept. 23, 2009) (*Wikileaks* extract 224303), reprinted in *US Embassy Cables: ‘Reviewing Our Afghanistan-Pakistan Strategy*, GUARDIAN (Nov. 30, 2010), <http://www.guardian.co.uk/world/us-embassy-cables-documents/226531>.

<sup>767</sup> Chris Woods, ‘US Drone Strikes Undermine Pakistani Democracy’ Says Top Diplomat, THE BUREAU OF INVESTIGATIVE JOURNALISM (Aug. 3, 2012), <http://www.thebureauinvestigates.com/2012/08/03/us-drone-strikes-undermine-pakistani-democracy-says-top-diplomat/>.

<sup>768</sup> See, e.g., Musthaq Yusufzai, *Taliban Bans Pakistan Polio Vaccinations Over Drone Strikes*, MSNBC (June 18, 2012), [http://worldnews.msnbc.msn.com/\\_news/2012/06/18/12283097-taliban-bans-](http://worldnews.msnbc.msn.com/_news/2012/06/18/12283097-taliban-bans-)

The significant global opposition to drone strikes also erodes US credibility in the international community. In 17 of the 20 countries polled by the Pew Global Attitudes Project, the majority of those surveyed disapproved of US drone attacks in countries like Pakistan, Somalia, and Yemen.<sup>769</sup> Widespread opposition spans the globe, from traditional European allies such as France (63% disapproval) and Germany (59% disapproval) to key Middle East states such as Egypt (89% disapproval) and Turkey (81% disapproval).<sup>770</sup> As with other unpopular American foreign policy engagements, including the invasion of Iraq and the practice of torture at Abu Ghraib and elsewhere, drone strikes weaken the standing of the US in the world, straining its relationships with allies, and making it more difficult for it to build multilateral alliances to tackle pressing global challenges.

### US TARGETED KILLING AND DRONE STRIKE PRACTICES MAY ESTABLISH DANGEROUS PRECEDENTS AND UNDERMINE THE RULE OF LAW AND US DEMOCRACY

The practices employed, and legal frameworks articulated, by the US today may set dangerous precedents for future engagements, including for other countries and armed non-state actors. We are in the midst of a significant period of drone proliferation, pushed forward on the one hand by governments and militaries, and on the other, by manufacturers seeking to expand markets and profit. Unchecked armed drone

“[A]t least 76 countries” . . . have acquired UAVs, including China, Pakistan, Russia, and India.

- *US Government Accountability Office*

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[pakistan-polio-vaccinations-over-drone-strikes?lite](#) (“A Taliban commander in Pakistan’s tribal belt has banned a vaccination campaign against child polio in protest over frequent US drone attacks there.”).

<sup>769</sup> PEW RESEARCH CENTER, GLOBAL OPINION OF OBAMA SLIPS, INTERNATIONAL POLICIES FAULTED: DRONE STRIKES WIDELY OPPOSED (2012), *available at* <http://www.pewglobal.org/2012/06/13/global-opinion-of-obama-slips-international-policies-faulted/>. The only exceptions were the United Kingdom, in which only a plurality, rather than a majority, opposed strikes (47 to 44% disapproval), and India and the US, in which there was greater support for drones than opposition (32 to 21% approval in India and 62 to 28% approval in the US). *Id.*

<sup>770</sup> *Id.*

proliferation poses a threat to global stability, and, as more countries and non-state actors obtain access to the technology, the risk of US-style practices of cross-border targeted killing spreading are clear.

According to the US Government Accountability Office (GAO), “at least 76 countries” have acquired UAVs,<sup>771</sup> including China, Pakistan, Russia, and India.<sup>772</sup> China alone has 25 types of systems currently in development; <sup>773</sup> Iran, whose arsenal includes the “Ambassador of Death,”<sup>774</sup> is developing a drone with a range of more than 600 miles.<sup>775</sup> Recently, in an unconfirmed report, it was alleged that Israel used a drone to strike and kill in the territory of Egypt.<sup>776</sup> Reportedly, Iran has supplied the Assad regime with drones, which it has apparently already employed to conduct surveillance on the opposition.<sup>777</sup> Non-state organizations like Hezbollah have also entered the fray, reportedly deploying an Iranian-designed drone;<sup>778</sup> the Free Syria Army also reportedly recently built a small armed drone.<sup>779</sup> The GAO recently warned that “[t]he United States likely faces increasing risks as additional countries of concern and terrorist organizations acquire UAV technology.”<sup>780</sup> As Peter Singer of the Brookings Institution has observed, “I think of where the airplane was at the start of World War I: at first it was

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<sup>771</sup> US GOV'T ACCOUNTABILITY OFFICE, GAO-12-536, AGENCIES COULD IMPROVE INFORMATION SHARING AND END-USE MONITORING ON UNMANNED AERIAL VEHICLE EXPORTS 9 (2012); *see also* Micah Zenko, *10 Things You Didn't Know About Drones*, FOREIGN POL'Y (Mar./Apr. 2012), *available at* [http://www.foreignpolicy.com/articles/2012/02/27/10\\_things\\_you\\_didnt\\_know\\_about\\_drones?page=0.3](http://www.foreignpolicy.com/articles/2012/02/27/10_things_you_didnt_know_about_drones?page=0.3) (placing the figure at 44-70 countries).

<sup>772</sup> US GOV'T ACCOUNTABILITY OFFICE, *supra* note 771, at 10; *see also* David Cortright, *The Scary Prospect of Global Drone Warfare*, CNN (Oct. 19, 2011), <http://www.cnn.com/2011/10/19/opinion/cortright-drones/index.html>.

<sup>773</sup> Zenko, *supra* note 771.

<sup>774</sup> *Id.*

<sup>775</sup> Cortright, *supra* note 772.

<sup>776</sup> Mohamed Fadel Fahmy, *Bedouin Man Dies in Apparent Rocket Strike on Israeli-Egyptian Border*, CNN (Aug. 27, 2012), <http://edition.cnn.com/2012/08/26/world/meast/egypt-bedouin-killed/> (“An Egyptian intelligence source confirmed the incident, saying, ‘The conclusion after the investigation is that a drone from across the border had fired a rocket and killed the Bedouin.’”).

<sup>777</sup> *Iranian Weapons Help Bashar Assad Put Down Syria Protests, Officials Say*, REUTERS (Mar. 24, 2012), *available at* <http://worldnews.msnbc.msn.com/news/2012/03/24/10842227-iranian-weapons-help-bashar-assad-put-down-syria-protests-officials-say?lite>.

<sup>778</sup> Cortright, *supra* note 772.

<sup>779</sup> David Cenciotti, *Exposed: First Syrian Rebels DIY Unmanned Aerial Vehicle*, AVIATIONIST (Aug. 31, 2012), <http://theaviationist.com/2012/08/31/fsa-drone/>.

<sup>780</sup> US GOV'T ACCOUNTABILITY OFFICE, *supra* note 771, at 17.

unarmed and limited to a handful of countries....Then it was armed and everywhere. That is the path we're on."<sup>781</sup>

Drone manufacturers are heavily pushing their products internationally and into new markets,<sup>782</sup> and global spending on drones is expected to total more than \$94 billion over the next decade.<sup>783</sup> Indeed, there "is not a single new manned combat aircraft under research and development at any major Western aerospace company, and the Air Force is training more operators of unmanned aerial systems than fighter and bomber pilots combined."<sup>784</sup>

US manufacturers' exports of drones have been limited to date because of export controls; however, significant pressure has been brought to bear on Congress, particularly by drone manufacturers, to loosen the export regime.<sup>785</sup> In September 2012, it was reported that the Pentagon had given approval for drone exports to 66 countries.<sup>786</sup> Representative Howard Berman (D- Los Angeles), ranking Democrat on the House Foreign Affairs Committee, recently announced that his committee would soon review drone sales, declaring that "it's crazy for us to shut off sales in this area

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<sup>781</sup> Scott Shane, *Coming Soon: The Drones Arms Race*, N.Y. TIMES (Oct. 8, 2011), <http://www.nytimes.com/2011/10/09/sunday-review/coming-soon-the-drone-arms-race.html?pagewanted=all>.

<sup>782</sup> Drones have also rapidly been proliferating into US domestic airspace, in significant part due to the efforts of drone manufacturers. *See, e.g.,* Ana Campoy, *The Law's New Eye in the Sky*, WALL ST. J. (Dec. 13, 2011), <http://online.wsj.com/article/SB10001424052970204319004577088891361782010.html>. While they have thus far been used exclusively for surveillance, the prospect of armed drone usage by domestic law enforcement and commercial clients should not be overlooked. *See, e.g.,* Conor Friedersdorf, Congress Should Ban Armed Drones Before Cops in Texas Deploy One, ATLANTIC (May 24, 2012), <http://www.theatlantic.com/national/archive/2012/05/congress-should-ban-armed-drones-before-cops-in-texas-deploy-one/257616/>; Jason Gilbert, *ShockerDrone: Hackers Attach Shocking Material to Drone Helicopter, Chase People, Stun Them*, HUFFINGTON POST (Aug. 30, 2012), [http://www.huffingtonpost.com/2012/08/30/shockerdrone-hackers-attach-stun-gun-drone-helicopter\\_n\\_1843999.html](http://www.huffingtonpost.com/2012/08/30/shockerdrone-hackers-attach-stun-gun-drone-helicopter_n_1843999.html).

<sup>783</sup> Shane, *supra* note 781.

<sup>784</sup> Peter W. Singer, *Do Drones Undermine Democracy?*, N.Y. TIMES (Jan. 21, 2012), <http://www.nytimes.com/2012/01/22/opinion/sunday/do-drones-undermine-democracy.html?pagewanted=all>.

<sup>785</sup> *See* W.J. Hennigan, *Drone Makers Urge US to Let Them Sell More Overseas*, L.A. TIMES (July 1, 2012), <http://articles.latimes.com/2012/jul/01/business/la-fi-drone-foreign-sales-20120701>; Andrea Stone, *Drone Lobbying Ramps Up Among Industry Manufacturers, Developers*, HUFFINGTON POST (May 25, 2012), [http://www.huffingtonpost.com/2012/05/28/drone-lobbying-companies\\_n\\_1546263.html](http://www.huffingtonpost.com/2012/05/28/drone-lobbying-companies_n_1546263.html).

<sup>786</sup> Doug Palmer & Jim Wolf, *Pentagon Lists 66 Countries as Eligible to Buy US Drones*, REUTERS (Sept. 5, 2012), <http://www.reuters.com/article/2012/09/06/us-aircraft-usa-northrop-grumman-idUSBRE88500B20120906>; Kevin Spak, *Pentagon OKs Drone Sales to 66*, NEWSER (Sept. 6, 2012), <http://www.newser.com/story/153566/pentagon-oks-drone-sales-to-66-nations.html>.

while other countries push ahead.”<sup>787</sup> The *Wall Street Journal* reported in July 2012 that the US plans to provide Kenya with eight hand-launched Raven drones, which, while currently unarmed, have sensors for pinpointing targets.<sup>788</sup> The drones are part of a military assistance package aimed at helping African partners combat Al Qaeda and al Shabaab “militants” in Somalia.<sup>789</sup>

Executive Director of the Arms Control Association Daryl Kimball describes how “[t]he proliferation of this technology will mark a major shift in the way wars are waged,” warning that “[w]e need to be very careful about who gets this technology. It could come back to hurt us.”<sup>790</sup> John Brennan himself acknowledged that the US is “establishing precedent that other nations may follow.”<sup>791</sup>

The ways in which the US has used drones in the context of its targeted killing policies has facilitated an undermining of the constraints of democratic accountability, and rendered resort to lethal force easier and more attractive to policymakers. The decision to use military force must be subject to rigorous checks-and-balances; drones, however, have facilitated the use of killing as a convenient option that avoids the potential political fallout from US casualties and the challenges posed by detention. Senator Saxby Chambliss of Georgia, the top Republican on the Senate Intelligence Committee, stated: “[The Obama administration’s] policy is to take out high-value targets, versus capturing high-value targets. They are not going to advertise that, but that’s what they are doing.”<sup>792</sup>

While drone warfare represents but the newest chapter in ever-increasing military technological sophistication, “the distance between killer and killed, the asymmetry, the prospect of automation and, most of all, the minimization of pilot risk and political risk” render current practices particularly problematic.<sup>793</sup> As the technology develops, and as

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<sup>787</sup> Hennigan, *supra* note 785.

<sup>788</sup> Adam Entous, *US to Provide Kenya with Drones to Fight Militants*, WALL ST. J. (July 20, 2012), <http://online.wsj.com/article/SB10000872396390444097904577539362229840378.html>.

<sup>789</sup> *Id.*

<sup>790</sup> Hennigan, *supra* note 785.

<sup>791</sup> John O. Brennan, Assistant to the President for Homeland Security and Terrorism, *The Ethics and Efficacy of the President’s Counterterrorism Strategy*, Address at the Woodrow Wilson International Center for Scholars (Apr. 30, 2012).

<sup>792</sup> Becker & Shane, *supra* note 719. Obama’s aides deny such a policy, arguing instead that capture is impossible in remote parts of Pakistan and Yemen. *Id.*

<sup>793</sup> *Id.*

drones become increasingly autonomous, these concerns will likely continue to magnify.<sup>794</sup>

A combat veteran of Iraq explained why drones may alter the calculus of warfare: “[t]here’s something important about putting your own sons and daughters at risk when you choose to wage war as a nation. We risk losing that flesh-and-blood investment if we go too far down this road.”<sup>795</sup> A 2011 British Defense Ministry study of drones raises these challenging questions:

If we remove the risk of loss from the decision-makers’ calculations when considering crisis management options, do we make the use of armed force more attractive? Will decision-makers resort to war as a policy option far sooner than previously?<sup>796</sup>

Peter Singer insightfully describes how these questions also affect democratic accountability: “when politicians can avoid the political consequences of the condolence letter—and the impact the military casualties have on voters and on the news media—they no longer treat the previously weighty matters of war and peace the same way.... [drones are] short-circuiting the decision-making process for what used to be the most important choice a democracy could make.”<sup>797</sup> Michael Hastings of *Rolling Stone* concludes that the “immediacy and secrecy of drones makes it easier than ever for leaders to unleash America’s military might—and harder than ever to evaluate the consequences of such clandestine attacks.”<sup>798</sup> In 1848, President Abraham Lincoln warned about the peril of granting such unrestrained power to the executive:

Allow the President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion, and you allow him to do so, whenever he may

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<sup>794</sup> UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, *Interim Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, General Assembly, UN Doc A/65/321 (Aug. 23, 2010) (by Philip Alston) (examining legal and ethical concerns around increasing autonomy), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/492/39/PDF/N1049239.pdf?OpenElement>.

<sup>795</sup> Mayer, *supra* note 695.

<sup>796</sup> John Sifton, *A Brief History of Drones*, NATION (Feb. 7, 2012), <http://www.thenation.com/article/166124/brief-history-drones#>.

<sup>797</sup> Singer, *supra* note 784.

<sup>798</sup> Hastings, *supra* note 715.

choose to say he deems it necessary for such purpose and you allow him to make war at pleasure.<sup>799</sup>

With policymakers making critical decisions about US policy outside the public's view, and an utter lack of any real transparency and accountability,<sup>800</sup> the rule of law is undermined and a democratic deficit created. The US government has refused to explain adequately the legal basis for the strikes, as we discuss above in Chapter 4. In calling for more transparency regarding the legal basis for the program, former CIA director Michael V. Hayden stated: "democracies do not make war on the basis of legal memos locked in a D.O.J. safe."<sup>801</sup>

The opaque position of the US government on civilian casualties is also emblematic of an accountability and democratic vacuum. Appendix C compares statements of US officials on drones since January 2011 with strike data as reported by *TBIJ*. The results reveal a pattern of dishonesty in public statements about drones.<sup>802</sup> For example, in June 2011, Deputy National Security Advisor John Brennan asserted that "there hasn't been a single collateral death because of the exceptional proficiency, precision of the capabilities we've been able to develop."<sup>803</sup> By this time, *TBIJ* had reported that at least 458 civilians had been killed, including 31-42 in the March 17 strike (documented earlier in this report) that had taken place less than three months prior.<sup>804</sup> While Brennan subsequently clarified that he only meant to suggest that the US had yet to find credible evidence of civilian casualties,<sup>805</sup> even this statement was later directly contradicted: in May 2012, it was reported that President Obama "got word" that the first strike he authorized on January 23, 2009 "had killed a number of innocent Pakistanis" on the very same day.<sup>806</sup>

In light of these concerns, author, political commentator, and former constitutional lawyer Glenn Greenwald pointedly asks, "[i]f you believe the President should have the

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<sup>799</sup> Glenn Greenwald, *Excuses for Assassination Secrecy*, SALON (July 12, 2012), [http://www.salon.com/2012/07/12/excuses\\_for\\_assassination\\_secrecy/](http://www.salon.com/2012/07/12/excuses_for_assassination_secrecy/).

<sup>800</sup> See Legal Analysis, *supra* Chapter 4: Legal Analysis.

<sup>801</sup> Becker & Shane, *supra* note 719.

<sup>802</sup> See also Justin Elliott, *Obama Administration's Drone Death Figures Don't Add Up*, PROPUBLICA (JUNE 18, 2012), <http://www.propublica.org/article/obama-drone-death-figures-dont-add-up>.

<sup>803</sup> See *Obama Administration Counterterrorism Strategy* (C-Span television broadcast June 29, 2011), <http://www.c-spanvideo.org/program/AdministrationCo>.

<sup>804</sup> See *supra* Chapter 3: Living Under Drones.

<sup>805</sup> See Scott Shane, *C.I.A. Is Disputed on Civilian Toll in Drone Strikes*, N.Y. TIMES (Aug. 11, 2011), <http://www.nytimes.com/2011/08/12/world/asia/12drones.html?pagewanted=all>.

<sup>806</sup> Becker & Shane, *supra* note 719.

power to order people, including US citizens, executed with no due process and not even any checks or transparency, what power do you believe he shouldn't have?"<sup>807</sup>

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<sup>807</sup> Greenwald, *supra* note 799; see also Conor Friedersdorf, *Obama's Execution of the Drone War Should Terrify Even Drone Defenders*, ATLANTIC (July 12, 2012), <http://www.theatlantic.com/politics/archive/2012/07/obamas-execution-of-the-drone-war-should-terrify-even-drone-defenders/259704/> ("Is it imprudent to give this president and all future presidents the unchecked power to kill in secret? Or does human nature and the framework of checks and balances devised by America's founders suggest that multiple layers of oversight is the wiser course?").



## APPENDIX A: TESTIMONY

The following provides excerpts from the testimony of individuals who told our research team that they had survived or witnessed drone strikes, or lost family members in strikes.

**Sadaullah Wazir, teenager, former student from the village of Machi Khel in Mir Ali, North Waziristan, was severely injured in a September 2009 drone strike on his grandfather's home.<sup>808</sup> Sadaullah has filed a complaint before the UN Human Rights Council.<sup>809</sup>**

“Before the drone strikes started, my life was very good. I used to go to school and I used to be quite busy with that, but after the drone strikes, I stopped going to school now. I was happy because I thought I would become a doctor.” Sadaullah recalled, “Two missiles [were] fired at our *hujra* and three people died. My cousin and I were injured. We didn't hear the missile at all and then it was there.” He further explained, “[The last thing I remembered was that] we had just broken our fast where we had eaten and just prayed. . . . We were having tea and just eating a bit and then there were missiles. . . . When I gained consciousness, there was a bandage on my eye. I didn't know what had happened to my eye and I could only see from one.” Sadaullah lost both of his legs and one of his eyes in the attack. He informed us, “Before [the strike], my life was normal and very good because I could go anywhere and do anything. But now I am not able to do that because I have to stay inside. . . . Sometimes I have really bad headaches. . . . [and] if I walk too much [on my prosthetic legs], my legs hurt a lot. [Drones have] drastically affected life [in our area].”

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<sup>808</sup> Interview with Sadaullah Wazir, in Islamabad, Pakistan (Feb. 29, 2012).

<sup>809</sup> Reprieve, *Complaint Against the United States of America for the Killing of Innocent Citizens of the Islamic Republic of Pakistan to the United Nations Human Rights Council*, [http://reprieve.org.uk/media/downloads/2012\\_02\\_22\\_PUB\\_drones\\_UN\\_HRC\\_complaint.pdf?utm\\_source=Press+mailing+list&utm\\_campaign=89f3db0a75-2012\\_02\\_23\\_drones\\_UN\\_complaint&utm\\_medium=email](http://reprieve.org.uk/media/downloads/2012_02_22_PUB_drones_UN_HRC_complaint.pdf?utm_source=Press+mailing+list&utm_campaign=89f3db0a75-2012_02_23_drones_UN_complaint&utm_medium=email).

**Waleed Shiraz, 22, was pursuing a Bachelor of Arts in Political Science and taking various foreign language courses before he became disabled.**<sup>810</sup>

“My father was asleep in the *hujra* as usual after a normal day, and I was studying nearby. . . . I had liked studying in the *hujra*, because it is peaceful and quiet. There was nothing different about our routine in the prior week.” Waleed recounted the subsequent sequence of events. “[When we got hit], [m]y father’s body was scattered in pieces and he died immediately, but I was unconscious for three to four days. . . . [Since then], I am disabled. My legs have become so weak and skinny that I am not able to walk anymore. . . . It has also affected my back. I used to like playing cricket, but I cannot do it anymore because I cannot run.”

“I have two younger brothers, who are both unemployed, and I don’t have a father and I am disabled. I have been completely ruined. . . . [My brothers] can’t go to school, because I can’t afford to support them, buying their books, and paying their fees. They are home most of the day and they are very conscious of the fact that drones are hovering over them. [The presence of drones] intimidates them.”

“If the drones had not become routine and my father had not died and I hadn’t lost my leg, today I would have completed my MA in Political Science.” Waleed explained, “I can’t dream of going back to college.”

**Dawood Ishaq is a father of four young children who works as a vegetable merchant in North Waziristan.**<sup>811</sup>

“I was going to [a] chromite mine for work. On the way, as the car was going there, a drone targeted the car. . . . All I remember is a blast, and that I saw a bit of fire in the car before I lost consciousness. The people in the back completely burned up, and the car caught fire.” Dawood was taken to several locations for treatment, before he awoke in Peshawar. “[The] driver and I lost our legs . . .”

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<sup>810</sup> Interview with Waleed Shiraz (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>811</sup> Interview with Dawood Ishaq (anonymized name), in Islamabad, Pakistan (Mar. 8, 2012).

### **Adil Hashmi's house was destroyed in a drone strike.<sup>812</sup>**

“A drone struck my home. . . . [At that time] there was nobody in my home [so] no one [was] killed. . . . I went back to see the home, but there was nothing to do. I just saw my home wrecked and came back. I was extremely sad, because normally a house costs around ten *lakh*, or 1,000,000 rupees [approximately \$10,600], and I don't even have 5,000 rupees [approximately \$53] now. I spent my whole life in that house. My father had lived there as well.”

“[I now have to rent a house.] There is a big difference between having your own home and living on rent or mortgage. I enjoyed a lot of freedom and a lot of flexibility before. I have five sons and they all live with me in the house in Miranshah now. . . .”

### **Tahir Afzal's brother died in a drone strike.<sup>813</sup>**

“It was in the afternoon around two o'clock and he was on his way to work. They were in a car. A drone struck and four people died in it, including children who were walking on the road. . . . There were lots of drones wandering over that day. They were wandering all over, and as the car passed by, it was targeted.” Tahir told our team, “He was my older brother, and I miss him a lot.”

“[Before, e]verybody was involved in their own labor work. We were all busy. But since the drone attacks have started, everybody is very scared and everybody is terrorized. . . . People are out of business, people are out of schools, because people are being killed by these drone attacks.” Tahir emphasized, “It's not a [fictional] story. It's brutality that we are undergoing and that needs to be stopped.”

### **Khairullah Jan's brother was killed in a drone attack.<sup>814</sup>**

“[One day, [m]y brother was coming from college . . . . dropping his friend to his house, which is located behind our house a few kilometers away. . . . I was coming from Mir Ali Bazaar . . . going to my house. That's when I heard a drone strike and I felt something in my heart. I thought something had happened, but we didn't get to know until next day. That's when all the villagers came and brought us news that [my brother] had been

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<sup>812</sup> Interview with Adil Hashmi (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>813</sup> Interview with Tahir Afzal (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>814</sup> Interview with Khairullah Jan, in Islamabad, Pakistan (Feb. 29, 2012).

[killed] . . . I was drinking tea when I found out. [My] entire family was there. They were crying . . . . [T]o lose such a young one; everybody is sad and it also affects the tribe, our community, as well. My mother is really affected. She is sad all the time, and my father is also heavily affected. At times he used to go to Peshawar or Karachi, he was outgoing, but now he sits at home.”

“I have been affected. The love that I had for studies—that has finished. My determination to study—that is also gone. . . . if, for instance, there is a drone strike and four or five of your villagers die and you feel sad for them and you feel like throwing everything away, because you feel death is near— [death is] so close, so why do you want to study?”

**Ismail Hussain’s cousin was killed in a drone strike.**<sup>815</sup>

“We were sitting together and my mother said Sajid did not come home. She said there was [a] drone [attack] and so my mother said to go ask about Sajid. . . . When I came to know that the drone [attack] had happened in the other village, I took my motorcycle to go to that village. . . . When I reached that village, people told me Sajid and some others were injured and were taken to the hospital. They didn’t want to make me sad. Then I went to Miranshah hospital. I didn’t meet with him because before I arrived he died. The body of my uncle’s son was put into a box. I took it to my village. I placed it in the house of my neighbor during *Fajr* [dawn] prayers. At the time of *Fajr*, I took it to my home.” Ismail informed us, “His mother hangs his picture on the wall. She looks at it 24 hours [a day] and cries.”

**Hisham Abrar’s cousin was killed in a drone strike.**<sup>816</sup>

“When the weather is clear, three or four [drones] can be seen . . . . They are in the air 24 [hours a day], seven [days a week], but not when it’s raining. Every time they are in the air, they can be heard. And because of the noise, we’re psychologically disturbed—women, men, and children. . . . When there were no drones, everything was all right. [There was] business, there was no psychological stress and the people did what they could do for a living.”

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<sup>815</sup> Interview with Ismail Hussain (anonymized name), in Islamabad, Pakistan (Feb. 29, 2012).

<sup>816</sup> Interview with Hisham Abrar (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

“[The drone strikes have caused many problems:] [f]irst, it’s psychological. Diseases that people have—psychological, mental illnesses. And that’s a huge issue. Secondly, a lot of men have been killed, so they’re the wage earners for the house, and now the kids and the families don’t have a source of income because of that.” Hisham noted that “[others in the community help sometimes, but [i]n Waziristan, there are poor people, and [victims] usually rely on . . . daily wage earning. That’s only sufficient for themselves, so it’s hard to help others. But whenever they can, they do.”

**Khalid Raheem is an elder member of his community.**<sup>817</sup>

“We did not know that America existed. We did not know what its geographical location was, how its government operated, what its government was like, until America invaded Iraq and Afghanistan. We do know that Americans supported the Taliban in our area, North Waziristan, to fight off the Soviets. But [now with] the Soviets divided and broken . . . we have become victims of Americans. We don’t know how they treat their citizens or anything about them. All we know is that they used to support us, and now they don’t. . . . [W]e didn’t know how they treated a common man. Now we know how they treat a common man, what they’re doing to us.”

“We know that the consequences of drone strikes are extremely harsh. Our children, our wives know that our breadwinners, when they go out to earn a livelihood, they might not come back, and life may become very miserable for them in the years to come.” Khalid further explained, “Now we are always awaiting a drone attack and we know it’s certain and it’s eventual and it will strike us, and we’re just waiting to hear whose house it will strike, our relatives’, our neighbors’, or us. We do not know. We’re just always in fear.”

**Firoz Ali Khan is a shopkeeper in Miranshah.**<sup>818</sup>

“I have been seeing drones since the first one appeared about four to five years ago. Sometimes there will be two or three drone attacks per day. . . . [We see drones] hovering [24 hours a day but] we don’t know when they will strike.” Firoz explained, “People are afraid of dying. . . . Children, women, they are all psychologically affected. They look at the sky to see if there are drones. Firoz told us, “[The drones] make such a noise that everyone is scared.”

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<sup>817</sup> Interview with Khalid Raheem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>818</sup> Interview with Firoz Ali Khan (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

**Marwan Aleem is a *malik* in his community.**<sup>819</sup>

“My name is Marwan and I am from North Waziristan, in the area of Manzar Khel. I was born and raised here, as was my grandfather. . . . [D]rone attacks create widespread devastation. They have killed so many young men, who have left behind helpless young orphans. We cannot figure out when a drone will strike—they may strike in two days, three days, ten days, or a month—but they are always there.”

**Najeeb Saaqib is a *malik* in his community.**<sup>820</sup>

“I belong to the Wazir nation. . . . I have a[n extended] family of 60 to 70 people. My sons and daughters were going to schools, [but] the schools were affected by the drones. I mean these attacks have been on schools, on *maliks*, on elders, and on different buildings. . . . [S]ometimes when people are moving in cars, they are hit. Sometimes when they are gathering with friends, they are hit. Sometimes when people are gathering to offer prayers to those killed, there are drone attacks on those people. . . . [M]y own relatives, close family relatives, have been killed. Elders of the villages, the *maliks*, the children of the schools, other children, all have been victims of strikes.

“[In one case,] [t]here was a drone attack on a religious teacher while he was coming in a car with some other people, after which he was brought to the village. A lot of people were gathering, the small children and families were gathered, and another drone attack happened, killing the small children. Two drone attacks in a single day.”

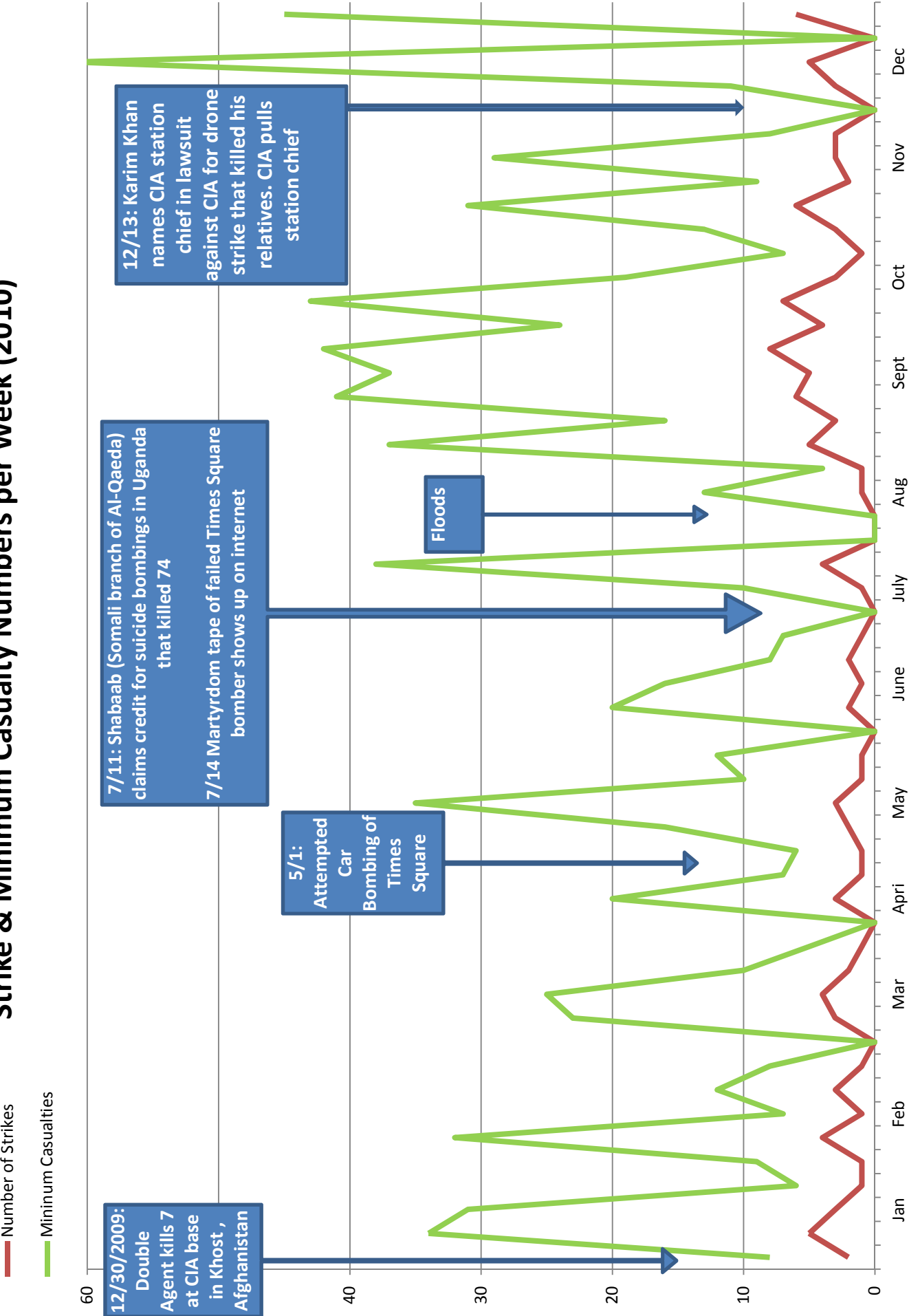
Najeeb later told us, “We love unity. We love peace. We love to live in peace with other people as well.”

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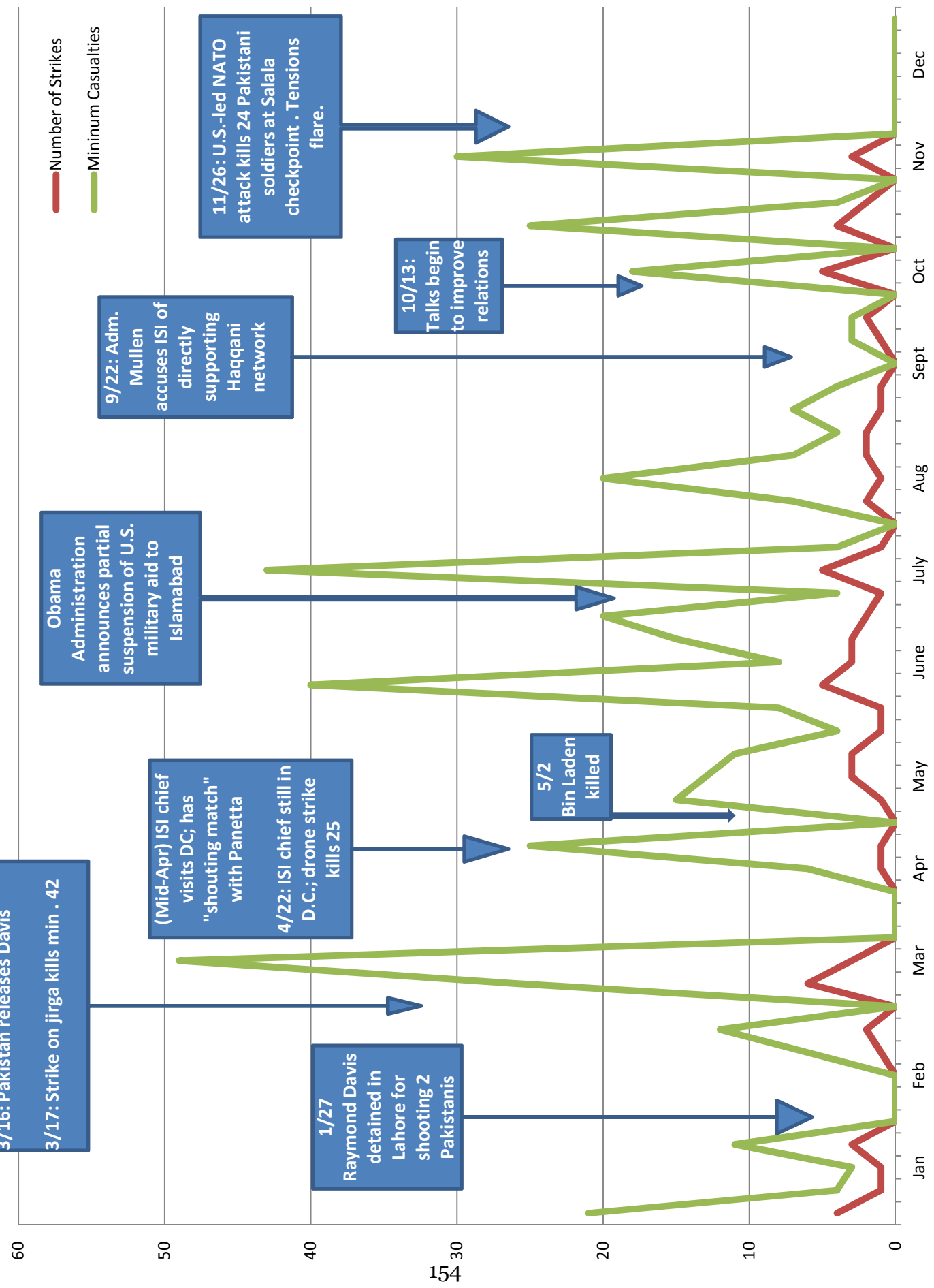
<sup>819</sup> Interview with Marwan Aleem (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

<sup>820</sup> Interview with Najeeb Saaqib (anonymized name), in Islamabad, Pakistan (Feb. 26, 2012).

# Appendix B: Strike & Minimum Casualty Numbers per Week (2010)

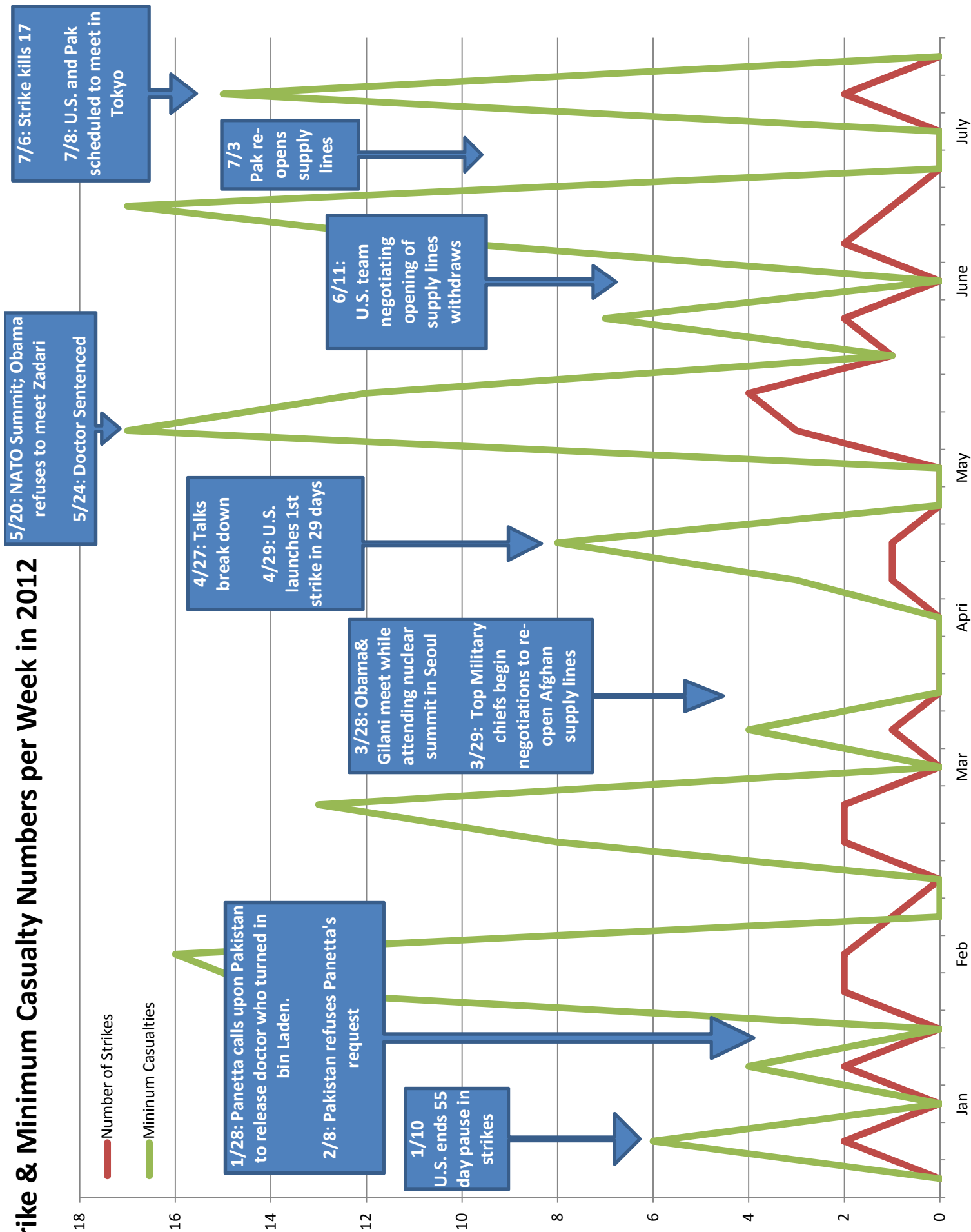


# Strike & Minimum Casualty Numbers per Week in 2011





# Strike & Minimum Casualty Numbers per Week in 2012





## APPENDIX C

### US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBIJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>January 2011</b>	No civilian casualties between mid-August 2010 and January 2011, despite increased frequency of CIA strikes in Pakistan. <sup>821</sup>  Unnamed U.S. official to Bloomberg News	Sept. '10—Jan. '11 Civilians Killed: 25-106 Children Killed: 5+	Husain Haqqani, Pakistan's ambassador to the U.S., tells Bloomberg unintended casualties are “the subject of an ongoing dialogue” between the US and Pakistan. <sup>822</sup>  Bloomberg News
<b>February 2011</b>	No civilians killed in at least 75 strikes since mid-Aug. <sup>823</sup>  Unnamed U.S. intelligence official	Sept. '10—Feb. '11 Civilians killed: 25-117 Children Killed: 5+	October 18, 2010: Shrapnel from a strike on a house kills 10-year-old, Naeem Ullah, who was in the next-door house. <sup>824</sup>  The Bureau of Investigative Journalism  August 23, 2010: Reuters report four women and three children were among the twenty dead in a strike on a house in North Waziristan. <sup>825</sup> TBIJ has pictures of children orphaned by the strike. <sup>826</sup>  Reuters / The Bureau of Investigative Journalism

<sup>821</sup> <http://www.bloomberg.com/news/2011-01-31/u-s-said-to-reduce-civilian-deaths-after-increasing-cia-pakistan-strikes.html>

<sup>822</sup> <http://www.bloomberg.com/news/2011-01-31/u-s-said-to-reduce-civilian-deaths-after-increasing-cia-pakistan-strikes.html>.

<sup>823</sup> <http://articles.latimes.com/2011/feb/22/world/la-fg-drone-strikes-20110222>.

<sup>824</sup> A picture of Naeem's body can be found here: <http://www.thebureauinvestigates.com/2011/08/10/obama-2010-strikes/>.

<sup>825</sup> <http://www.reuters.com/article/2010/08/23/us-pakistan-drone-idUSTRE67M44U20100823>.

<sup>826</sup> <http://www.thebureauinvestigates.com/2011/08/10/obama-2010-strikes/>.

# US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>March 2011</b>	<p>“There’s no question the Pakistani and U.S. governments have different views on the outcome of this strike [on a <i>jirga</i> on March 17]. The fact is that a large group of heavily armed men, some of whom were clearly connected to Al Qaeda and all of whom acted in a manner consistent with Al Qaeda-linked militants, were killed.”<sup>827</sup></p> <p>Anonymous U.S. official</p>	<p>March 17, 2011</p> <p>Total Deaths: 32-53</p> <p>Civilians Killed: 32-42</p> <p>Children Killed: poss. 1</p>	<p>“Although 11 Taliban fighters were reported killed, between 19 and 30 civilians also died, including tribal elders and local police officers.”<sup>828</sup></p> <p>New York Times</p> <p>Pakistan’s powerful army chief, Gen. Ashfaq Parvez Kayani, said the <i>jirga</i> “was carelessly and callously targeted with complete disregard to human life.”<sup>829</sup></p> <p>ABC News</p> <p>“[The Bureau of Investigative Journalism’s] researchers said the dead included members of the government-managed and armed Khassadar force. One of the contractors, Malik Daud, 45, was killed along with members of his family. Among the civilians killed were Malik Daud, Gul Akbar, Mohammad Sheen, Lewanai, Mir Zaman, Din Mohammad, Malik Tareen, Noor Ali, Zare Jan, Sadiq, Mustaqeem, Khangai, Gulnaware and Faenda Khan.”<sup>830</sup></p> <p>New York Times</p>

<sup>827</sup> <http://www.nytimes.com/2011/08/12/world/asia/12droneside.html?ref=asia>.

<sup>828</sup> <http://www.nytimes.com/2011/08/12/world/asia/12droneside.html?ref=asia>.

<sup>829</sup> <http://abcnews.go.com/International/wireStory?id=14213135&page=3#.T6wtrguuId8A>.

<sup>830</sup> <http://www.nytimes.com/2011/08/12/world/asia/12droneside.html?ref=asia>.

# US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
April 2011	<p>“There is no evidence to support that claim [of civilian deaths in the April 22 strike] whatsoever.”<sup>831</sup></p> <p>U.S. official to CNN in response to reports from Pakistani intelligence sources of civilian deaths</p>	<p>April 22, 2011</p> <p>Total Deaths: 25-26</p> <p>Civilians Killed: 5-8</p> <p>Children Killed: 3</p>	<p>Government official in North Waziristan tells Pakistani reporters that five children and four women were killed.<sup>832</sup></p> <p>New York Times</p> <p>“At least three women were among the dead.”<sup>833</sup></p> <p>Wall Street Journal</p> <p>Pakistani official state that eight civilians were killed.<sup>834</sup></p> <p>CNN</p> <p>Neighbor states that three children and two women killed.<sup>835</sup></p> <p>Associated Press</p>

<sup>831</sup> [http://articles.cnn.com/2011-04-22/world/pakistan.drone.strike\\_1\\_drone-strike-american-drone-pakistani-tribal-region?\\_s=PM:WORLD](http://articles.cnn.com/2011-04-22/world/pakistan.drone.strike_1_drone-strike-american-drone-pakistani-tribal-region?_s=PM:WORLD)

<sup>832</sup> [http://www.nytimes.com/2011/04/23/world/asia/23pakistan.html?\\_r=2&src=me](http://www.nytimes.com/2011/04/23/world/asia/23pakistan.html?_r=2&src=me).

<sup>833</sup> <http://online.wsj.com/article/SB10001424052748703387904576278122411803628.html>.

<sup>834</sup> <http://edition.cnn.com/2011/WORLD/asiapcf/04/22/pakistan.drone.strike/?hpt=T2>.

<sup>835</sup> <http://abcnews.go.com/International/wireStory?id=14213135&page=3#.T6wtr9uufd8A>.

## US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>May 2011</b>	<p>Since the beginning of 2009, only 30 “noncombatants” have been killed and none since summer 2010. Drones are “the most precise weapon in the history of warfare.”<sup>836</sup></p> <p>U.S. official “familiar with the details of the [drone] program” tells National Journal</p>	<p>Sep. ’10—May ’11            Civilians Killed: 73-183+            Children Killed: 8+</p>	<p>Study finds 53 civilians, including two women and three children, were killed in nine drone strikes between August 2010 and May 2011.<sup>837</sup></p> <p>Associated Press</p>
<b>June 2011</b>	<p>“Nearly for the past year there hasn’t been a single collateral death because of the exceptional proficiency, precision of the capabilities that we’ve been able to develop.”<sup>838</sup></p> <p>John Brennan, Deputy National Security Advisor for Homeland Security and Counterterrorism, and Assistant to the President</p>	<p>Sep. ’10—June ’11            Civilians Killed: 87-223+            Children Killed: 8+</p>	<p>June 6, 2011: Report that seven civilians are among the dead in two three suspected drone strikes.<sup>839</sup></p> <p>CNN</p>

<sup>836</sup> <http://www.nationaljournal.com/magazine/secret-love-obama-s-budding-romance-with-the-cia-20110511?page=3>.

<sup>837</sup> <http://www.usnews.com/news/world/articles/2012/02/25/ap-investigation-of-us-drone-strikes-in-pakistan>.

<sup>838</sup> June 29, 2011 speech at Paul H. Nitze School of Advanced International Studies at Johns Hopkins University in Washington, reported at <http://articles.latimes.com/2011/jun/29/news/la-pn-al-qaeda-strategy-20110629>.

<sup>839</sup> <http://edition.cnn.com/2011/WORLD/asiapcf/06/06/pakistan.attacks/>

US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
July 2011	<p>“There haven’t been any noncombatant casualties for about a year, and assertions to the contrary are wrong. The most accurate information on counter-terror operations resides with the United States, and this list is wildly inaccurate. Those operations are designed to protect America and our allies, including Pakistan, from terrorists who continue to seek to kill innocents around the world.”<sup>840</sup></p> <p>Senior U.S. Official</p>	<p>Sep. ’10–July ’11 Civilians Killed: 92-233+ Children Killed: 8+</p>	<p>The Bureau of Investigative Journalism releases report that finds between August 23, 2010 and June 29, 2011 “45-56 civilian victims across 10 individual strikes.”<sup>841</sup></p> <p>The Bureau of Investigative Journalism</p> <p>June 15, 2011: A drone strike on a car kills five civilians and leads to an outpouring of local anger. Residents used the coffins of the dead to block roads in protest.<sup>842</sup> Among the dead were: Shahzada; a student and the grandson of a tribal elder, Akram Shah, a government employee, Atiq ur Rehman, a local pharmacist, Irshad Khan, who worked for Rehman, and Amar Khan, a local student at Miransha college.<sup>843</sup></p> <p>Dawn.com / The Bureau of Investigative Journalism</p>

<sup>840</sup> <http://www.thebureauinvestigates.com/2011/07/18/washingtons-untrue-claims-no-civilian-deaths-in-pakistan-drone-strikes/>.

<sup>841</sup> <http://www.thebureauinvestigates.com/2011/07/18/washingtons-untrue-claims-no-civilian-deaths-in-pakistan-drone-strikes/>.

<sup>842</sup> <http://dawn.com/2011/06/17/tribesmen-protest-drone-attacks/>

<sup>843</sup> <http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/>

## US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>August 2011</b>	<p>“Fortunately, for more than a year, due to our discretion and precision, the U.S. government has not found credible evidence of collateral deaths resulting from U.S. counterterrorism operations outside of Afghanistan or Iraq, and we will continue to do our best to keep it that way.”<sup>844</sup></p> <p>John Brennan, Deputy National Security Advisor for Homeland Security and Counterterrorism, and Assistant to the President</p>	<p>Aug. ‘10-Aug. ‘11            Civilians Killed: 112-276+            Children Killed: 15+</p>	<p>Study finds 53 civilians, including two women and three children, were killed in nine drone strikes between August 2010 and May 2011.<sup>845</sup></p> <p>Associated Press</p>
<b>September 2011</b>	N.A.	N.A.	N.A.

<sup>844</sup> <http://www.nytimes.com/2011/08/12/world/asia/12drones.html?pagewanted=all>.

<sup>845</sup> <http://www.usnews.com/news/world/articles/2012/02/25/ap-investigation-of-us-drone-strikes-in-pakistan>.



## US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>October 2011</b>	Regarding October 31 <sup>st</sup> strike on car carrying 16 year old Tariq Khan and his 12-year-old cousin: "A U.S. official acknowledged to ABC News that the car was targeted by the CIA, but said the two people inside it were militants, and that neither occupant was a 12-year-old." <sup>846</sup>  Anonymous U.S. official	October 31, 2011 Civilian Deaths: 2 Children Killed: 2	Clive Stafford Smith, founder of Reprieve, a UK-based charity, confirms Tariq Khan attended a three day meeting in Islamabad three days before he was killed. The meeting was hosted by Reprieve and included more than 60 villagers from FATA, all of whom gathered to discuss drones in their communities. According to Stafford Smith, "Tariq was a good kid, and courageous." <sup>847</sup>  New York Times
<b>November 2011</b>	N.A.	N.A.	"If Tariq Aziz, the 16-year-old soccer fan I met last week in Pakistan was a dangerous Taliban terrorist, let the CIA prove it." <sup>848</sup>  Pratap Chatterjee, The Guardian
<b>December 2011</b>	N.A.	N.A.	N.A.

<sup>846</sup> <http://abcnews.go.com/Blotter/tariq-khan-killed-cia-drone/story?id=15258659#.T7K-rOufdm1>.

<sup>847</sup> [http://www.nytimes.com/2011/11/04/opinion/in-pakistan-drones-kill-our-innocent-allies.html?\\_r=3&src=tp](http://www.nytimes.com/2011/11/04/opinion/in-pakistan-drones-kill-our-innocent-allies.html?_r=3&src=tp)

<sup>848</sup> <http://www.guardian.co.uk/commentisfree/cifamerica/2011/nov/07/cia-unaccountable-drone-war?INTCMP=ILCNETTXT3487>.

# US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
<b>January 2012</b>	President Obama, acknowledging the drone program for the first time, states that it is “kept on a very tight leash,” enables the U.S. to use “pinpoint” targeting, and does not inflict huge civilian casualties. <sup>849</sup>  President Barack Obama	Jan. '09-Dec. '11 Total strikes: 259 Total Killed: 1932 Minimum Civilians Killed: 297-569+ Minimum Children Killed: 64+  Minimum Total Injured: 901	Since Obama took office three years ago, between 282 and 535 civilians have been credibly reported as killed, including more than 60 children. A three month investigation including eye witness reports has found evidence that at least 50 civilians were killed in follow-up strikes when they had gone to help victims. <sup>850</sup>  The Bureau of Investigative Journalism  Between May 2009 and June 2011, at least fifteen attacks on rescuers were reported by credible news media.  New York Times / CNN / Associated Press / ABC News / Al Jazeera. <sup>851</sup>
<b>February 2012</b>	U.S. “has no reliable evidence” of civilian deaths in any of the examined strikes.  Unnamed U.S. counterterrorism official responding to investigation by the Associated Press. The AP investigation looked at 10 drone strikes between August 14, 2010 and August 10, 2011 and found evidence of civilian deaths. <sup>852</sup>	AP Report (10 strikes) Total Civilians Killed: 53 Total Children Killed: 3	(re: April 22, 2011 strike) AP Study finds “[m]issiles hit a compound in Hasan Khel village, killing 25 people, including 20 militants, three children and two women.” <sup>853</sup>  Seattle Times / Associated Press

<sup>849</sup> <http://www.nytimes.com/2012/01/31/world/middleeast/civilian-deaths-due-to-drones-are-few-obama-says.html>.

<sup>850</sup> <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>

<sup>851</sup> <http://www.thebureauinvestigates.com/2012/02/04/obama-terror-drones-cia-tactics-in-pakistan-include-targeting-rescuers-and-funerals/>

<sup>852</sup> <http://www.usnews.com/news/world/articles/2012/02/25/ap-investigation-of-us-drone-strikes-in-pakistan>.

<sup>853</sup> [http://seattletimes.com/html/nationworld/2017595106\\_apspakistandroneshumancostglance.html](http://seattletimes.com/html/nationworld/2017595106_apspakistandroneshumancostglance.html)

# US STATEMENTS ON CIVILIAN CASUALTIES

DATE	U.S. ASSERTIONS	TBLJ REPORTED CIVILIAN DEATHS	EXAMPLES OF CONTRADICTORY INFORMATION
March 2012			
April 2012	Brennan states that for a period of time the U.S. “had no information about a single civilian being killed,” but “unfortunately in war there are casualties, including among the civilian population.” He adds, “sometimes you have to take life to save lives.” <sup>854</sup>  John Brennan, Deputy National Security Advisor for Homeland Security and Counterterrorism, and Assistant to the President	Aug. ’10 – Apr. ’12 Civilians Killed: 117-284+ Children Killed: 17+	

<sup>854</sup> Speaking on ABC “This Week,” reported at [http://latimesblogs.latimes.com/world\\_now/2012/04/brennan-drone-attacks.html](http://latimesblogs.latimes.com/world_now/2012/04/brennan-drone-attacks.html).









Image of original photos  
taken by Noor Behram,  
Pakistani photojournalist. The  
photos are part of a collection of  
images of drone victims and drone  
sites compiled by Mr. Behram.

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