

After the Dead Are Counted: U.S. and Pakistani Responsibilities to Victims of Drone Strikes



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Cover Image Artist's Statement: Mahwish Chishty



“MQ-9-5” © Mahwish Chishty

I am a Pakistani-American artist who uses my paintings to talk about the complexity of acculturation, politics, and power by camouflaging modern war machines with folk “truck art” imagery. By presenting the colorful iconography and text within the silhouette of a drone, these paintings open up a conversation about the omnipresence of “truck art” and the not-so-visible presence of drones at the border of Pakistan and Afghanistan. The inspiration comes from the contrasting elements like colorful versus gray metallic structure, and truck artists using their mode of transportation as a form of self-expression while drone operators remain anonymous. Colorful imagery also serves as a very practical tool to lure the audience into the work and later coded language reveals the deadly elements. I am interested in the juxtaposition of terror with the representation of cultural beauty.

After the Dead Are Counted: U.S. and Pakistani Responsibilities to Victims of Drone Strikes

Executive Summary

U.S. drone strikes in Pakistan are estimated to have killed well over 2,000 individuals, including an unknown number of civilians. Despite long-voiced concern over civilian harm, and U.S. officials' promises of greater transparency, the United States has clearly and consistently failed to account for and provide redress and compensation for civilian harm from these strikes. Pakistan, however, could also be doing much more to improve transparency and accountability, and provide compensation for civilian harm in the absence of redress from the U.S. government.

Based on interviews and investigations of 27 separate U.S. drone strikes, this report documents credible cases of civilian harm, examines the broader political and legal context in the Federally Administered Tribal Areas (FATA) within which drone strikes take place, and government responses to civilian victims. Over the past several years there have been some positive developments in Pakistan at the provincial level on providing redress to victims of conflict, but in FATA there is no evidence that victims of U.S. drone strikes have been offered compensation. This report provides practical recommendations to both the U.S. and Pakistani governments to improve respect for rights and protection of civilians in areas affected by drone strikes and address civilian losses.¹

The Pakistani military's recent offensive in North Waziristan, and the resumption of U.S. drone strikes after a six month break only underscore the urgent need for much greater transparency and proper responses to civilian harm.

For years, three factors have undermined the ability of governments, civil society and the international community to make progress on civilian harm from drone strikes. First is the United States' ongoing failure to publicly acknowledge and investigate credible claims and well-documented cases of civilian harm. Second, a pro-drone/anti-drone debate that too often ignores long-standing, systematic political marginalization and human rights abuses in FATA. And third, the Pakistani government's inability or failure to properly ensure transparency, accountability, and redress for civilian harm by U.S. drone strikes within its territory.

¹ The term "civilian" is used to denote individuals that the United States or the Pakistani government is not permitted to use lethal force against, whether under applicable international humanitarian or human rights law. The use of such a term does not reflect a determination that the situation in FATA or between the United States and armed groups operating in Pakistan is an armed conflict. This paper does not take a position on that specific question. The U.S. and Pakistani governments are responsible for providing a public, clearly articulated legal basis for the use of lethal force against individuals in FATA.

When Khalil-ur-Rehman's brother was killed in a drone strike in North Waziristan in 2009, he left behind nine children. "Several times we have asked the government and made claims for compensation to help his widow and children. But every time these requests fall on deaf ears and we have had no reply. We have submitted our applications so many times with the assistant political agent and have talked to the jirgas as well, but we get nothing."²

Civilian harm from U.S. drone strikes is subject to significant debate, and has at times been highly politicized. Though obtaining reliable information is a significant challenge, recent reports by human rights groups and the media have brought to light credible claims of civilian harm and raised serious legal and policy concerns.³ Open Society Foundations research confirms that civilian harm is likely greater than the United States has acknowledged. In recent months, civilian harm resulting from drone strikes, and the number of strikes in Pakistan have declined. However, the United States still has a responsibility to publicly investigate credible claims of civilian harm in past strikes, and to disclose information necessary to ensure that past and future drone operations in Pakistan comply with international law.⁴

In addition, too often lost in the debate over civilian harm from drone strikes is the long-term marginalization of FATA and systematic human rights violations suffered by its residents. Despite limited reforms to the draconian, colonial-era Frontier Crimes Regulation (FCR), residents of FATA continue to be second-class citizens within Pakistan, with limited political representation and even less access to Pakistani courts.⁵ It is unsurprising that in this context families who suffer losses from drone strikes have less access to government assistance and redress.

Though Pakistani military operations in FATA over the past decade have succeeded in pushing militants out of many areas, the Pakistani government has done little to fill the power vacuum left by the destruction of traditional governance structures with new governance mechanisms or more representative forms of local government. Successive waves of Pakistani military operations against militants in FATA have displaced hundreds of thousands, led to the disappearance and detention without trial of thousands, and caused an untold number of civilian casualties. Meanwhile, militant groups have been able to exert effective control over large areas of territory, leaving minimal legal protections for local

² Interview 2, Case 24.

³ See United Nations, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Ben Emmerson, Human Rights Council, UN Doc. A/HRC/25/59, March 11, 2014, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_59_ENG.DOC; Amnesty International, *Will I Be Next? U.S. Drone Strikes in Pakistan*, October 2013, <http://www.amnestyusa.org/sites/default/files/asa330132013en.pdf>; The Bureau of Investigative Journalism, *Drone Strikes in Pakistan*, <http://www.thebureauinvestigates.com/category/projects/drones/drones-pakistan/>; Global Justice Clinic at NYU School of Law and Stanford International Human Rights and Conflict Resolution Clinic, *Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan*, September 2012, <http://www.livingunderdrones.org/>; Sebastian Abbott, "AP Impact: New Light on Drone War's Death Toll," The Associated Press, February 26, 2012, <http://news.yahoo.com/ap-impact-light-drone-wars-death-toll-150321926.html>; The Center for Civilians in Conflict, *Civilian Harm and Conflict in Northwest Pakistan*, October 2010, http://civiliansinconflict.org/uploads/files/publications/civilian_harm_in_nw_pakistan_oct_2010.pdf.

⁴ See Open Society Foundations, "Statement of Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings," April 11, 2013, http://www.opensocietyfoundations.org/sites/default/files/rights-groups-question-legality-targeted-killing-20130412_o.pdf; Open Society Foundations, "Letter to President Obama Re: Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings," December 4, 2013, <http://www.opensocietyfoundations.org/sites/default/files/rights-groups-urge-president-obama-address-concerns-new-questions-drone-strikes-20131204.pdf>.

⁵ See Human Rights Commission of Pakistan, *FCR: A Bad Law Nobody Can Defend*, July 2005, <http://hrpc-web.org/hrpcweb/wp-content/pdf/ff/23.pdf>; Irfan Ghauri, "A Century Later, Some Rights for the Tribals," *The Express Tribune*, August 12, 2011, <http://tribune.com.pk/story/229954/president-zardari-signs-fata-political-parties-order-2002-extension/>.

residents who are left to defend themselves against pervasive insecurity and widespread human rights abuses, including indiscriminate terrorist attacks and extrajudicial executions.⁶

In North Waziristan, the military's ongoing Operation Zarb-e-Azb aims to dislodge militant groups that have used the area as a base for well over a decade. The large-scale, months-long offensive has reportedly killed hundreds of militants and displacing an estimated one million people. Independent assessments of civilian casualties have yet to be conducted.⁷ It is unclear how long it may be until the Pakistani government will restore security in the area necessary for displaced residents to return, provide basic services, and move ahead with long overdue political reform.

Against this backdrop, the United States is conducting drone strikes in communities that feel abandoned and extremely vulnerable. Whatever tactical gains may be achieved by drone strikes in such an environment, there are serious doubts as to whether they are part of a viable strategy for addressing the threats of militancy and terrorism or bringing lasting security and peace to the region or the people of FATA.

Despite vocal Pakistani opposition to U.S. drone strikes and criticism regarding civilian casualties, the Pakistani government thus far has not properly investigated civilian harm and ensured redress for violations of victims' rights. The Pakistani government has not provided consistent, public estimates of civilian casualties or implemented policies to identify and provide compensation or assistance to civilian victims.

By contrast, the Pakistani government already regularly investigates and provides compensation to victims of armed conflict and militant and terrorist attacks elsewhere in the country. Newly established laws and policies in Pakistan that provide redress to civilian victims of conflict can serve as a model for addressing civilian losses from drone strikes.

Based on interviews with 96 residents and witnesses in affected regions, 18 current and former U.S. and Pakistani government officials, as well as several journalists, international officials, and experts, the Open Society Foundations have found that both the U.S. and Pakistani governments can do much more to ensure transparency and accountability for past and future civilian harm from drone strikes. This includes the following recommendations:

To the Federal Government of Pakistan:

- Create a formal mechanism within a capable, transparent, and accountable government body to identify, publicly acknowledge, and provide compensation, relief, and rehabilitation to civilians killed or injured by U.S. drone strikes both in the past and prospectively.

⁶ See Counter Terrorism Center, "Reviewing Pakistan's Peace Deals with the Taliban," 26 September 2012, <http://www.ctc.usma.edu/posts/reviewing-pakistans-peace-deals-with-the-taliban>; Pakistan Institute of Peace Studies (PIPS), *Analysis of Peace Agreements with Militants and Lessons for the Future*, January-March 2011, <http://san-pips.com/download.php?f=140.pdf>.

⁷ *Daily Times*, "NWA Operation Displaced Figure Crosses Million Mark," July 16, 2014, <http://www.dailytimes.com.pk/national/16-Jul-2014/nwa-operation-displaced-figure-crosses-million-mark>; Jon Boone, "Pakistan Unprepared for Refugees Fleeing Operation against Taliban," *The Guardian*, June 26, 2014, <http://www.theguardian.com/world/2014/jun/26/pakistan-displaced-military-operation-taliban-north-waziristan-humanitarian-assistance>.

- Provide public estimates of overall civilian deaths and injuries from U.S. drone strikes as well as the criteria for determining civilian, militant or combatant status. Publicly investigate all past and future credible claims of civilian harm from U.S. drone strikes.
- Publicly commit to a timeline for adopting and implementing the legal and political reforms necessary to guarantee respect for the fundamental rights and international human rights of the people of FATA.

To the Government of the United States:

- Take all necessary steps to ensure that U.S. lethal force operations in Pakistan comply with international law, publicly disclose key targeted killing standards and criteria, and ensure effective investigations, tracking, and response to civilian harm.
- Investigate and make public findings related to all credible claims of civilian harm identified in this and other public reports. Publicly acknowledge every incident of civilian harm from U.S. drone strikes, including specific responses to credible claims of civilian casualties.
- Provide additional financial and technical assistance to Pakistani government initiatives to investigate and provide amends to civilian victims of drone strikes, including relevant intelligence and post-strike assessments of civilian harm.

Introduction

Since 2004, U.S. drone operations in Pakistan have gone through different phases, with significant changes in year-to-year frequency as well as targeting policies and practices. Under President Obama, drone strikes increased dramatically, peaking in 2010 with approximately 125 strikes. Since 2010, drone strikes have declined substantially, with approximately 41 strikes in 2012 and approximately 27 in 2013.⁸ In 2014 there was a long pause in such operations, which coincided with negotiations between the Pakistani government and the Tehrik-i-Taliban Pakistan (TTP).⁹ U.S. drone strikes have since resumed following the collapse of those negotiations and as the Pakistani military launched Operation Zarb-e-Azb, a major offensive against militant groups in North Waziristan.

Researchers from an Open Society Foundations partner organization investigated 27 separate U.S. drone strikes conducted in North Waziristan and South Waziristan from 2009 to 2012. The Open Society Foundations found evidence of civilian casualties in 16 out of 27 strikes

⁸ Averages of 2010, 2012, and 2013 data from New America Foundation and Bureau of Investigative Journalism. See New America Foundation, *Drone Wars Pakistan: Analysis*, accessed May 28, 2014, <http://counterterrorism.newamerica.net/drones>; The Bureau of Investigative Journalism, *Get the Data: Drone Wars*, accessed May 28, 2014, <http://www.thebureauinvestigates.com/2012/07/02/resources-and-graphs/>.

⁹ Reports indicate this was at the request of the Pakistani government which was attempting peace talks with Tehrik-i-Taliban Pakistan (TTP): Karen de Young and Greg Miller, "U.S. Said to Curtail Drone Strikes in Pakistan as Officials There Seek Peace Talks with Taliban," *The Washington Post*, February 5, 2014, http://www.washingtonpost.com/world/national-security/us-curtails-drone-strikes-in-pakistan-as-officials-there-seek-peace-talks-with-taliban/2014/02/04/id63f52a-8dd8-11e3-833c-33098f9e5267_story.html. However, the talks quickly faltered, and in May splits in the TTP were reported, and the Pakistani government resumed airstrikes in Waziristan. Ismail Khan and Declan Walsh: "After Months of Infighting, a Major Faction Splits from the Pakistani Taliban," *New York Times*, May 28, 2014: http://www.nytimes.com/2014/05/29/world/asia/major-faction-splits-from-pakistani-taliban.html?_r=0.

investigated, and a total of 26 claims of individual civilian deaths. Between 2012 and February 2014, the Open Society has also conducted interviews to assess post-strike responses, including investigations, accountability, and redress for civilian harm. As noted in the methodology section, this study is too small and the case selection process too influenced by security concerns for researchers to extrapolate any broader assertions about average levels of civilian harm in U.S. drone strikes.

Though the overall number of civilian casualties found in these cases was not high compared to the number of militants reportedly killed in these strikes, the cases investigated clearly indicate that civilians have been killed and injured in strikes, and that the United States is failing to acknowledge these losses and may be underestimating civilian harm.

Despite calls for and U.S. officials' pledges to increase transparency, the United States has still not provided official estimates of civilian casualties as a result of drone strikes, nor has it explained how it defines civilian for purposes of pre-strike or post-strike casualty assessments. U.S. officials' statements, often anonymous, suggest that civilian casualties are assumed to be "minimal." Such statements refer to different time periods, but have ranged from 0 to up to 60 civilian casualties over the past several years.¹⁰ Such findings raise concerns, since they consistently underestimate civilian harm when measured against all other assessments. Furthermore, the United States has failed to provide the information necessary to ensure such operations comply with international law, including providing the applicable targeted killing standards and criteria.¹¹ In addition, whenever civilians are harmed in U.S. drone strikes, the United States should conduct an investigation, acknowledge any civilian harm caused, and provide redress, even when there is no evidence that such an attack constituted a violation of international humanitarian law: at present, this is simply not taking place.¹²

These cases illustrate the real, practical challenges of accurately determining the combatant status of individuals in affected areas, and raises serious questions about the reliability of U.S. civilian casualty assessments. Particularly in light of credible claims of civilian casualties documented by other organizations, these cases demonstrate the urgent need for much more transparent, rigorous means and methods of assessing civilian harm, public investigations of claims of civilian casualties, and the creation of systematic mechanisms to provide redress to victims.¹³

¹⁰ Justin Elliott, Cora Currier, and Lena Groeger, "How Obama Drone Death Claims Stack Up," *ProPublica*, June 18, 2012, <http://www.propublica.org/special/how-obama-drone-death-claims-stack-up>; Scott Shane, "C.I.A. Is Disputed on Civilian Toll in Drone Strikes," *The New York Times*, August 11, 2011, <http://www.nytimes.com/2011/08/12/world/asia/12drones.html?pagewanted=all>; Adam Entous, Siobhan Gorman, and Julian E. Barnes, "U.S. Tightens Drone Rules," *The Wall Street Journal*, November 4, 2011, <http://online.wsj.com/news/articles/SB10001424052970204621904577013982672973836?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052970204621904577013982672973836.html>.

¹¹ Open Society Foundations, "Statement of Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings," April 11, 2013, http://www.opensocietyfoundations.org/sites/default/files/rights-groups-question-legality-targeted-killing-20130412_o.pdf; Open Society Foundations, "Letter to President Obama Re: Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings," December 4, 2013, <http://www.opensocietyfoundations.org/sites/default/files/rights-groups-urge-president-obama-address-concerns-new-questions-drone-strikes-20131204.pdf>.

¹² "Where possible, we also work with local governments to gather facts and, if appropriate, provide condolence payments to families of those killed." See "Response to Post-Hearing Questions from the Chairman, Nomination of John O. Brennan to be the Director of the Central Intelligence Agency, U.S. Senate Select Committee on Intelligence," February 7, 2014, <http://www.intelligence.senate.gov/130207/posthearing.pdf>.

¹³ See *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, Ben Emmerson, Human Rights Council, UN Document A/HRC/25/59, March 2014, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_59_ENG.DOC; Amnesty

Transparency, accountability and mechanisms to provide redress, however, remain almost non-existent. The U.S. government has not provided estimates of overall of civilian casualties from drone strikes, publicly acknowledged any specific instances of civilian casualties, or publicly investigated credible claims of civilian casualties. Despite having provided compensation and redress to civilians harmed by its operations in Afghanistan, the United States has not provided any redress or compensation to civilian victims of drone strikes in Pakistan.

For its part, the Pakistani government has provided inconsistent estimates of civilian casualties from drone strikes, which is discussed in more detail below. Despite having provided victims of terrorism and armed conflict elsewhere in the country with compensation, Pakistan has not provided victims of U.S. drone strikes with any compensation or redress for their losses, according to interviews with victims and government officials, nor has it worked with the U.S. government to establish a suitable mechanism to provide such assistance.

The recent resumption of U.S. drone strikes, and Pakistan's ongoing military operation in North Waziristan, which has displaced a million people, only underscore the urgent need for greater transparency and improved responses to civilian harm. In addition, despite the ebb and flow of the frequency of drone strikes, both the Pakistani and U.S. governments have a continuing responsibility to account for past civilian harm, and to provide redress, and ensure accountability going forward.¹⁴

Overview: Civilian Harm¹⁵

Woman Killed, Children Injured: Ghondi Kala, North Waziristan, October 24, 2012

According to interviewees, at around 3:00 pm on October 24, 2012, several drone missiles struck the home of Waresheem Jan, a retired school principal. Waresheem Jan's wife, Bibi Manama, was with several of her grandchildren near their home tending to their fields at the time of the attack. This incident has been well-documented by Amnesty International.¹⁶ Media reports are also consistent with the accounts and information provided by interviewees.¹⁷

International, *Will I Be Next? U.S. Drone Strikes in Pakistan*, October 2013, <http://www.amnestyusa.org/sites/default/files/asa330132013en.pdf>; The Bureau of Investigative Journalism, *Drone Strikes in Pakistan*, <http://www.thebureauinvestigates.com/category/projects/drones/drones-pakistan/>; Global Justice Clinic at NYU School of Law and Stanford International Human Rights and Conflict Resolution Clinic, *Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan*, September 2012, <http://www.livingunderdrones.org/>; Sebastian Abbott, "AP IMPACT: New Light on Drone War's Death Toll," The Associated Press, February 26, 2012, <http://news.yahoo.com/ap-impact-light-drone-wars-death-toll-150321926.html>; The Center for Civilians in Conflict, *Civilian Harm and Conflict in Northwest Pakistan*, October 2010, http://civiliansinconflict.org/uploads/files/publications/civilian_harm_in_nw_pakistan_oct_2010.pdf.

¹⁴ The same transparency, accountability, and redress must also be ensured in instances of civilian harm caused by Pakistani military operations and airstrikes.

¹⁵ All the names of interviewees and victims have been altered to protect their identity and security. Researchers did not use a legally specific or complex definition of a combatant or a non-combatant civilian. For interviewing purposes, interviewees' understanding of whether an individual was a member of an armed group, referred to generally by interviewees as "militants" or "Taliban" or "member of Taliban," was all that could be meaningfully obtained and subject to some level of verification. See Methodology section below.

¹⁶ Amnesty International, *Will I Be Next? U.S. Drone Strikes in Pakistan*, October 2013.

¹⁷ Jane Corbin, "Drone Strike Killed My Grandmother outside Our House," BBC News Panorama, December 16, 2012, <http://www.bbc.co.uk/programmes/boipcyfc>; Tahir Khan, "U.S. Drones Traumatizing Tribal Children," *The Express Tribune*, December 19, 2012, <http://tribune.com.pk/story/481473/us-drones-traumatizing-tribal-children/>; Robin Pagnamenta, "My Dead

Interviewees confirmed that Manama was killed in the strike, and several children were injured by the explosion and shrapnel. Interviewees said the missiles struck a field near the family's home, killing Manama and injuring the children who were outside at the time.¹⁸

According to Noor Wali, Waresheem's nephew, "No [militant] element was there. He was an educated man and a retired principal. He has also served in the Agency Education Office...He was our own man. He had no links because he was a government servant. He also ran in the 2008 elections as an independent candidate from NA-40 [constituency for National Assembly]...No one could imagine that he was involved in such activities."¹⁹

Fazal Khan, a neighbor who knew the family, said "To target innocents like Waresheem Jan and others is not good for our region, because Waresheem Jan is an educated and well-reputed person. He has no links with any suspected elements and has not taken part in such activities. He has no enmity toward America or anyone else."²⁰

U.S. officials have not responded to previous reports of civilian casualties in this strike.²¹

Civilian Killed in Vehicle with Taliban: Angar Baddar Birmal, South Waziristan, March 13, 2012

On March 13, 2012, a U.S. drone fired at and struck a vehicle travelling in the Birmal district of South Waziristan. Several Taliban members were reportedly killed, including two prominent commanders of the Maulvi Nazir group, according to interviews, which were consistent with media reports at the time. However, interviewees also claimed that one of those killed, Noor Mohammed, was a civilian and not a member of the Taliban.

Seerat Khan, a close friend of Noor Mohammed, insisted that he was not involved with militancy. "You can see his shop in front of us. He had a shop for shoes." Ajab Khan acknowledged that Noor Mohammed met with and knew members of the Taliban. "He had some Taliban friends who belonged [sic] to the Wazir tribe. They used to meet each other and roam around in the area. He went to Bermal with his friend, Commander Shamsullah when they were attacked by a drone. They were normal friends. The Taliban used to buy shoes from him and because of his business, he had links with them."

Seerat Khan went to Noor Mohammed's funeral, which was attended by family members, not militants. "His body was brought by the common Wazir people and his friends. No other people like the Taliban or foreigners were among those who brought him home. His relatives

Mother Wasn't an Enemy of America. She Was Just an Old Lady," *The Times*, November 20, 2012, <http://www.thetimes.co.uk/tto/news/world/asia/article3605267.ece>.

¹⁸ Malik Mumtaz Khan and Mushtaq Yusufzai, "Tribesmen Protest Drone Strike in North Waziristan," *The News International*, October 26, 2012, <http://www.thenews.com.pk/Todays-News-7-139621-Tribesmen-protest-drone-strike-in-North-Waziristan>; Robin Pagnamenta, "My Dead Mother Wasn't an Enemy of America. She Was Just an Old Lady," *The Times*, November 20, 2012, <http://www.thetimes.co.uk/tto/news/world/asia/article3605267.ece>.

¹⁹ Interview 5, Case 24.

²⁰ Interview 1, Case 24.

²¹ In response to Amnesty International's report, which also reported civilian casualties in this strike, White House spokesperson Jay Carney did not respond to the specific allegations, but instead referred only to President Obama's May 2013 National Defense University speech, saying "The president directly addressed the issue of civilian casualties in that speech, and he made it clear that it is a hard fact that U.S. strikes have resulted in civilian casualties, a risk that exists in every war." However, he noted that there is a "wide gap" between U.S. assessments of civilian casualties and NGO reports. See Mark Schone, "White House Admits Killing Civilians with Drone Strikes, Denies Breaking Law," NBC News, October 22, 2014, <http://www.nbcnews.com/news/other/white-house-admits-killing-civilians-drone-strikes-denies-breaking-law-f8C11435816>.

were mourning over his body at his home. Everyone was grieving. His friends were very upset. His body and limbs had been mutilated in the attack, so we couldn't recognize him except for the shape of his face and the photo that was placed over the coffin."²²

Taliban Prisoner Accused of Being U.S. Spy, Killed: Baghar, South Waziristan, October 26, 2011

According to three witnesses and locals interviewed by researchers, around 26 militants were killed in a U.S. drone strike on a *merkez* (center or compound) used by the Taliban. All those interviewed stated that the strike targeted a compound belonging to Taj Gul Mehsud, who was reportedly killed along with a large number of militants. However, the strike also killed one civilian, Junaid Khan—described by interviewees as a Taliban prisoner from Bannu, who had been detained for being a suspected spy.²³

The detention and execution of civilians by the Taliban accused of being spies for the United States has been widely reported.²⁴ Junaid's body was found not in the main compound, but in an adjacent room believed to be used to detain and torture suspected spies.²⁵ Junaid's body lay in the destroyed room for two days until his family came to collect it after local residents found his ID card in his pocket.²⁶

Hussain, a neighbor who heard the explosion and rushed to the scene soon after, described the aftermath, "I had never witnessed such a horrible scene in my life. It was a mess; there were body parts scattered all around. The house was in ashes, completely destroyed."²⁷

12-Year-Old Boy Killed: Spin Wam, North Waziristan, April 22, 2011

On April 22, 2011, a drone struck a *hujra*, or guest house, in Spin Wam, North Waziristan. Several civilians were reported to have been killed, including Arif, a 12-year-old boy. Three individuals interviewed by researchers, including a cousin, an eyewitness, and a neighbor, all stated that Arif was a student with no connection to militancy, and was reportedly killed along with other civilians, and 20 possible militants staying in the guest house.²⁸

²² Interview 2, Case 13.

²³ Interviews 1, 2, and 3, Case 8. All those interviewed stated that the strike targeted a compound belonging to Taj Gul Mehsud, who was killed along with a large number of militants. Reports indicate that Taj Gul was a high-ranking Taliban commander, close to TTP leader Hakimullah Mehsud. The number of reported deaths as well as the death of Taj Gul was consistent with several media reports as well as statements made by the TTP. See Jibrán Ahmad, "Suspected U.S. Drone Strike Kills 13 Pakistani Taliban," Reuters, October 28, 2011, <http://www.reuters.com/article/2011/10/28/us-pakistan-drone-idUSTRE79R2AU2011028>; http://www.longwarjournal.org/archives/2011/12/taliban_avenge_death.php;

²⁴ Zia Khan, "Taliban Create Cell to Hunt 'Spies' Assisting U.S. Drones," *The Express Tribune*, March 28, 2011,

<http://tribune.com.pk/story/138759/taliban-create-cell-to-hunt-spies-assisting-us-drones/>;

http://www.longwarjournal.org/archives/2011/03/taliba_execute_4_mor.php;

http://www.longwarjournal.org/archives/2011/02/taliban_execute_4_sp.php; *The Express Tribune*, "Taliban Claim Killing Five for 'Spying,'" October 2, 2012, <http://www.thenews.com.pk/Todays-News-7-135217-Taliban-claim-killing-five-for-spying>; Taliban militant groups have produced and distributed videos of accused spies confessing before being executed. See NBC News, "Video Shows Execution of Alleged Taliban Spy," April 17, 2009, <http://video.msnbc.msn.com/nbcnews.com/30267523>.

²⁵ Interviews 1 and 2, Case 8.

²⁶ Interview 2, Case 8.

²⁷ Interview 1, Case 8.

²⁸ An investigation by the Associated Press also found that five women and children had been killed according to its investigation, including a 12-year-old boy named Arif. See Sebastian Abbott, "AP Impact: New Light on Drone War's Death Toll," *The Associated Press*, February 26, 2012, <http://news.yahoo.com/ap-impact-light-drone-wars-death-toll-150321926.html>. Research conducted by The Bureau of Investigative Journalism confirmed the death of a boy named Arif in this strike. See The Bureau of Investigative Journalism, "Obama 2011 Pakistan Strikes," <http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/>. Classified U.S. intelligence reports obtained by McClatchy Newspapers indicate that U.S. officials noted the death

According to interviewees, Arif was bringing water or tea to guests staying in the hujra when the compound was struck by a drone-fired missile. “Arif was from our tribe. He was a student and was also a shepherd during his vacations. He was just a boy,” Hanzullah, a neighbor, told researchers. “That day when he brought tea for the guests, drones attacked.”²⁹

Salam Gul, Arif’s cousin, lives nearby where the strike occurred and heard the explosion that morning. He said that militants may have been killed in the strike, but that Arif was innocent. “[T]here were no foreigners [non-Pakistani militants/fighters], but the local Taliban belonging to our village might have been the victims. It was early in the morning, and Arif was serving tea for the guests. It is our tribal tradition that we must give respect and hospitality to our guests.”³⁰

Salam Gul described the scene when he arrived shortly after the drone strike: “The attack produced a powerful sound. The attack first hit the guest house and dust and smoke covered the whole area. Arif and the other people’s corpses were scattered on the ground. The guest house was destroyed.... it was terrible.”³¹

Rehmatullah, an eyewitness and neighbor, described how the loss affected his family and the community. “All parents love their children; your children are everything to you. All the villagers came to pay their respects. The whole tribe was upset over his death because he was still a child.”³²

Civilian Guest in Compound Killed: Tapi, North Waziristan, February 17, 2010

A drone strike targeting a compound on February 17, 2010, reportedly killed Sheikh Mansoor, a senior al-Qaeda leader, along with several other militants. However, according to interviewees, the strike also killed Jan Mohammed, a 25-year-old student who was staying at the compound for the night.

Researchers interviewed two family members and two close friends of Jan Mohammed regarding his death in the strike. They said he was traveling from South Waziristan to a madrassa in Darra Pezu, and was forced by road closures to travel through North Waziristan, where he had no relatives he could stay with.

Azalmir, a close friend, said that Jan Mohammed was just a student. “[H]e had no relations with the Taliban. I knew him very well, he only wanted to get a religious education, rather than roam around with the Taliban and get himself involved in their activities. He was on his way to his madrassa. All the routes in South Waziristan were closed, that is why he decided to use routes in North Waziristan. When he reached Miranshah, he decided to stay for a night. On that very night, a drone attack was carried out on the home where he stayed.”³³ Two of Jan Mohammed’s brothers also stated that he was passing through Miranshah on his way to his madrassa in Darra Pezu, and was to stay only for a night when he was killed.

of a civilian in this strike. See Jonathan Landay, Obama’s Drone War kills ‘Others,’ Not Just al Qaida Leaders,” McClatchy Newspapers, April 2013, <http://www.mcclatchydc.com/2013/04/09/188062/obamas-drone-war-kills-others.html>.

²⁹ Interview 1, Case 54. See also The Bureau of Investigative Journalism, Obama 2011 Pakistan Strikes, <http://www.thebureauinvestigates.com/2011/08/10/obama-2011-strikes/>.

³⁰ Interview 3, Case 54.

³¹ Interview 3, Case 54.

³² Interview 2, Case 54.

³³ Interview 3, Case 188.

Funeral Attendees Targeted: Makeen, South Waziristan, June 23, 2009

On June 23, 2009, at approximately 4:30 pm, a drone fired several missiles into a crowd that had gathered for the funeral of a suspected Taliban commander who had been killed in a separate drone strike earlier that day. The three primary militant commanders reportedly targeted, including Baitullah Mehsud, the then-commander of the TPP, all escaped unharmed.³⁴

Media reports indicate a significant number of civilians were killed during the attack, with many more seriously injured.³⁵ Interviews with three relatives of one victim, Ajab Khan, claimed that he was a civilian who worked in the United Arab Emirates as a truck driver, and was visiting his family in Pakistan.

According to all three relatives, Ajab Khan was not connected to militancy. “If you could see his travel documents, you would see that his passport shows he arrived in Pakistan via Peshawar airport on the 13th of June [10 days before the incident],” his brother Abdul told interviewers. “He has lived almost half his life abroad just to earn money for his family...He was a driver [in the United Arab Emirates]. He was there only to earn money for his family that he left behind here.”³⁶

Waheed, another brother of Ajab Khan, rushed home upon hearing the news of his sibling’s death. “On our way home, we saw a mass grave in the village just before ours, which had around 14 bodies in it, all buried together. We saw those bodies and then rushed ahead to see if our brother was home. It was a very hard time for us.”³⁷

Families in North and South Waziristan often depend on income earned by men working in Gulf countries. According to Abdul, “He was our sole bread earner. We are six brothers in all and he was the oldest. He was responsible for our education and other expenses. We were totally dependent on him. I graduated only because of him, the rest of my brothers are in universities. We suffered a lot after the tragic death of our elder brother, as we have no other source of income.”³⁸

Two Children Killed: Shwangai, South Waziristan, February 14, 2009

Researchers interviewed six local residents and eyewitnesses of a drone strike that occurred in Shwangai, South Waziristan on February 14, 2009. All interviewees stated that in addition to those killed in the compound or “center” targeted by the drone strike, two children in a nearby house were also killed by the blast and shrapnel.

³⁴ Bill Roggio, “Taliban Commanders Survive US Airstrike at Funeral,” Long War Journal, June 25, 2009, http://www.longwarjournal.org/archives/2009/06/taliban_commanders_s.php; Joby Warrick, *The Triple Agent*, Vintage, May 2012, p. 65-67; “U.S. Drone Hits Pakistani Funeral,” Al Jazeera, June 24 2009, <http://www.aljazeera.com/news/asia/2009/06/20096244230395712.html>; Mushtaq Yusufzai, Irfan Burki and Malik Mumtaz, “No Prominent Militant Killed in Drone Attack,” *The News International*, June 25, 2009, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=22926&Cat=13&dt=6/25/2009>.

³⁵ “Missile Kills Key Trainer of Suicide Bombers,” *Dawn*, June 25, 2009, <http://archives.dawn.com/archives/151024>; “U.S. Drone Hits Pakistani Funeral,” Al Jazeera, June 24, 2009.

³⁶ Interview 2, Case 241.

³⁷ Interview 3, Case 241.

³⁸ Interview 2, Case 241.

Zahid, a local resident, was at the bazaar when he heard the strike. “It was a deafening noise. The explosions were loud and huge.” Soon after, Zahid visited the scene. “Dead bodies were scattered all over the place. People were busy retrieving bodies from the rubble. They didn’t know the exact number of casualties. However, a Taliban leader told me that 25 to 30 Taliban were killed in the attack.”³⁹

Zahid said that while the target was a Taliban compound, or center, a nearby house was also hit. “The scene in the house was worse than the Taliban center. The Taliban killed in the center were waging jihad for the appeasement of Allah Almighty. They wanted to embrace martyrdom. But the children were killed for nothing. All of the children were killed—the family had no other children.”⁴⁰

Ahmad Noor also arrived at the scene shortly after the strike. “I was sitting outside my house. I heard huge explosions and then saw the center engulfed by flames of fire. I wanted to rush to the scene but my father forbade me, he feared that another attack might be carried out. We went there after about one hour. There were so many drones in the air at that time that it was almost impossible to hear anything except their noise.”⁴¹

Similar to Zahid, Ahmad said that he thought it was a Taliban compound that had been hit, killing 25-30 militants, including a Taliban commander from the Mehsud network. This is consistent with media reports at the time that the TTP and Baitullah Mehsud were targets of the strike.⁴² He also said that two children in a nearby house had been killed, again consistent with media reports. “I feel nauseous remembering it. There was just human flesh everywhere. Their bodies were lying inside. Everyone was weeping. I don’t know their exact ages. But they seemed between five and eight years old. They said that the children were playing when the drones fired missiles at the Taliban center. The center was hit by missiles but the shrapnel hit the children and they were killed on the spot.”⁴³

Another witness, Manan said the family also blamed the Taliban for the death of their children. “Yes, they were angry with the Taliban. They were blaming the Taliban for killing their children. I haven’t seen any drone attacks except this one. Witnessing this drone attack is the worst memory of my life.”⁴⁴

Civilian Brother of Taliban Commander Killed: Dabkot, South Waziristan, June 2, 2012

On the morning of June 2, 2012, a U.S. drone targeted a motorbike travelling in the Dabkot area of South Waziristan killing two individuals, including Rehmanullah Gangi Khail, who also went by the name Ikramullah. According to interviewees, Rehmanullah was a local pine nut dealer and also the brother of militant commander Mohammed Wali, also known as

³⁹ Interview 5, Case 259.

⁴⁰ Interview 5, Case 259.

⁴¹ Interview 6, Case 259. Interviewee confirmed that a Taliban compound had been hit, killing 25-30 militants; he also stated that a Mehsud commander had been killed, which is consistent with reports that the TTP and Baitullah Mehsud were targets of the strike, but also that two children in a nearby house had also been killed.

⁴² Pir Zubair Shah, “U.S. Air Strike Kills 30 in Pakistan, *The New York Times*, February 14, 2009, http://www.nytimes.com/2009/02/15/world/asia/15pstan.html?_r=1.

⁴³ Interview 6, Case 259.

⁴⁴ Interview 4, Case 259.

Commander Malang, a high-ranking member of Mullah Nazir's group, a Taliban-aligned militant group operating in South Waziristan.⁴⁵

Another Taliban commander, Ghulam Khan, was injured in a drone strike the following day while attending funeral prayers for Rehmanullah at the home of his brother Commander Malang. Commander Ghulam Khan said that Rehmanullah was the younger brother of Commander Malang, but he was not a member of the Taliban. "The first attack was carried out when Rehmanullah was on his way to Wana, in Dabkot. He was an innocent and was martyred. He was a pine nut dealer. He was on his way to bazaar from his home in the morning. The second attack was carried out when people had gathered for the condolences of Rehmanullah after his burial. This attack directed at Malang was carried out at 8 or 9 in the morning when people had gathered for condolences. Besides me, there was Commander Malang, Commander Abdullah, the brother of the late Amir Hamza, and the village elders."⁴⁶

Two other local residents interviewed by researchers for this report also claimed that Rehmanullah was a pine nut dealer and not involved with militancy.⁴⁷ Research by the Bureau of Investigative Journalism indicates, by contrast, that Rehmanullah was a member of the Taliban. Conflicting reports only underscore the difficulty confirming such information—and assessing status of or actual threat posed by individuals in circumstances like FATA, where families may have members of militant groups interacting with those who are not involved in militancy.

Civilians Killed in Targeted Vehicle: Doghi Macha, North Waziristan, October 30, 2011⁴⁸

On October 30, 2011, around 11:00 am, a U.S. drone fired at least one missile at a car travelling in Doghi Macha, near Khar Kamar, North Waziristan, killing four individuals. One of those killed is believed to be Shaheed ur Rehman. According to two family members of Shaheed ur Rehman and one local resident who was at the site of the attack shortly after the strike interviewees, Rehman was a chromite mining businessman from Doghi Macha who was travelling with several day laborers in his car when they were attacked. Both relatives stated that in addition to Shaheed ur Rehman, the three others killed were named Sadari, Kastori, and Hafiz Abdur Rehman. A man named Noor Zal was seriously injured. Three separate interviewees provided independent accounts that were highly consistent with each other, including details of the victims' identities, occupations, approximate numbers of dead and injured, the location and time of the strike, the business dealings of one of the victims, and that all were unconnected to militancy. The reported death of Shaheed ur Rehman as well as three other companions in a car, as well as his connection to chromite mining and the occupants' civilian status is consistent with a local news report at the time of the strike.⁴⁹

⁴⁵ Bill Roggio, "U.S. Adds Mullah Nazir Group, Subcommander to Terrorism List," *The Long War Journal*, February 26, 2013, http://www.longwarjournal.org/archives/2013/02/us_adds_mullah_nazir.php. Mullah Nazir was killed by a drone strike in January 2013. "Obituary: Mullah Nazir," BBC News, January 3, 2013, <http://www.bbc.co.uk/news/world-asia-20896839>.

⁴⁶ Interview 1, Case III.

⁴⁷ Interview 2 and 3, Case III.

⁴⁸ *The New York Times*, however, reported that a local farmer stated that three of his relatives were killed in this strike, though the names provided by the farmer are not consistent with those provided to interviewees in Waziristan. See Declan Walsh, Eric Schmitt, and Ihsanullah Tipu Mehsud, "Drones at Issue as U.S. Rebuilds Ties with Pakistan," *The New York Times*, March 18, 2012, <http://www.nytimes.com/2012/03/19/world/asia/drones-at-issue-as-pakistan-tries-to-mend-us-ties.html?pagewanted=all>.

⁴⁹ Malik Mumtaz Khan, "Four Miners Killed in North Waziristan Drone Attack," *The News International*, October 31, 2011, <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=9973&Cat=13>. Other reports note claims of locals at the time that those killed were not connected with the militancy. See <http://dawn.com/2011/10/31/six-killed-in-us-drone-attack/>;

Zia, who arrived at the scene of the attack shortly after, told researchers, “There was a vehicle they just used it for business to pick up and drop off laborers. They were going for a business deal. Rehman was in the vehicle along with his companions. They were very poor and had no connections with any one; they were just going in search of work. When we went there, believe me, their faces were completely mutilated. They looked awful and their body parts were scattered everywhere. They were in a very bad condition, when we saw them, we felt very sorry.”⁵⁰

According to Tariq, Shaheed ur Rehman’s nephew, “He [Rehman] left us in the morning, and told us that he was going to make some business as the Eid [holiday] days were near, but he did not come back.”⁵¹

Shaheed ur Rehman’s death greatly impacted the family. “He had been in this [chromite] business for the last 10-12 years,” according to Tariq. “It was a very good business, so we were economically sound. But now that my uncle has died we are facing economic difficulties. He was a good man; how can this have happened to him? He was the head of our family.”

According to Wajib, Shaheed ur Rehman had four sons and two daughters. “They are now orphans. There is no one to look after the business. We are with God’s mercy now.”⁵²

Putting Drone Strikes in Context: Militancy, Oppression, and Human Rights in FATA

The debate over drones in the international community and in Pakistan’s public discourse often focuses on the death, injury, and economic and psychological harm that U.S. drone strikes cause to the people of FATA. From the perspective of many Pakistanis, there is too little attention paid to the background situation in FATA, in particular the serious, systematic human rights violations connected to long-term economic, political, and legal marginalization and failed counter-terrorism policies.

Civilian residents of North and South Waziristan interviewed by researchers for this report had diverse views on the accuracy and effectiveness of drones but described life in areas affected by drones and militancy as extremely hard and dangerous. Many decried the violence on both sides, expressing both despair and anger at the unpredictability of drone strikes, as well as a feeling of helplessness as they are caught in between the Taliban and U.S. drones.

“People want peace. People are fed up with the Taliban. But people are also afraid of the Taliban because they kill their opponents. No one will speak against them. If you allow the Taliban to sit with you then drones target them and you are also killed with them. People are caught between the devil and the deep blue sea.”⁵³

<http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/30-Oct-2011/At-least-6-people-killed-in-US-drone-attack-in-North-Waziristan>;

⁵⁰ Interview 3, Case 6.

⁵¹ Interview 1, Case 6.

⁵² Ibid.

⁵³ Interview 1, Case 14.

Human Rights Denied and Impunity for Abuse

The Pakistani state bears responsibility for ensuring security and rule of law in FATA, including the areas of North and South Waziristan where the vast majority of drone strikes take place. Yet the human rights situation in FATA remains bleak. Residents of FATA are currently denied full political, civil, and legal rights in Pakistan. They are subject to the draconian, colonial-era Frontier Crimes Regulation (FCR), that authorizes measures such as collective punishment and detention without trial, which are clear violations of international law and fundamental rights.⁵⁴ Though FATA residents are ostensibly protected by the Constitution of Pakistan, they have no access to Pakistani courts, and no way of enforcing rights and protections.

“The FCR is a law for animals, not people,” according to Malik Azmat Khan, a member of the National Assembly from Dir district in Khyber-Pakhtunkhwa province. “FATA has been ignored for the last 65 years; we still have no fundamental rights, clean water, roads, education, and health. We need local administrative systems, and a separate province,” according to Habib Orakzai, from the Kurram Agency in FATA, and the leader of the United Tribal Party.

The lack of an accountable civilian administration in FATA undermines the ability of the Pakistani state to provide basic services, infrastructure, development, and security to residents of FATA. International and Pakistani human rights organizations, including the Human Rights Commission of Pakistan have claimed that Pakistani security forces in FATA and KP have committed serious human rights violations in connection to major military operations, as well as counter-terrorism and law enforcement operations.⁵⁵ Such operations are rarely followed by public investigations or redress for civilian harm as they are in other parts of the country.

Meanwhile, the ongoing failure to enforce rule of law and the lack of effective governance in FATA has enabled militant groups to engage in widespread human rights abuses, including indiscriminate terrorist attacks, extrajudicial executions, and intimidation of health and education workers. Militant groups also use U.S. drone strikes to justify the formation of death squads to identify alleged spies who are often summarily executed.⁵⁶ Targeted killings and assassinations continue to be conducted against government officials, government-aligned tribal elders, journalists, human rights activists, aid and health workers, and other persons throughout FATA and KP accused of opposing the agendas of militant groups. There is no public record of the number of civilians killed in such incidents.

“People are helpless and can do nothing,” said Salman Shah, whose relative and local tribal leader Malik Afzal Khan was kidnapped and killed in North Waziristan in 2009. “Everyone knows who is involved in such kinds of terrorism. However, no one can dare say anything.

⁵⁴ HRCPC 2011 Annual Report, <http://50.87.51.207/~hrcpweb2/pdf/areports/7.pdf>; See also Amnesty International, *The Hands of Cruelty: Abuses by Armed Forces and Taliban in Pakistan's Tribal Areas*, December 2012, <http://www.amnesty.org/en/library/asset/ASA33/019/2012/en/a38b1e69-afec-4e73-bcf2-1405fa0c71fc/asa330192012en.pdf>; U.S. Department of State, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>; Interviews with residents of FATA. Interviews with Pakistani experts and analysts.

⁵⁵ Ibid.

⁵⁶ Declan Walsh, “Drone War Spurs Militants to Deadly Reprisals,” *New York Times*, December 29, 2012, <http://www.nytimes.com/2012/12/30/world/asia/drone-war-in-pakistan-spurs-militants-to-deadly-reprisals.html>; Alex Rodriguez, “Pakistani Death Squads Go After Informants to U.S. Drone Program,” *Los Angeles Times*, December 28, 2011, <http://articles.latimes.com/2011/dec/28/world/la-fg-pakistan-death-squads-2011228>.

Even now I want to say what I know, but I cannot as I have no freedom of expression and I fear I will be killed.”⁵⁷

The reality is that civilians face abuse and human rights violations from all sides, including oppressive curfews, restrictions on freedom of movement, unlawful detention, arrest, torture, extrajudicial execution, and targeted killings.⁵⁸ For many, it feels like U.S. drone strikes only add to these fundamental, day-to-day grievances and injustices, rather than alleviate them.

“The people in FATA are faced with severe threats, their life has become miserable: the economy is shattered, the culture is damaged, and businesses are shut. People’s land as well as schools and hospitals are confiscated and turned into military posts. An entire way of life has been finished.”⁵⁹

The issuance of the Action in Aid of Civil Power Regulations (AACP Regulations) by President Zardari in July 2011 has in many ways exacerbated the human rights situation.⁶⁰ Portrayed as an effort to bring detentions within the rule of law and provide detainees with protections and rights, the AACP Regulations have in effect legalized unconstitutional detention practices and granted sweeping powers to the military and security forces to detain individuals without charge or trial.⁶¹ Since 2009, thousands of individuals throughout KP and FATA have been unlawfully and indefinitely detained, and subjected to forced disappearance. Many remain in detention in officially designated government “internment centers” or in undisclosed locations of detention.⁶²

“Although we call the FCR a black law, the AACP Regulations are even more severe than the FCR. There were reforms to the FCR announced in August 2011--but [the AACP Regulations] have also overshadowed those reforms, like a snake eating its tail.”⁶³

The civilian and military leaders in the Pakistani government continue to lack a coherent strategy for countering terrorism and militancy in FATA or a plan for providing FATA residents with full, equal rights. Instead, the Pakistani government has relied on a mix of military operations and political accommodation of militant groups, as well as development, stabilization and “counter-radicalization” programs, none of which has addressed the fundamental lack of rights for the people of FATA, or promised to bring a lasting end to militancy and terrorism. Recent peace talks between the Pakistani government and the TTP are inconclusive at this writing, but raise further questions as to whether and how the government will ensure protection and respect for the rights of individuals in FATA, should an agreement be reached.

The significant challenges facing Pakistan’s police and judiciary in responding effectively to terrorism and militancy have been well-documented.⁶⁴ In FATA, the challenge of mounting

⁵⁷ Interview 1, Case 4.

⁵⁸ Ibid.

⁵⁹ Interview with former ambassador, Pakistani government official.

⁶⁰ Action in Aid of Civil Power Regulations for FATA and PATA, 27 June 2011, on file with Open Society Foundations.

⁶¹ Dawn, “New Regulations Give Legal Cover to Detentions in Tribal Areas,” 12 July 2011,

<http://beta.dawn.com/news/643548/new-regulations-give-legal-cover-to-detentions-in-tribal-areas-2>.

⁶² Id. See also Umer Farooq, “Year of Recovery of Missing Persons’ Fails to Hold its Promise,” *The Express Tribune*, January 1, 2013, <http://tribune.com.pk/story/487159/year-for-recovery-of-missing-persons-fails-to-hold-its-promise/>; Amnesty International, *The Hands of Cruelty: Abuses by Armed Forces and Taliban in Pakistan’s Tribal Areas*, December 2012,

<http://www.amnesty.org/en/library/asset/ASA33/019/2012/en/a38b1e69-afee-4e73-bcf2-1405fa0c71fc/asa330192012en.pdf>.

⁶³ Interview with Ijaz Mohmand, President, FATA Lawyers Forum, September 2012.

an effective law enforcement response is made even more difficult by its unique legal and political status. Having relied on the FCR and indirect forms of rule to maintain law and order, the Pakistani government has never developed or deployed a significant civilian law enforcement force or capacity in FATA. Pakistani courts do not have jurisdiction in FATA, nor does the criminal procedure code apply. Instead, civilian law enforcement depends on the functioning of traditional jirgas, which have raised serious rule of law concerns and at times failed to respect human rights, particularly those of women, minorities, and the poor. From an operational perspective, such mechanisms have been severely undermined by militant attacks and targeted killings of elders.⁶⁵

With little to no civilian law enforcement capacity, and without a proper legal framework in FATA, there is relative impunity for militancy and terrorism. The Pakistani government has, in turn, relied too much on military responses and highly problematic customary law for counter-terrorism which are inconsistent with Pakistan's obligations under international human rights law.

“Unless and until the status of FATA changes, there is no law enforcement or prosecutions,” according to Kahawaja Khalid Farooq, former head of Pakistan's National Counter-Terrorism Authority (NACTA). “We have to deal with this problem under customary law. Under customary law we can use force—they kill people, so we have to use force.”⁶⁶

Drone Strikes: A Tactic, Not a Strategy

The United States is conducting drone strikes in areas where communities feel extremely vulnerable, abandoned, and besieged by both militants and the military. Though U.S. officials may believe that such operations are effective and in U.S. national security interests, there is a complex debate in Pakistan over the efficacy of drone strikes, the long-term costs, and how such operations fit into a broader strategy for combating militancy in FATA.

Several current and former Pakistani officials acknowledged that U.S. drone strikes have been effective at undermining the short-term operational capabilities of militant groups in FATA, and perhaps provided a tactical advantage to the Pakistani military. According to Talat Masood, “The generals believe that drones help contain militants. This containment, pressure, gives Pakistan an opportunity to take advantage militarily. The leadership of militants becomes fragmented and it's harder for them to exercise control.”⁶⁷ Another currently serving Pakistani security official agreed. “Yes, no doubt drones cause collateral damage but drones are playing a vital role in containing militants. It's the easiest way.”⁶⁸ Though some interviewees claimed that drone strikes are counter-productive because they provide militants with propaganda that assists in recruitment, others believed that such

⁶⁴International Crisis Group, *Countering Militancy in FATA*, October 2009; Asia Society, *Stabilizing Pakistan through Police Reform*, Hassan Abbas, ed., July 2012, http://asiasociety.org/files/pdf/as_pakistan_police_reform.pdf; Stephen Tinkel, *Domestic Barriers to Dismantling Militant Infrastructure in Pakistan*, United States Institute of Peace, September 2013, <http://www.usip.org/sites/default/files/PW89-Domestic%20Barriers%20to%20Dismantling%20the%20Militant%20Infrastructure%20in%20Pakistan.pdf>; Zulfiqar Hameed, “The Anti-Terrorism Law of Pakistan: Need for Reform,” *Social Science and Policy Bulletin*, Lahore University of Management Sciences, Winter/Spring 2012, http://www.academia.edu/2603468/The_Anti-Terrorism_Law_Of_Pakistan_Need_For_Reform;

Interview with Khalid Farooq, then-chairman of NACTA, February 18, 2013, Islamabad.

⁶⁵ Shuja Nawaz, *FATA—A Most Dangerous Place*, January 2009, Center for Strategic and International Studies, http://csis.org/files/media/csis/pubs/o81218_nawaz_fata_web.pdf.

⁶⁶ Interview with Khalid Farooq, then-chairman of NACTA, February 18, 2013, Islamabad.

⁶⁷ Interview with Lt. Gen. Talat Masood (ret.), Islamabad, February 20, 2013.

⁶⁸ Interview with Pakistani intelligence official.

concerns are overstated. As former spokesperson for Inter-Service Public Relations, Major General Athar Abbas put it, “I don’t believe that it helps recruitment—do you believe the militant groups want more drones? If this were true they would welcome this policy—but they don’t.”⁶⁹

However, several current and former Pakistani officials point to how the expansion of the drone program has had significant political and strategic costs for the Pakistani military and government.

“Some big names have been killed but there is also collateral damage, psychological effects, and the helplessness of Pakistan’s own military, which in turn is used by the political right and the militants to criticize the Pakistani military,” according to Major General Athar Abbas. As a result, “drones create an atmosphere in which people view the state as helpless.”⁷⁰

Other current and former officials interviewed echoed this concern that U.S. drone strikes feed into militant groups’ narratives of the Pakistani state and its alliance with the United States, as well as popular discourse that tends to blame the United States for current levels of conflict and instability in Pakistan. “It’s always leverage for militants to reinforce doctrine, policies, and their narrative; you’re constantly apologizing for your ally, and your ally is perceived as an enemy but it is not the real enemy,” said one former military official.⁷¹ Another official agreed: “It gives strength to the argument that this is not Pakistan’s war, its America’s war.”⁷²

The secrecy of the drone campaign fuels conspiratorial claims about U.S. responsibility for other secretive activity in Pakistan and obfuscates the responsibility of Pakistan government officials. Some political elites privately support drone strikes but publicly denounce them, all the while aware that there has been comparatively little public awareness of or political pressure for the necessary legal and political reforms in FATA.

When it comes to addressing militancy and terrorism in FATA, most interviewees said the real issue is the status of FATA, and the lack of strong Pakistani leadership and long-term strategy. According to Ayaz Wazir, from South Waziristan and a former Pakistani ambassador to Afghanistan, “Drones are not the cure. If militancy is the cancer, you’re just killing some individuals, and when you kill that person the germs don’t die but spread and infects others.”⁷³ Wazir argues that the military alone cannot bring security and rule of law to these areas; empowering the people of FATA is the only way forward. “It’s about operational capabilities in FATA; you must empower the local people, make them shareholders, owners. This is what United States doesn’t understand, how to strengthen the hands of Pakistanis in FATA.”⁷⁴

“Pakistan’s neglect of FATA is the problem—but drones going away also doesn’t solve the problem. This is a symptomatic approach; you need to address the root causes of militancy,” according to Talat Masood. “But the government doesn’t seem interested or prepared to own

⁶⁹ Interview with Major General Athar Abbas, Rawalpindi, February 21, 2013.

⁷⁰ Ibid.

⁷¹ Interview with former Pakistani military official.

⁷² Interview with former Pakistani government official.

⁷³ Interview with Ayaz Wazir, Islamabad, February 20, 2013.

⁷⁴ Interview with Ayaz Wazir, Islamabad, February 20, 2013.

[the problem of FATA]. The present government has absolved themselves of responsibility for this—of ownership and of having to form some policy.”⁷⁵

Mainstreaming FATA

Political leaders and policy experts broadly agree that FATA should be brought within the formal justice system, and that civilian law enforcement capacity must be developed in FATA in order to tackle militancy and terrorism in the longer term.⁷⁶

In recent years, the Pakistani government has made some reforms in FATA, though falling short of the legal and political reforms necessary to mainstream and normalize FATA, with civilian and military leaders blaming the other for failure.⁷⁷ Reforms adopted in 2011 were important steps forward. The extension of the Political Parties Order to FATA finally ended the prohibition on political party activities. A number of amendments to the FCR made marginal improvements in the legal and due process rights of FATA residents, including prohibiting women, children, and elderly from being subjected to collective punishment, creating the right to bail, and requiring those arrested to be produced before the relevant government authority within 24 hours. However, not only is it uncertain how well these reforms have been implemented, but they fail to grant residents of FATA full legal and political rights.⁷⁸

“The military says that it is a political problem, and that when the political government takes the steps, [the military] says it will be ready,” according to United Tribal Party leader Habib Orakzai. “But when we speak with the prime minister, and the federal government, they say that it is the military that is against reforms. The tribal people must face their problems and demand change—but neither the government nor the military are clear internally, and we don’t know why.”⁷⁹

In a significant move in December 2013, 10 major political parties represented on the Joint Political Parties Committee on FATA Reforms agreed on an 11-point agenda for FATA reforms, including the abolition of the AACP regulations, strengthening law enforcement, local elections, creation of an independent judiciary, and constitutional reform to guarantee

⁷⁵ Interview with Lt. Gen. Talat Masood (ret.), Islamabad, February 20, 2013.

⁷⁶ Shuja Nawaz, *FATA—A Most Dangerous Place*, Center for Strategic and International Studies, January 2009, http://csis.org/files/media/isis/pubs/o81218_nawaz_fata_web.pdf; Daniel Markey, *Securing Pakistan’s Tribal Belt*, Council on Foreign Relations, July/August 2008, <http://www.cfr.org/pakistan/securing-pakistans-tribal-belt/p16763>; Shuja Ali Malik and Joshua T. White, *Governance Reforms in Pakistan’s Tribal Areas: The Long Road to Nowhere?*, U.S. Institute of Peace, October 15, 2012, <http://www.usip.org/files/resources/PB-135.pdf>; International Crisis Group, *Countering Militancy in FATA*, October 2009, [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); Human Rights Commission of Pakistan, *FCR: A Bad Law Nobody Can Defend*, October 2004, <http://www.hrcp-web.org/pdf/FCR%20Report.pdf>.

⁷⁷ “Major Changes Made in FCR: FATA People Get Political Rights,” *Dawn*, August 12, 2011, <http://beta.dawn.com/news/651369/major-changes-made-in-fcr-fata-people-get-political-rights>; see also Asad Zia, “Shortcomings of Political Parties Act: FATA Politicians Call for Quick Reforms before Polls,” *Express Tribune*, March 16, 2013, <http://tribune.com.pk/story/521534/shortcomings-of-political-parties-act-fata-politicians-call-for-quick-reforms-before-polls/>.

⁷⁸ Irfan Ghauri, “Political Reforms: A Century Later, Some Rights for the Tribals,” *The Express Tribune*, August 12, 2011, <http://tribune.com.pk/story/229954/president-zardari-signs-fata-political-parties-order-2002-extension/>; Amnesty International, *The Hands of Cruelty: Abuses by Armed Forces and Taliban in Pakistan’s Tribal Areas*, December 2012. See also Saba Imtiaz, “Fixing Pakistan’s Broken Tribal Laws,” *Foreign Policy*, August 22, 2011, http://southasia.foreignpolicy.com/posts/2011/08/22/fixing_pakistans_broken_tribal_laws. It is also unclear how fully these reforms have been implemented in practice. See G.M. Chaudhry, “Summary of 2011 Amendments to the FCR,” FATA Research Center, FATA Reforms, accessed June 10, 2014, <http://www.fatareforms.org/summary-of-2011-amendments-to-the-frontier-crimes-regulation/>;

⁷⁹ Interview with Habib Orakzai, Islamabad, February 2013.

fundamental rights to the citizens of FATA.⁸⁰ It marked the first time that there appeared to be broad, political consensus on FATA reforms.

The FATA reforms committee and its agenda present a promising opportunity and platform for change. Committee representatives have been meeting with political leaders throughout Pakistan and discussing the committee's recommendations. Time will tell whether the political will exists, particularly if government outreach to the TTP and other radical factions continues, given that such groups have repeatedly rejected the Pakistani constitution.⁸¹

Nevertheless, addressing the cause and costs of U.S. drone strikes ultimately requires progress on reforms in FATA.

Despite significant attention and debate over drone strikes in the international community and in Pakistan, there has been a tendency of Pakistani officials, media, and some in the international community to focus on the issue of drone strikes without attention to the systematic denial of rights in FATA, and the urgent need for legal and political reforms. For example, recent reports and statements on Pakistan by the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, fail to acknowledge how the existing legal and political system in FATA denies citizens fundamental rights, including remedies for violations of their rights by drone strikes.⁸² Senior Pakistani officials and parliamentarians tend to focus on U.S. drone strikes and violations of Pakistan's sovereignty and far less on the long overdue need for legal and political reforms in FATA, or on meeting the needs of the victims of the conflict in the region.⁸³ Playing politics over FATA and U.S. drone strikes exploits the lawlessness of FATA—a result of the Pakistani government's own policies—and allows officials to evade responsibility and accountability for widespread human rights violations.

U.S. assistance to Pakistan, including to the Pakistani military and in support of counter-terrorism operations in FATA, has continued to flow despite a lack of progress on political and legal reform. Some conditions do exist related to combatting terrorist groups and Pakistani security forces' non-intervention into political and judicial processes, though several of these certification requirements have been waived by the U.S. secretary of state in recent years, enabling U.S. assistance to continue to flow despite disappointing progress on meeting such conditions.⁸⁴

⁸⁰ Political Parties Joint Committee on FATA Reforms, "11-Point FATA Reforms Recommendations," December 2013, <http://www.fatareforms.org/11-point-fata-reforms-recommendations/>.

⁸¹ BBC News, "Pakistan Enters Peace Talks with Taliban," February 6, 2014, <http://www.bbc.com/news/world-asia-26065385>.

⁸² United Nations, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Ben Emmerson, UN Doc. A/HRC/25/59, March 11, 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/119/49/PDF/G1411949.pdf?OpenElement>; United Nations, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Ben Emmerson, UN Doc. A/68/389, September 18, 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/478/77/PDF/N1347877.pdf?OpenElement>; UN Special Rapporteur Ben Emmerson, "Statement of the Special Rapporteur Following Meetings in Pakistan," UN Office of the High Commissioner of Human Rights, March 14, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13146&LangID=E>.

⁸³ Agence France-Presse, "Pakistan Backs Drones' Aim, Not Method: Khar," *Dawn*, September 27, 2012, <http://www.dawn.com/news/752444/pakistan-backs-drones-aim-not-method-khar>; Richard Leiby, "Pakistan Calls for End to U.S. Drone Attacks," *The Washington Post*, April 12, 2012, http://www.washingtonpost.com/world/pakistan-calls-for-end-to-us-drone-attacks/2012/04/12/gIQAiZFDT_story.html.

⁸⁴ Susan B. Epstein and K. Alan Kronstadt, *Pakistan: U.S. Foreign Aid Conditions, Restrictions, and Reporting Requirements*, Congressional Research Service, June 1, 2012, <http://www.fas.org/spp/crs/row/R42116.pdf>; Anwar Iqbal, "U.S. Likely to Issue National Interest Waiver over Pakistan Aid," *Dawn*, July 10, 2012, <http://www.dawn.com/news/732997/us-likely-to-issue-national-interest-waiver-over-pakistan-aid>.

In North Waziristan, the military’s ongoing Operation Zarb-e-Azb aims to dislodge militant groups that have used the agency as a base for well over a decade. The Pakistani military describes the operation as a “comprehensive operation against foreign and local terrorists who are hiding in sanctuaries in North Waziristan.” So far the operation has displaced a million people, caused an unknown number of civilian casualties, and led to a humanitarian crisis. Time will tell whether the Pakistani military’s operation will provide security in the long-term, and whether military action will be accompanied by genuine legal and political reforms.

Pakistan’s Role: Ensuring Transparency, Accountability, and Redress for Civilian Harm

The United States has clearly failed to meet its obligations on transparency and accountability, and to properly investigate and respond to credible claims of civilian harm. The Pakistani government, however, can also do much more to protect the rights of individuals affected by drone strikes and ensure transparency and accountability. New laws and policies in Pakistani that provide redress and assistance to civilian victims of conflict are an important precedent, and can serve as a basis for addressing civilian losses from drone strikes.

Inconsistent Civilian Casualty Estimates

The Pakistani government has released various, inconsistent estimates of civilian casualties from U.S. drone strikes. In March 2013, the Ministry of Foreign Affairs reported to the UN that from 2004 to 2012, at least 400 civilians had been killed as a result of drone strikes, and that a further 200 individuals were regarded as probable non-combatants.⁸⁵ However, figures reported by the Pakistani Ministry of Defense in October 2013 differed sharply with those estimates, citing only 67 civilian deaths between 2008 and 2013, though several days later defense ministry officials reportedly claimed the figures provided to the senate were “wrong and fabricated.”⁸⁶

Pakistani government documents obtained by the Bureau of Investigative Journalism, which appear to be based on daily situation reports compiled by the FATA Secretariat, record 138 civilian deaths until 2009. From January 2009 to September 2013, “civilian” deaths and injuries are not separately noted, though the documents record hundreds of casualties in strikes from 2009 to September 2013. The Pakistani government also provided reports to the Peshawar High Court from the political agents of North Waziristan and South Waziristan that recorded a total of 1,449 Pakistani civilians killed in drone strikes from 2008 to 2012.⁸⁷

⁸⁵ UN Special Rapporteur Ben Emmerson, “Statement of the Special Rapporteur Following Meetings in Pakistan,” UN Office of the High Commissioner of Human Rights, March 14, 2013.

⁸⁶ Pakistan Senate Secretariat, “Questions for Oral Answers and Replies to Be Asked at a Sitting of the Senate to Be Held on Wednesday, the 30th October, 2013, Deferred Questions,” October 30, 2013, http://www.senate.gov.pk/uploads/documents/questions/138311609_934.pdf; Ahmad Norrani, “Defense Ministry Admits to Sending Wrong Drone Figures to PM,” *The News International*, November 6, 2013, <http://www.thenews.com.pk/Todays-News-13-26495-Defence-ministry-admits-sending-wrong-drone-figures-to-PM>.

⁸⁷ F.M.Sabir, Advocate Peshawar High Court, *Peshawar v. Federation of Pakistan through Ministry of Defence and Five Others*(Is this the name of the court case?), Peshawar High Court, Writ Petition No. 1551-P/2012, May 9, 2013, <http://www.peshawarhighcourt.gov.pk/images/wp%201551-p%2020212.pdf>.

By contrast, the Pakistani government has collected quite detailed information on damage, death, and injuries from terrorism and armed conflict in KP and FATA. Since 2008, according to reports submitted by Pakistani intelligence officials to the Peshawar High Court the conflict caused the death of 5,152 civilians, 1,489 army officials, 675 Frontier Corps soldiers, 1,717 police officers, and 243 members of tribal militias.⁸⁸

The Pakistani government has not made clear what criteria and evidence officials use to determine the combatant status of those killed or injured in U.S. drone strikes or what accounts for its sharply different estimates of civilian casualties. In addition, despite Pakistani government and military officials having raised and discussed the drone strike program with U.S. officials for years, and at the highest levels, there is no public indication that Pakistan has requested U.S. intelligence reports or post-strike assessments of civilian casualties.

Lack of Civilian Harm Assessment and Compensation Policies

The FATA Secretariat, the lead civilian government entity in FATA, has in some cases demonstrated the capacity to collect information regarding civilian casualties.⁸⁹ The government, however, does not have a policy that provides compensation to victims of drone strikes, nor has the Pakistani government provided compensation in any of the cases investigated. Given how much information the FATA Secretariat and other elements of the Pakistani government appear capable of collecting and reasonably verifying, it is likely that the government could investigate claims of civilian harm and providing compensation and other forms of assistance to victims. Pakistani security, military, and intelligence officials could also provide significant assistance to such efforts.

The FATA Secretariat's process for collecting information on drone strike casualties is complex and depends upon the situation and accessibility of the area of the drone strike. The information is primarily collected through *tehsildars* (administrative heads of sub-districts) and *khasadars* (local law enforcement officers) who obtain information by visiting the site of the strike and questioning the local witnesses and local tribal elders or maliks.

In complex cases, the political agent and/or the assistant political agent along with a local committee of tribal elders may visit the site of the incident to verify information. These local tribal and community leaders are FATA officials' key interlocutors in the implementation of relevant regulations and laws and often act as intermediaries between militant groups and the government. All information regarding casualties is provided to the office of the political agent, which in turn provides such information to the FATA Secretariat. Pakistani military and intelligence officials may collect information on casualties from drone strikes, though this information is reportedly not shared with the FATA Secretariat, though it may be incorporated into casualty estimates of other elements of the government such as the Ministry of Foreign Affairs.

There is also a lack of mechanisms or procedures within the FATA Secretariat for verifying information or collecting evidence from the scene of drone strike such as photography, documentation or forensic evidence. FATA Secretariat officials also frequently lack access to the sites of drone strikes because of insecurity or ongoing military operations, as well as

⁸⁸ "More than 9,000 Terrorism Linked Deaths in KP/FATA since 2008," *Dawn*, March 27, 2013, <http://www.dawn.com/news/798134/more-than-9000-terrorism-linked-deaths-in-kp-fata-since-2008>.

⁸⁹ Interviews with current and former Pakistani government officials.

limited financial and technical support necessary to conduct such investigations. Sophisticated technologies, however, are not necessary to conduct basic investigations and provide compensation, as has been done for victims of conflict elsewhere in Pakistan.

To be sure, the FATA Secretariat is a deeply problematic institution.⁹⁰ Without elections or representative political bodies in FATA, the FATA Secretariat remains largely unaccountable to the people it is meant to serve. For years, foreign assistance has been provided without being tied to progress on fundamental legal and political reforms, and despite such investments and major efforts at capacity building, the FATA Secretariat remains seriously dysfunctional.⁹¹ Yet even the limited amount of progress the FATA Secretariat has been able to make demonstrates the capacity for government institutions to respond to civilian harm, and the need for greater engagement by the Pakistani government. Throughout Pakistan, civilian victims of armed conflict, militant attacks, and terrorism are provided compensation by government authorities. Since May 2013 the FATA Disaster Management Authority has had the authority to provide compensation to civilian victims of conflict (300,000 PKR in the case of civilian death, and lower amounts for injuries and property damage). Government officials still retain significant discretion in the provision of compensation. However, according to interviews with government officials, this policy does not extend to civilian victims of drone attacks.⁹² In addition, the FATA Secretariat lacks sufficient or specifically earmarked funds to conduct investigations and provide relief to victims of drone strikes.

When Khalil ur Rehman's brother was killed in a drone strike in North Waziristan in 2009 he left behind nine children. "Several times we have asked the government and made claims for compensation to help his widow and children. But every time these requests fall on deaf ears and we have had no reply. We have submitted our applications so many times with the assistant political agent and have talked to the jirgas as well, but we get nothing."⁹³

Precedent for Civilian Victim Assistance in Pakistan

The government response in FATA to drone strike victims differs markedly from victims of armed conflict elsewhere in Pakistan. While the Pakistani government collects information, verifies civilian casualties and provides compensation and redress to those killed or injured by terrorist and militant attacks as well as in some cases Pakistani security forces, there are no policies or funds dedicated to systematically verify civilian harm from U.S. drone strikes and provide compensation and redress.

There are several positive instances of Pakistani provincial governments trying to improve responses to civilian harm from armed conflict and terrorism more broadly, including efforts to enshrine victim assistance as a right, expand access, and reduce the politicized, highly discretionary manner in which compensation has been provided.

The Balochistan Civilian Victims of Terrorism (Relief and Rehabilitation) Act 2014, passed by the Government of Balochistan in January 2014 is a prime example of how elements of the Pakistani government are establishing mechanisms to assess civilian harm and provide assistance. The act provides for the establishment of a special fund for the civilian victims of

⁹⁰ International Crisis Group, *Countering Militancy in FATA*, October 2009.

⁹¹ Colum Lynch, "USAID Program for Pakistani Tribal Areas Making Little Headway, Audit Finds," *The Washington Post*, January 29, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/28/AR2010012803563.html>.

⁹² Interviews with knowledgeable Pakistani government officials, February 2014.

⁹³ Interview 2, Case 24.

conflict and terrorism, standardizes compensation and rehabilitation policies and procedures, and requires government officials to gather information regarding civilian victims and provide compensation within specified timetables. Though implementation may pose additional challenges, the act nevertheless provides civilian victims with a clear right to government assistance—and mandates government officials to investigate and respond to civilian harm.⁹⁴

The Government of Khyber Pakhtunkhwa also provides compensation to civilian victims of conflict and terrorism on the basis of executive orders or administrative notifications. Though the government lacks a comprehensive legal and policy framework on civilian victim assistance, in practice compensation has been found to be relatively efficient and effective.⁹⁵ The Khyber Pakhtunkhwa government is currently considering the establishment of a specific conflict victim support fund to support victim assistance as well as legislation similar to that adopted by the Government of Balochistan.

The Azad Jammu and Kashmir Cease Fire Line Incidents Relief Act 1992 was enacted to provide relief to persons who are physically affected by “enemy action” along the cease fire line in Azad Jammu and Kashmir.⁹⁶ Precedent also exists in Punjab and Sindh provinces, though compensation provision has been more ad hoc here, subject to significant official discretion, and frustrated by cumbersome bureaucratic procedures. In addition, politicians throughout Pakistan have tended to focus more on compensation and assistance for civilian victims of terrorist attacks and bomb blasts, and less on victims of military and counter-terrorism operations. Nevertheless, clear legal and policy mechanisms do exist in other areas of Pakistan.

Finally, the U.S. government also works with the Pakistani government in KP and FATA to provide support to victims of conflict through USAID’s Civilian Victim Support Program (CVSP). The program provides short-term relief directly to victims of armed conflict in KP and FATA, including medical assistance, vocational training, and economic assistance.⁹⁷ Such initiatives can serve as a model for expanded assistance programs for victims of conflict throughout Pakistan, including victims of U.S. drone strikes.

Pakistan’s Legal Obligations

The U.S. drone program in Pakistan has changed significantly over time as have claims regarding the alleged cooperation, complicity, and consent of the Pakistani government.⁹⁸

⁹⁴ Prior to this legislation, the Balochistan government has in some cases provided compensation on a discretionary basis but lacked specifically allocated funds, designated budget lines, and standardized procedures. See Institute of Social and Policy Sciences, *Compensating Civilian Victims of Terrorism and Conflict in Pakistan*, 2011, <http://isps.org/Publications/Info/CC%20Report.php>. See also Javed Rezayee and Christopher Rogers, “Pakistani Law Helps Victims of Conflict, Sets Precedent,” Open Society Foundations, May 9, 2014, <http://www.opensocietyfoundations.org/voices/pakistani-law-helps-victims-conflict-sets-precedent>.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ See International Relief and Development, “Strengthening Pakistan’s Ability to Assist Conflict Victims,” <http://www.ird.org/our-work/programs/strengthening-pakistans-ability-to-assist-conflict-victims>.

⁹⁸ International Crisis Group, *Drones: Myths and Realities*, May 21, 2013, <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan/247-drones-myths-and-reality-in-pakistan.aspx>; United Nations, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Ben Emmerson, Human Rights Council, UN Doc. A/HRC/25/59, March 11, 2014, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_59_ENG.DOC; Greg Miller and Bob Woodward, “Top Pakistani Leaders Secretly Backed CIA Drone Campaign Secret Documents Show,” *The Washington Post*,

This makes assessing legal and policy aspects of the program difficult. What has remained constant, however, is that pledges on transparency and accountability from leaders in both the United States and Pakistan have not been met, nor have the U.S. or Pakistani governments publicly clarified the exact nature and scope of Pakistan's consent.

However, even if the Pakistani government had consented to U.S. drone strikes, this would not necessarily render such actions legal as a matter of international law. Under international law as a state party to the International Covenant on Civil and Political Rights (ICCPR), the Pakistani government can resort to lethal force only to protect against an imminent threat to life. Pakistan can use lethal force subject to international humanitarian law only against individuals and non-state armed groups with whom it is actively engaged in an armed conflict.⁹⁹

Because the Pakistani government can only consent to the use of force by another state that itself would be legally permitted to undertake, it cannot permit the United States to conduct lethal operations against an individual who does not pose an imminent threat to life as defined under human rights law or against an individual or group with whom Pakistan is not engaged in an armed conflict. Quite simply, as UN special rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns concluded, "States cannot consent to violations of international human rights law or international humanitarian law on their territory."¹⁰⁰

Doing so would violate Pakistan's international human rights law and international humanitarian law obligations to Pakistani citizens and those on its territory. Nor can Pakistan evade such legal obligations by voluntarily ceding control over certain areas of territory to non-state armed groups.

In addition, regardless of whether it has consented to such strikes, Pakistan also has a legal obligation to protect such individuals from attack and to conduct investigations into potential human rights and humanitarian law violations connected to U.S. drone strikes.¹⁰¹

Pakistan's recent proposed resolution to the UN Human Rights Council, which was adopted in March 2014, focuses on the obligations of states using drones, and highlights concerns

October 24, 2013, http://www.washingtonpost.com/world/national-security/top-pakistani-leaders-secretly-backed-cia-drone-campaign-secret-documents-show/2013/10/23/15e6bod8-3beb-11e3-b6a9-da62c264f40e_story.html.

⁹⁹ International Covenant on Civil and Political Rights, opened for signature December 16, 1966, 999

U.N.T.S. 171 (entered into force March 23, 1976, Pakistan acceded June 10, 2010),

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. See also *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, UN Doc. A/CONF.144/28/Rev.1 at 112 (1990), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOffForceAndFirearms.aspx>.

¹⁰⁰ United Nations, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Ben Emmerson, UN Doc. A/68/389 18, September 2013, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/478/77/PDF/N1347877.pdf?OpenElement>.

¹⁰¹ International and regional human rights courts and bodies have found that states have a positive obligation to prevent third parties from committing human rights violations on their territory. See UN Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (Eightieth session, 2004), UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 8; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment, 1998. ECtHR, *El Masri v Former Yugoslav Republic of Macedonia* (2012) App. No. 39630/09, Judgment of December 13, 2012. See also *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. A/RES/60/147, 16 December 2005.

regarding compliance with international law and state sovereignty. Yet the resolution fails to explicitly address the territorial state’s human rights obligations.¹⁰²

In a recent decision, the Peshawar High Court held that the Pakistani government has a legal obligation to prevent U.S. drone strikes that violate Pakistan’s sovereignty and the right to life. The court ordered that the government, among other actions, ensure that the drone strikes cease, request that the Security Council or General Assembly pass a resolution condemning drone strikes, and take the matter before the Security Council “to file a proper complaint, giving complete details of the losses sustained by Pakistani civilians both to life and properties due to drone strikes” and request the UN Secretary General to “constitute an independent War Crimes Tribunal” that could mandate the United States to provide “complete and full compensation for the victims’ families for life, and properties at the rate and ration laid down under international standards.”¹⁰³

While the Peshawar High Court’s ruling is in many ways a flawed one, the court has highlighted Pakistan’s legal responsibility to protect the rights of the people in its territory who are being subject to the use of lethal force by another state and to seek appropriate compensation and redress for such individuals.¹⁰⁴

Recommendations

To the Federal Government of Pakistan:

- Create a formal mechanism within a capable, transparent, and accountable government body to identify, publicly acknowledge, and provide compensation, relief, and rehabilitation to civilians killed or injured by U.S. drone strikes, both in the past and prospectively.
- Provide the responsible government body with sufficient technical and financial resources to conduct proper investigations of civilian harm. Create a budget line or fund specifically designated for compensation and assistance for victims of U.S. drone strikes.
- Provide public estimates of overall civilian death and injuries from U.S. drone strikes as well as the criteria for determining civilian, “militant” or combatant status. Publicly investigate all past and future credible claims of civilian harm from U.S. drone strikes.

^{102a} Pakistan Sponsored Resolution on Drones Adopted in UNHRC,” *The Express Tribune*, March 28, 2014, <http://tribune.com.pk/story/688448/pakistan-sponsored-resolution-on-drones-adopted-in-unhcr/>; United Nations, Human Rights Council, “Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law,” UN Doc. A/HRC/25/L.32, 24 March 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.32.

¹⁰³ F.M.Sabir Advocate Peshawar High Court, *Peshawar v. Federation of Pakistan through Ministry of Defence and five others*, Peshawar High Court, Writ Petition No. 1551-P/2012, May 9, 2013, <http://www.peshawarhighcourt.gov.pk/images/wp%201551-p%2020212.pdf>.

¹⁰⁴ Jonathan Horowitz and Christopher Rogers, “Case Watch: A Court in Pakistan Addresses U.S. Drone Attacks,” Open Society Justice Initiative, May 28, 2013,” <http://www.opensocietyfoundations.org/voices/case-watch-court-pakistan-addresses-us-drone-attacks>.

- Publicly commit to a timeline for adopting and implementing FATA reforms. Abolish the FCR, extend the jurisdiction of Pakistan's high courts and parliament to FATA, and adopt the legal and political reforms necessary to guarantee respect for the fundamental rights and international human rights of the people of FATA.
- Engage with and seek the advice of the Political Parties Joint Committee on FATA Reforms and propose policy reforms, executive orders, legislation, and constitution reforms in line with the committee's recommendations. Ensure that any peace deals with militant groups do not violate or undermine the constitutional and human rights of the people of FATA.
- Fulfill obligations to protect and respect the rights of all victims of armed conflict and terrorism in FATA. Ensure victims have access to justice and effective legal remedies for any violation of applicable international human rights or international humanitarian law, including the prosecution of members of militant groups responsible for such violations.
- Seek appropriate reparations from the U.S. government on behalf of victims of unlawful drone attacks. Request that the U.S. government share with the Pakistani government relevant intelligence, post-strike assessments, and other information related to potential instances of civilian casualties from U.S. drone strikes in order to assess civilian harm and provide redress.

To the Government of the United States:

- Take all necessary steps to ensure that U.S. lethal force operations in Pakistan comply with international law, publicly disclose key targeted killing standards and criteria, and ensure effective investigations, tracking, and redress for civilian harm.
- Address serious concerns that the criteria used for determining non-combatant status of individuals harmed in drone strikes underestimates civilian harm and fails to respect the presumption of civilian status. Regularly, formally consult with the Pakistani government and international human rights organizations that have credible information regarding civilian harm.
- Investigate and make public the findings related to all credible claims of civilian harm identified in this and other public reports. Publicly acknowledge every incident of civilian harm from U.S. drone strikes, including specific, appropriate responses to credible claims of civilian casualties.
- Make public the nature and scope of consent provided by the Pakistani government to conduct each U.S. drone strike conducted on Pakistan's territory.
- Expand the USAID-funded Civilian Victim Support Program, which provides economic assistance and vocational training to victims of conflict in KP and FATA, to include victims of U.S. drone strikes, in consultation with the government of Pakistan and the FATA authorities. Provide additional financial and technical assistance to

Pakistani government initiatives to investigate and provide amends to civilian victims of drone strikes, including relevant intelligence and post-strike assessments of civilian harm.

- Publicly call on the Pakistani government to commit to a timetable for adopting legal and political reforms in FATA. Condition military aid on the progress of FATA reforms.
- Investigate claims of human rights abuses by Pakistani security forces in FATA; strictly enforce U.S. prohibitions against assistance to security forces against whom there are credible claims of gross human rights violations (the Leahy Amendments), and certification requirements in Kerry-Lugar-Berman and other legislation conditioning aid on Pakistani efforts toward combatting terrorist groups.
- Press the Pakistani government to ease restrictions on local and international NGOs and journalists' access to FATA to ensure humanitarian assistance and freedom of information.
- Share information and intelligence relating to human rights abuses and crimes committed by militant groups and members with Pakistani authorities to facilitate criminal prosecutions.

Methodology

This paper is based on interviews and research conducted from 2012 to 2014. A total of 96 witnesses and relatives of victims of drone strikes were interviewed, as well as 18 current and former U.S. and Pakistani government officials. Background interviews were also conducted with several knowledgeable academics, experts, and journalists.

To reach witnesses and victims, the Open Society Foundations worked with a national Pakistani organization to conduct research in affected areas, which chose not to be named in this report given the sensitivities associated with conducting research in FATA. The partner organization used a team of researchers who conducted interviews with 96 witnesses, victims, and relatives of victims in North Waziristan and South Waziristan over the course of several months in 2012 and 2013. In total, 27 cases were investigated, and 2 to 6 individuals were interviewed to attest to the factual circumstances of each case. The drone strikes investigated took place between June 2009 and December 2012.

There are significant challenges to conducting credible assessments of civilian harm. Restrictions on access to affected areas by the Pakistani government, control over such areas by militant groups, and the efforts by all sides to influence reporting pose great challenges to the credible documentation of civilian harm from U.S. drone strikes. Independent organizations' estimates of civilian casualties from drone strikes have relied primarily on the aggregation of media reports, which can be useful, but are subject to the impediments above as well as other methodological challenges and inconsistencies.¹⁰⁵

For the purposes of this study, we do not seek to make an assessment of the scale of civilian harm, but simply to illustrate civilian protection issues through a series of case studies. Researchers did not only select cases where civilians were reported to have been killed, but case selection was not randomized, since access and security for the researchers and interviewees were the primary concerns. An effort was made to research a range of incidents, in terms of geographical distribution, and the degree of reported civilian harm. Incidents where no civilian harm had been reported were also included in the research. Findings of civilian harm based on this research should not be used to extrapolate or make conclusions regarding the cumulative level of civilian harm from U.S. drone strikes or proportion of civilian casualties among those killed in drone strikes in Pakistan.

All interviews were conducted in-person, in the directly affected areas of North and South Waziristan, in most cases in the locale where the drone strike being investigated occurred. The names and other certain identifying features and information related to interviewees

¹⁰⁵ Columbia Law School Human Rights Clinic, *Counting Drone Strike Deaths*, October 2012, <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/COLUMBIACountingDronesFinalNotEmbargo.pdf>; International Human Rights and Conflict Resolution Clinic of Stanford Law School and the Global Justice Clinic at New York University School of Law, *Living under Drones*, September 2012, http://www.livingunderdrones.org/wp-content/uploads/2012/09/Stanford_NYU_LIVING_UNDER_DRONES.pdf; The New America Foundation, "Drone Wars Pakistan: Analysis," accessed June 11, 2014, <http://counterterrorism.newamerica.net/drones>; The Bureau of Investigative Journalism, "Obama 2013 Pakistan Drone Strikes," accessed June 11, 2014, <http://www.thebureauinvestigates.com/2013/01/03/obama-2013-pakistan-drone-strikes/>; Bill Roggio, "Charting the Data for U.S. Airstrikes in Pakistan, 2004 - 2014," *The Long War Journal*, accessed June 11, 2014, <http://www.longwarjournal.org/pakistan-strikes.php>.

from North and South Waziristan have been altered in order to protect the interviewees and researchers.

Testimony provided by interviewees was subject to several modes of credibility assessment. Interviews were assessed for internal and external consistency. Interviewers made audio recordings of most interviews conducted, a sample of which were reviewed and analyzed by independent verifiers to ensure quality of translation as well as general reliability of interviews, based on their knowledge of the area. All information provided in interviews was compared with independent media reports to assess credibility—where discrepancies exist, they have been identified, assessed, and noted where relevant.

In addition, a select number of cases were chosen for independent investigation by separate, independent researchers to verify key information including date of strikes, locations, individuals involved, and status of those killed or injured. Though there were several instances where location names were different, perhaps due to issues related to translation and the remoteness of areas in which strikes occurred, such assessments corroborated the key information provided by principal teams of researchers, adding further to the credibility of the interviews conducted. While these efforts go some way to addressing the methodological challenges outlined above, we recognize that they are imperfect.

Researchers did not use a legally specific or complex definition of a combatant or a non-combatant civilian. For interviewing purposes, interviewees' understanding of whether an individual was a member of an armed group, referred to generally by interviewees as "militants" or "Taliban" or "member of Taliban," was all that could be meaningfully obtained and subject to some level of verification.¹⁰⁶

For More Information

To find out more about the Open Society Foundations and our work in the region, please visit:

www.opensocietyfoundations.org/topics/south-asia

¹⁰⁶ The Open Society Foundations recognize that determining status as a legal matter is more complex and is based on a range of factors related to the nature of an individual's participation in hostilities.

