International Crisis Group
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Drones: Myths and Reality in Pakistan

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Table of Contents

Executive Summary i

Recommendations iv

I. Introduction 1

II. Challenging Conventional Wisdom 3
- A. The Sovereignty Question 3
- B. Militant Jihadis – Targets or Allies? 6
- C. The Numbers Game 7
- D. Social, Economic and Psychological Impact 11

III. The Legal Ground 13

IV. Drones and Counter-Terrorism in Pakistan 22
- A. Counter-terrorism Dividends 22
- B. Winning Hearts and Minds or Losing Allies? 23
- C. Public Opinion in FATA: Claims and Counter-claims 25

V. Pakistan's Responsibility 28

VI. The Best Counter-terrorism Strategy in FATA: Rule of Law 31

VII. Conclusion 34

APPENDICES

A. Map of Pakistan 35

B. Map of Khyber Pakhtunkhwa and FATA 36

C. Glossary 37

D. About the International Crisis Group 38

E. Crisis Group Reports and Briefings on Asia since 2010 39

F. Crisis Group Board of Trustees 42

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Executive Summary

Nine years after the first U.S. drone strike in Pakistan's Federally Administered Tribal Areas (FATA) in 2004, the U.S. refuses to officially acknowledge the CIA-run program, while Pakistan denies consenting to it. This secrecy undermines efforts to assess the program's legality or its full impact on FATA's population. It also diverts attention from a candid examination of the roots of militancy in the poorly governed tribal belt bordering southern and eastern Afghanistan and how best to address them. Drone strikes may disrupt FATA-based militant groups' capacity to plan and execute cross-border attacks on NATO troops and to plot attacks against the U.S. homeland, but they cannot solve the fundamental problem. The ability of those groups to regroup, rearm and recruit will remain intact so long as they enjoy safe havens on Pakistani territory and efforts to incorporate FATA into the constitutional mainstream are stifled.

Since 2004, there have been at least 350 drone strikes in FATA, mostly in North Waziristan, South Waziristan and Kurram agencies. These have killed significant numbers of al-Qaeda leaders and senior militant commanders of both the Pakistani and Afghan Taliban, but also scores of innocent civilians, in part because of so-called "signature" strikes that target groups of men based on behaviour patterns associated with terrorist activity rather than known identities.

Even with so-called "personality" strikes in which the individual has been targeted based on evidence of identity, accurate assessments of collateral damage are impossible. Independent researchers, facing significant military and militant-imposed barriers to access in FATA, rely primarily on media reports that depend largely on anonymous U.S. government and/or Pakistani military sources – each with a vested interest in under- or over-reporting civilian casualties.

Neither is it possible to gauge the real feelings of civilians who live in the areas of drone operations. Fearing retaliation from the militants or the military, respondents choose their words carefully. For the same reasons, it is hard to determine with any precision the strategic impact of the drone campaign. While reported signature strikes may in particular fuel local alienation, at the same time, the deaths of senior, highly experienced commanders are certainly a hard blow for the militants.

Pakistan's attitude towards drones borders on the schizophrenic. Rather than inherently opposing the strikes, its leadership, in particular its military, seeks greater control over target selection. This is often to punish enemies, but sometimes, allegedly, to protect militants who enjoy good relations with, or support from, the military – leaders of the Haqqani network, for example, or some Pakistani Taliban groups with whom the military has made peace deals.

Ample evidence exists of tacit Pakistani consent and active cooperation with the drone program, contradicting the official posture that it violates the country's sovereignty. This includes acknowledgements by former President Pervez Musharraf in April 2013 and by then-Prime Minister Yousuf Raza Gilani in 2008 and 2010. After the October 2001 U.S.-led intervention in Afghanistan, Musharraf's military regime permitted a substantial CIA presence in at least two airbases, Shamsi in southern Balochistan and Shahbaz in Sindh's Jacobabad district, for intelligence gathering and collaboration; both were used to gather intelligence for drone strikes and possi-

bly even to conduct them. This cooperation and collaboration signified Pakistan's assent to the program. It was not until the November 2011 NATO air raid that killed 24 Pakistani soldiers near the Afghan border and months after the U.S. raid that killed Osama bin Laden in Abbottabad, vitiating relations with Washington, that Islamabad demanded the U.S. vacate one of the bases.

While drones have not themselves caused the political falling out between Washington and Islamabad, the Pakistani military has attempted to take advantage of downturns in the relationship to leverage greater control over drone targets. Even after the U.S. vacated the Shamsi base in December 2011, some level of Pakistani sanction for the strikes continues. While condemning attacks against its anti-Afghanistan-oriented jihadi allies, such as the August 2012 killing of Badruddin Haqqani, the Haqqani network's third in command, it supports strikes against its internal enemies, such as Maulvi Dadullah, the leader of the Pakistani Taliban in Bajaur Agency, killed in a drone strike in Afghanistan's Kunar province that same month. The U.S. hit list now reportedly includes Mullah Fazlullah, the leader of a Pakistani Taliban faction in Khyber Pakhtunkhwa's (KPK's) Malakand region, ousted in a military operation in 2009, and now operating out of Afghanistan's Nuristan province.

The legal debate does not pivot only on Pakistani consent. Both countries are subject to numerous obligations under international law and their respective domestic legislation. Islamabad has a constitutional and international obligation to protect the lives of citizens and non-citizens alike on its territory. Even if it seeks U.S. assistance against individuals and groups at war with the state, Pakistan is still obliged to ensure that its actions and those of the U.S. comply with the principles, among others, of distinction and proportionality under International Humanitarian Law, and ideally to give independent observers unhindered access to the areas targeted.

The Obama administration should terminate any practice, such as the reported signature strikes, that does not comply with principles of international humanitarian and human rights law. It must also introduce transparency to the drone program, including its governing rules, how targets are selected and how civilian damage is weighed. By transferring its management from the CIA to the Defense Department, the administration would establish clearer lines of authority and accountability, including greater congressional and judicial oversight.

Distorted through hyper-nationalistic segments of the Pakistani media and hijacked by political hardliners, the domestic Pakistani debate on the impact of drone operations has overshadowed a more urgent discussion about the state's obligation to its citizens in FATA, who are denied constitutional rights and protections. In the absence of formal courts and law enforcement institutions, the state fails to protect FATA's residents from jihadi and other criminal groups.

The core of any Pakistani counter-terrorism strategy in this area should be to incorporate FATA into the country's legal and constitutional mainstream. This should be accompanied by a national counter-terrorism policy that prioritises the modernisation of a failing criminal justice sector, thus enabling the state to bring violent extremists to justice.

While the U.S. and international debate over legitimacy and control of drone strikes is highly important, drones are not a long-term solution to the problem they are being deployed to solve – destruction of local, regional and wider transnational jihadis who operate out of Pakistan's tribal belt.

The U.S. policy should be two-fold: pressuring the Pakistan military to abandon any logistical or other support to violent extremists, including by more rigorously applying existing conditions on security assistance; and encouraging and supporting efforts by the elected leadership in Islamabad to extend the state's writ to FATA. Similarly, if Pakistan is genuinely committed to ending strikes on its territory, it should realise that its strongest case against the U.S. drone program lies in overhauling an anachronistic governance system so as to establish fundamental constitutional rights and genuine political enfranchisement in FATA, along with a state apparatus capable of upholding the rule of law and bringing violent extremists to justice.

Recommendations

To introduce transparency to the U.S. drone program in Pakistan and ensure it is consistent with key principles of International Humanitarian and Human Rights Law

To the Federal Government of Pakistan:

1. Enable independent assessment of drone strike casualties and impact on FATA by:
   a) lifting all travel and other restrictions on independent observers, national and foreign, to the targeted areas in FATA; and
   b) conditioning any ongoing consent of drone strikes on the institution of transparent U.S. policies and practices that respect international humanitarian law principles of humanity, distinction, proportionality and military necessity, and ending any active or tacit support should the U.S. program violate those principles.

To the U.S. Government:

2. Demonstrate respect for the international humanitarian law principles of humanity, distinction, proportionality and military necessity, including by:
   a) halting reported signature strikes that target groups of men based on behaviour patterns that may be associated with terrorist activity rather than known identities; and
   b) ending the reported practice of counting all military-aged men in a strike zone as combatants unless sufficient evidence proves them innocent posthumously.
3. Develop a rigorous legal framework for the use of drones that defines clear roles for the executive, legislative and judicial branches and introduces a meaningful level of regular judicial and congressional oversight.
4. Convert the drone program from a covert CIA operation to a military-run program overseen by the Defense Department, with oversight by the Senate and House Armed Services Committees and appropriate judicial review.

To bolster the Pakistani civilian government's ability to protect its citizens and bring violent extremists to justice

To the Federal Government of Pakistan:

5. Ensure that the federal cabinet takes the lead in formulating comprehensive, nationwide and civilian-led counter-terrorism and counter-insurgency policies, centred on enhancing rule-of-law institutions, with input from and oversight by the legislature, particularly the parliamentary committee on national security and the Senate committee on defence and defence production.
6. Make the extension of the state's writ in FATA the centrepiece of the counter-terrorism agenda by:
   a) extending the jurisdiction of the Supreme Court and Peshawar High Court to FATA, as authorised by Article 247 of the constitution;

b) abolishing the FATA secretariat, established by the Musharraf military regime in 2006, and returning its responsibilities to the relevant Khyber Pakhtunkhwa province (KPK) line ministries;

c) incorporating FATA into the constitutional mainstream, abolishing the Frontier Crimes Regulations (FCR, 1901) and replacing it by the Pakistan Penal Code, Criminal Procedure Code and Evidence Act.

d) replacing tribal *jirgas* (councils of elders) with district and sub-district courts, manned by judges, and extending the jurisdiction of the KPK police to FATA;

e) repealing the Actions (in Aid of Civil Power) Regulations 2011 for FATA; and

f) enhancing border management cooperation with Afghanistan to contain and prevent militant cross border movement.

7. Establish clear guidelines for remedial action if and when innocent civilians are injured or killed, whether by U.S. drones or the Pakistani military, and create a compensation fund for such victims.

To the U.S. Government:

8. Implement existing conditions on military aid if the Pakistan military or elements within it do not take concrete steps to end support to the Haqqani network, the Quetta Shura, the Lashkar-e-Tayyaba and other extremist groups, including factions of the Pakistani Taliban; and consider as a last resort imposing targeted and incremental sanctions, including travel and visa bans and the freezing of financial assets of key military leaders and military-controlled intelligence agencies responsible for supporting extremist elements that plan and conduct attacks from Pakistani territory against its neighbourhood and beyond.

9. Shift the priority of security assistance to making Pakistan a strong criminal justice partner by supporting the modernisation and enhancing the counter-terrorism capacity of the police and civilian law enforcement agencies.

10. Condition FATA aid on tangible steps by Pakistan's federal government to extend the state's writ in the tribal belt and implement political reforms – including by abolishing the FATA secretariat and returning its responsibilities to KPK line ministries and instituting an effective law enforcement apparatus – and then provide technical, financial and other support to that new system.

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Drones: Myths and Reality in Pakistan

I. Introduction

When the drone program began in 2004 to target militants in Pakistan's Federally Administered Tribal Areas (FATA),[1] the Pakistani military was allowing the U.S. use of at least two major airbases, Shamsi in southern Balochistan and Shahbaz in Sindh's Jacobabad district. These were allegedly also used by the CIA both to collect intelligence and conduct drone strikes.[2] After the November 2011 NATO attack that killed 24 Pakistani soldiers at a checkpost in FATA's Mohmand Agency near the Afghan border, Pakistan demanded that the U.S. vacate Shamsi, which it did in December 2011.[3] That same month, Pakistan's defence ministry declared that the Shahbaz base was under the air force's control.[4] Whether the U.S. completely evacuated Shahbaz remains unclear.[5] An April 2012 National Assembly non-binding resolution called for an immediate cessation of drone strikes on Pakistani territory.[6]

Given the covert nature of program, it is difficult to determine the extent of continued Pakistani tacit consent or active cooperation. Militant groups, understandably the strongest opponents of the drone program, still hold the state responsible. On 2 February 2013, for example, militants attacked a military checkpost in Khyber Pakhtunkhwa's (KPK's) Lakki Marwat district, adjacent to FATA's South Waziristan Agency, killing 24 people. Claiming credit, the Pakistani Taliban said the attack was meant as retaliation against Pakistani cooperation in the CIA-run program.[7]

It is equally difficult to gauge the impact of drone strikes. Both the military and militants have obstructed access to independent observers in South Waziristan, North Waziristan and Kurram agencies, where most strikes have been conducted.[8] The drones' impact on the ground, including the number of militants and civilians killed, and the long-term impact on FATA's tribal society is therefore difficult to assess.

This report examines the impact of the drone program in FATA within the context of broader challenges in Pakistan-U.S. relations, civil-military relations in Pakistan

[1] For analysis of militancy in FATA, see Crisis Group Asia Reports N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006. FATA is comprised of seven administrative units, or agencies, including Bajaur, Mohmand, Khyber, Kurram, Orakzai, North Waziristan and South Waziristan, and parts of four KPK districts known as Frontier Regions.

[2] Chris Woods, "CIA drones quit one Pakistani site – but U.S. keeps access to other airbases", The Bureau of Investigative Journalism (TBIJ), 15 December 2011. TBIJ is an independent not-for-profit organisation based at City University, London.

[3] "U.S. vacating Shamsi air base, says Cameron Munter", *Dawn*, 5 December 2011.

[4] "Shahbaz base under PAF control", *The Nation*, 2 December 2011.

[5] Woods, op. cit.

[6] Pakistan's bicameral parliament is composed of the National Assembly, the directly-elected lower house, and the Senate, the indirectly-elected upper house.

[7] "Vengeful Taliban: Brazen attack on security forces in Lakki Marwat", *The Express Tribune*, 3 February 2013.

[8] There are stringent travel restrictions for foreigners in FATA, as well as curbs on the movements and activities of citizens who are non-residents.

and governance and security in FATA. It is based primarily on interviews in Pakistan with stakeholders in the legal, political and NGO communities, as well as activists, journalists and researchers working on FATA, and includes an extensive review of the literature on the legality of the drone program.

II. Challenging Conventional Wisdom

A. *The Sovereignty Question*

Washington and Islamabad have no official agreement regarding U.S. drone strikes on Pakistani territory, and the Pakistan government often denounces strikes as violation of both the country's sovereignty and international law.[9] At the same time, Islamabad has repeatedly demanded greater control over the use of drones, if not direct responsibility then a right to agree on targets,[10] thus implying more a desire to acquire greater decision-making authority over the program than to see it end.

According to a U.S. diplomatic cable released by WikiLeaks, in a May 2009 meeting with a U.S. congressional delegation led by Senator Patrick Leahy, chairman of the Appropriations Subcommittee on State, Foreign Operations and Related Programs, President Asif Ali Zardari reportedly said, "give me the drones so my forces can take out the militants [so that] we cannot be criticised by the media or anyone else for actions our Army takes to protect our sovereignty".[11]

There is ample evidence of the Pakistani authorities' tacit consent and even active cooperation with U.S. officials since the start of the drone program in 2004. In 2008, and again in 2010, then-Prime Minister Yousuf Raza Gilani disclosed that General Pervez Musharraf's government had authorised the U.S. to use drones to carry out reconnaissance and surveillance over Pakistani airspace.[12] In the first public acknowledgement of far more active Pakistani participation in the CIA-run program, Musharraf himself admitted during a media interview in April 2013 that his government had secretly signed off on U.S. drone strikes.[13] It had even taken credit for the killing of Pakistani Taliban leader Nek Muhammed in the CIA's first drone strike on 16 June 2004, claiming that it was a Pakistani missile strike.[14]

Musharraf allowed a substantial CIA presence in at least two airbases, Shamsi in southern Balochistan and Shahbaz in Sindh's Jacobabad district, for intelligence gathering and, possibly, to launch some of the drone attacks.[15] The military's claims

[9] On 5 February 2013, for example, Pakistan's ambassador to the U.S., Sherry Rehman, described drone strikes as "a clear violation of our sovereignty and a violation of international law", straining relations between Islamabad and Washington. Karen DeYoung, "Pakistan ambassador to U.S. calls CIA drone strikes a 'clear violation'", *The Washington Post*, 5 February 2013.

[10] For example, during an October 2012 visit to Washington, Interior Minister Rehman Malik told U.S. Secretary of Homeland Security Janet Napolitano: "If we are given drones, we will use them responsibly as we used the [U.S.-supplied] F-16s". Anwar Iqbal, "Drones will be used responsibly, Pakistan assures U.S.", *Dawn*, 8 October 2012. See also "CODEL Leahy meets President Zardari", U.S. Embassy Islamabad cable, 26 May 2009, as made public by WikiLeaks and cited in Hasan Zaidi, "Army chief wanted more drone support", *Dawn*, 20 May 2011.

[11] "CODEL Leahy meets President Zardari", op. cit.

[12] "Musharraf approved US reconnaissance drones: PM Gilani", *The Express Tribune*, 2 October 2010.

[13] Citing "a very fluid situation, a vicious enemy ... mountains, inaccessible areas" as justification for cooperating with the U.S. drone program, Musharraf disclosed that strikes were secretly approved if "there was no time for our own military to act", and "you couldn't delay action". Nic Robertson and Greg Botelho, "Ex-Pakistani President Musharraf admits secret deal with U.S. on drone strikes", CNN, 12 April 2013.

[14] Ismail Khan and Dilawar Khan Wazir, "Night raid kills Nek, four other militants: Wana operation", *Dawn*, 18 June 2004; and Brian Glyn Williams, "The CIA's Covert Predator Drone War in Pakistan", *Studies in Conflict and Terrorism*, vol. 32, no. 10 (2010), pp. 874-875.

[15] Woods, op. cit.

that Shamsi was run by the United Arab Emirates (UAE) and not by Pakistan, and therefore the Pakistani armed forces had no say in the U.S. presence, was a political fig leaf to conceal the actual high level of cooperation.[16]

Army chief General Ashfaq Pervez Kayani, head of the Inter-Services Intelligence directorate (ISI) from October 2004 to October 2007, likely played a central role in shaping intelligence cooperation during and even after the fall of Musharraf's regime.[17] Classified cables of the U.S. embassy in Islamabad, released by WikiLeaks in 2010, show that Pakistan's civil and military leadership had actively supported drone operations. Thus in January 2008, less than a month before presidential elections, General Kayani asked the U.S. to provide drone coverage of parts of South Waziristan.[18] In August 2008, Prime Minister Gilani, brushing aside Interior Minister Rehman Malik's suggestion that the U.S. hold off on drone strikes during the Pakistani military operation in FATA's Bajaur Agency, reportedly said, "I don't care if they do it as long as they get the right people. We'll protest in the National Assembly and then ignore it".[19]

The military, which continued to control security and defence policy after the civilian government was sworn in, provided far more than verbal support for the drone operations. In 2009, a U.S. embassy cable disclosed that the U.S. started embedding special forces with Pakistani soldiers in FATA's North and South Waziristan agencies to coordinate, among other forms of cooperation, drone strikes.[20] Information sharing apparently included monthly notifications to the ISI by the CIA, indicating the boundaries of airspace that drones would use, until the May 2011 U.S. raid in KPK's Abbottabad district that led to Osama bin Laden's killing. The ISI acknowledged receipt of the notifications, implying consent.[21]

The U.S. continued to use the Shamsi airbase throughout 2011. The CIA, however, reportedly stopped launching drones from the base in April 2011, following the killing of two people in Lahore by CIA operative Raymond Davis earlier that year.[22] After the Abbottabad raid, some Pakistani officials, including then-Defence Minister Ahmed Mukhtar, demanded that the U.S. vacate Shamsi, but the government only formally asked Washington to leave the base at the end of November 2011, following the NATO strike on the Salalah checkpost in FATA's Mohmand Agency, bordering

[16] "'Shamsi airbase not under PAF control'", *The Express Tribune*, 14 May 2011.
[17] Crisis Group interview, Ahmed Rashid, author and journalist, Lahore, 21 January 2013. The ISI and Military Intelligence (MI) are Pakistan's main military-run or controlled intelligence agencies.
[18] The cable is unclear on whether his request was limited to surveillance or included strikes. "Admiral Fallon discusses security cooperation with General Kayani", U.S. Embassy Islamabad cable, 11 February 2008, as made public by WikiLeaks and cited in Zaidi, op. cit.
[19] "Immunity for Musharraf likely after Zardari's election as president", U.S. Embassy Islamabad cable, 23 August 2008, as made public by WikiLeaks and cited in Declan Walsh, "WikiLeaks cables: US special forces working inside Pakistan", *The Guardian*, 30 November 2010.
[20] "Pakistan army GHQ again approves embedding U.S. special forces personnel to support military operations", U.S. Embassy Islamabad cable, 9 October 2009, as made public by WikiLeaks and cited in ibid. Also, Tim Lister, "WikiLeaks: Pakistan quietly approved drones strikes, U.S. special units", CNN, 1 December 2010.
[21] Adam Entous, Siobhan Gorman and Evan Perez, "U.S. unease over drone strikes", *The Wall Street Journal*, 26 September 2012.
[22] Karen DeYoung, "CIA idles drone flights from base in Pakistan", *The Washington Post*, 1 July 2011.

on Afghanistan.[23] That implied only a partial retraction of informal Pakistani consent and cooperation, since the U.S. reportedly maintains a presence at the Shahbaz base.[24]

Many Pakistani political leaders certainly oppose the U.S. targeting of Pakistani citizens and are frustrated by their government's inability to respond. Then-National Assembly deputy speaker, Faisal Karim Kundi, whose constituency borders on FATA's South Waziristan Agency, said, "not a single political party supports drones. But what can we do aside from ordering our air force to shoot them down? This would mean declaring war on a superpower".[25] It is, however, the Pakistani military that shapes the political leadership's response, through a variety of means, including briefings given to parliament by the army chief and ISI director general.[26]

As relations between the military and the U.S. deteriorated after the events of 2011, the National Assembly passed a non-binding resolution in April 2012, reviewing relations with Washington and calling for the immediate cessation of drone strikes. The resolution stated: "Pakistan's sovereignty shall not be compromised …. The relationship with U.S.A. should be based on mutual respect for the sovereignty, independence and territorial integrity of each other".[27]

Yet, Pakistan's stance on drones remains ambiguous. Almost nine years after the U.S. conducted its first drone strike in FATA, Pakistan has yet to lodge a formal complaint to the UN Security Council. It also continues to clear airspace for the drones, which the Obama administration interprets as tacit consent.[28] In September 2012, then-Foreign Minister Hina Rabbani Khar said, "the use of unilateral strikes on Pakistani territory is illegal". But while condemning unilateral strikes, Khar also expressed her government's support for the drone program's aim: "What the drones are trying to achieve, we may not disagree. If they're going for terrorists, we do not disagree. But we have to find ways which are lawful, which are legal".[29]

While intelligence sharing declined in 2011 and 2012, meetings between U.S. and Pakistan officials on the drone operations continued. Visiting Pakistan a month after the Abbottabad raid, CIA Director Leon Panetta "was particularly forceful about trying to get Pakistani officials to allow armed drones to fly over even wider areas in the northwest tribal regions".[30] ISI chief General Zaheerul Islam's visit to the U.S. in July 2012 was reportedly aimed at seeking "direct control of predators [drones] for precision strikes and for minimising their political fallout".[31]

It is thus amply clear that the military does not oppose drones, but seeks control over their use, or at least to leverage the debate to obtain more say over target selection.

[23] "Notices sent to vacate Shamsi Airbase: Malik", *The Express Tribune*, 29 November 2011. Also, "Shamsi base is nice but not crucial for drone attacks", *The Express Tribune*, 29 November 2011.
[24] Woods, op. cit.
[25] Crisis Group interview, Islamabad, 1 February 2013.
[26] In October 2011, for instance, Army chief General Kayani briefed parliamentary committees on Pakistan's relations with the U.S. in-camera, telling the political leadership that it was their duty to develop a consensus on drone strikes. A month later, the National Assembly passed a resolution condemning the strikes. Sikander Shaheen, "Army to toe parliament's line", *The Nation*, 19 October 2011.
[27] "Resolution on guidelines for terms of engagement with USA/NATO/ISAF and general foreign policy (resolution #53)", National Assembly of Pakistan, 12 April 2012, p. 1.
[28] Entous, Gorman and Perez, op. cit.
[29] "Pakistan backs drones' aim not method: Minister", *The Express Tribune*, 28 September 2012.
[30] Eric Schmitt and Mark Mazzetti, "Pakistan arrests C.I.A. informants in Bin Laden raid", *The New York Times*, 14 June 2011.
[31] "Spymaster to 'talk tough' on drones", *The Nation*, 19 July 2012.

B. *Militant Jihadis – Targets or Allies?*

Above all, the Pakistan military's attitude to drone warfare reflects the ambiguity of its relationship with militant jihadi groups. "The truth is that Pakistan's military approved of both safe havens for the Taliban and the American drone strikes against them", said an informed observer.[32] Its support for the drones certainly waned in 2010, when the U.S. targeting policy shifted from primarily foreign al-Qaeda operatives and the Tehreek-e-Taliban Pakistan (TTP) to the military's Afghan and Pakistani allies, particularly the Haqqani network and Pakistani Taliban commanders such as Hafiz Gul Bahadur, the signatory of a peace deal with the military in North Waziristan.[33] This U.S. strategy continues. A 2 January 2013 drone strike in South Waziristan, for example, killed another prominent Pakistani Taliban commander, Maulvi Nazir Wazir, also a signatory of a peace deal with the military.[34]

Yet, neither the shift in U.S. targeting nor a changed U.S.-Pakistan dynamic has fundamentally affected the Pakistani military's ambivalence towards drone strikes. In January 2013, a U.S. Special Operations official reportedly said that Swat's Mullah Fazlullah was a top priority of the U.S. drone program.[35] Fazlullah had led a violent campaign to impose Sharia (Islamic law) in KPK's Malakand division from 2007 until April 2009, when he was ousted by a military operation, described by military and government officials as a historic counter-insurgency success.[36] Now reportedly operating from Afghanistan's Nuristan province, he continues to target Pakistani security personnel and civilians in Malakand and was notably responsible for the October 2012 assassination attempt on fourteen-year-old female education activist Malala Yusufzai and two of her school friends.[37] His inclusion on the U.S. hit list reflects Pakistani rather than U.S. counter-insurgency priorities, suggesting that a certain level of cooperation between U.S. and Pakistani security forces likely continues.

With or without Pakistani consent, both countries are subject to numerous obligations under national and international law. By allowing the U.S. to conduct drone operations in FATA, Pakistan is failing in its constitutional obligation to protect the lives of citizens and non-citizens on its territory unless it is at war with those individuals and seeks U.S. assistance for that objective. Even in that case, Islamabad would still be obliged to ensure that its actions and those of the U.S. complied with, at the least, the principles of distinction and proportionality under International Humanitarian Law (IHL).[38] Yet, determining whether individual drone strikes comply with IHL requires greater transparency on the terms of any bilateral agreement, adequate investigation of possible civilian casualties, and unhindered access for independent observers to the areas targeted and the outcome of any such attacks.

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[32] Najam Sethi, "No turning point", *The Friday Times*, 19-25 October 2012.

[33] For data reflecting this shift, see for instance, "The Year of the Drone: Leaders Killed", New America Foundation (NAF). The data is regularly updated. For analysis of the Pakistani military's support to the Haqqani network and peace deals with Pakistani Taliban commanders such as Gul Bahadur, see Crisis Group Reports, *Countering Militancy in FATA*: *The Militant Jihadi Challenge*; and *Pakistan's Tribal Areas: Appeasing the Militants*, all op. cit.

[34] Amir Mir, "Maulvi Nazir's death irks security establishment", *The News*, 4 January 2013.

[35] "Fazlullah on top of U.S. drone target list", *Dawn*, 29 January 2013.

[36] Crisis Group Asia Briefing N°111, *Pakistan: The Worsening IDP Crisis*, 16 September 2010.

[37] Crisis Group Report, N°242, *Pakistan: Countering Militancy in PATA*, 15 January 2013.

[38] Christopher Rogers, "Legality of U.S. Drone Strikes in Pakistan", Center for Research and Security Studies, 2010, p. 4. See also Section III below.

C. *The Numbers Game*

Given the opacity of the drone program and the way the military and militants limit access to FATA conflict areas, conflicting claims about the weapon's accuracy, collateral damage, and overall impact are to be expected.[39] In particular, the absence of officially released and independently verified figures has resulted in widely divergent claims about civilian casualties.

The numbers often cited in the Pakistani press sharply contrast with the Obama administration's unofficial "in the single digits" estimates.[40] According to mid-March 2013 figures of Pakistan's foreign ministry, there have been 330 drone strikes since 2004, killing 2,200 people and injuring 600. Of those killed, the foreign ministry says, 400 were civilian and 200 non-combatants – although the distinction it makes between the latter two categories is unclear.[41]

Very few independent Pakistani NGOs track detailed data on drone strike victims. In 2012, the Islamabad-based Center for Research and Security Studies (CRSS) started issuing regular conflict analysis reports listing the number of attacks, including suicide attacks, drone strikes, and military operations, and the number of casualties caused, broken down, it says, between civilians, militants and security forces. Its figures are based on field reports by the institute's researchers, radio reporters and articles from ten newspapers. Between March 2012 and February 2013, CRSS reported 351 killed and 92 injured in 51 drone strikes, and counted all casualties as "militants".[42] Yet, as discussed later, threats by the military and militants and limited access to the conflict zone undermine field research. Moreover, media sources, particularly in the Urdu press, are at best unreliable. As the research director of a media-monitoring NGO noted, "generally very jingoistic, the Urdu media in its coverage of drone strikes will often not publish exact figures but will make a sweeping statement about the number of civilians killed".[43]

The independent Human Rights Commission of Pakistan (HRCP) and the Pakistan Institute for Peace Studies (PIPS) include drone casualty figures in their annual reports, but without a systematic breakdown of civilian and militant victims.[44] HRCP in particular considers all to be victims of extrajudicial killings.[45] It started reporting on drone casualties in 2011 and estimated that 517 people died that year in 74 strikes;

[39] For details on the military's barriers to access in FATA, see Crisis Group Report, *Pakistan: No End to Humanitarian Crises*; and Briefing, *Pakistan: The Worsening IDP Crisis*, both op. cit.
[40] See, for instance, Sikander Shah, "The folly of drone strikes", *The Nation*, 1 December 2011; and Justin Elliot, "Obama Administration's Drone Death Figures Don't Add Up", ProPublica, 18 June 2012.
[41] These figures were given to Ben Emmerson, UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, during his three-day visit to Pakistan in March 2013. He was also told, "that due to under-reporting and obstacles to effective investigation on the ground these figures were likely to be under-estimates of the number of civilian deaths". "Statement of the Special Rapporteur following meetings in Pakistan", Office of the High Commissioner for Human Rights, UN, 14 March 2013.
[42] See Pakistan Conflict Tracker, CRSS at www.crss.pk. This includes methodology and monthly data sheets up to February 2013.
[43] Crisis Group interview, Islamabad, January 2013.
[44] The Human Rights Commission of Pakistan (HRCP) publishes an annual report on the state of human rights in the country; PIPS, an independent Islamabad-based think-tank, monitors militant violence in Pakistan and publishes a yearly "Pakistan Security Report".
[45] Crisis Group interview, I.A. Rahman, Secretary General, HRCP, Lahore, 22 January 2013.

PIPS estimated 557 killed in 75 strikes.[46] When these organisations do provide a breakdown of their figures, they are generally comparable to estimates by international organisations. For example, PIPS estimated that drone strikes killed six civilians in 2012, one more than the U.S.-based New America Foundation's (NAF's) estimate and one less than the minimum estimate of the UK-based Bureau of Investigative Journalism (TBIJ).[47]

NAF and TBIJ estimates of civilian casualties caused by drones since the onset of the program in 2004 differ. NAF estimates between 261 and 305 civilians were killed out of a total of 1,965 to 3,295 deaths in 351 strikes;[48] TBIJ estimates between 411 and 884 civilians were killed out of a total of 2,537 to 3,581 deaths in 366 strikes.[49] While their interpretation of the data may somewhat vary, both indicate a decline in the number of civilian casualties: NAF from about 10 per cent in 2008, to less than 2 per cent in 2012, TBIJ from 24 per cent to less than 3 per cent during the same period.[50]

Researchers at NAF attribute the decline in civilian casualties to increased presidential and congressional oversight of the CIA-run program.[51] President Obama reportedly evaluates and personally signs off on strikes for which the CIA lacks "near certainty" that they will not kill civilians.[52] According to Senator Dianne Feinstein, members of the Senate Intelligence Committee she chairs "receive notification shortly after each strike, … hold regular briefings and hearings on these operations … and question every aspect of the program including legality, effectiveness, precision, foreign policy implications and the care taken to minimise non-combatant casualties".[53] According to PIPS director Mohammed Amir Rana, "since late 2011, because of criticism, most drone strikes have been on the roads, on vehicles, not on gatherings".[54]

Research organisations face significant hurdles in producing accurate figures. All rely primarily on news reports; their differences result from diverging interpretation

[46] "State of Human Rights in Pakistan in 2011", HRCP, 2012, p. 50; and "Pakistan Security Report 2011", PIPS, January 2012, p. 5.

[47] "Pakistan Security Report 2012", HRCP, p. 31; "2012: The Year of the Drone", NAF; and "Pakistan drone statistics visualized", TBIJ, 2012. NAF, a U.S.-based non-partisan public policy institute, runs the Year of the Drone database, which indicates low and high estimates for each category of victims. It also has a category for "unknowns", cases in which it could not ascertain whether the dead were militants or civilians. For 2012, it placed the number of "unknowns" killed between 23 and 39. When accounts on the number of casualties vary between sources, TBIJ indicates a minimum and maximum range. TBIJ's civilian death estimates for 2011 range between seven and 42. "Obama 2012 Pakistan strikes", TBIJ.

[48] Figures reflect the number of casualties from 2004 to 10 March 2013. These are regularly updated. See http://counterterrorism.newamerica.net/drones.

[49] Figures reflect the number of casualties from 2004 to 21 March 2013. These are regularly updated. See www.thebureauinvestigates.com/category/projects/drone-data/.

[50] For NAF data, see "2008: The Year of the Drone", and "2012: The Year of the Drone". For TBIJ data, see "Pakistan drone statistics visualized" (based on figures up to 21 March 2013). In his testimony before the U.S. Senate Judiciary Committee's Constitution, Civil Rights and Human Rights Subcommittee on 23 April, NAF director Peter Bergen estimated that some 2,003 to 3,321 people were killed by drone strikes in Pakistan between 2004 and mid-April 2013. He cited low civilian casualty figures (five, as well as 23 to 29 unknowns) for 2012.

[51] Peter Bergen and Jennifer Rowland, "Civilian casualties plummet in drone strikes", CNN Opinion, 14 July 2012.

[52] Jo Becker and Scott Shane, "Secret 'kill list' proves a test of Obama's principles and will", *The New York Times*, 29 May 2012.

[53] "Letters: Sen. Feinstein on drone strikes", *The Los Angeles Times*, 17 May 2012.

[54] Crisis Group interview, Islamabad, 15 January 2013.

of reports, as well as of the reliability of particular media outlets. All such interpretations have their weaknesses. Both the international and Pakistani media often rely on figures provided by unnamed sources in the U.S. government and/or Pakistani military, each with a vested interest in under- or over-reporting civilian casualties.[55] According to the media monitoring specialist, "the [Pakistan] army has very little sympathy for civilians who harbour Pakistani Taliban militants, so if they're killed in drone strikes, it will call them militants"[56] – just as it considers civilians who have not fled a conflict zone in a given limited time ahead of a military operation to be militant sympathisers and hence justified targets.[57] When strikes target the Pakistan military's allies, however, its interests are in inflating claims of collateral damage.

Local journalists working for the national and international press rely on a range of sources to determine the number and names of victims of a drone strike. These include listening to militant radio communications and contacting friends and relatives living in close proximity to the area of a strike.[58] But Pakistani journalists and stringers are not immune to manipulation and are regularly coerced or threatened by the ISI, as well as by militants.[59] "We cannot portray drone strikes in a positive light; we don't want to end up dead", said a local journalist.[60] "Militants want us to use their terms in our reporting and refer to those killed as martyrs", added another.[61]

In addition to press reports, research papers and leaked U.S. intelligence reports, TBIJ claims to gather information from "credible researchers and evidence in legal cases filed in Pakistan and elsewhere on behalf of civilian drone victims".[62] However, local researchers and lawyers are just as susceptible to external influence as journalists, and subject to both the same insecurity and restrictions placed by the military and FATA bureaucracy on access to the conflict zones. Moreover, local lawyers, by virtue of representing alleged victims of drone strikes, are not necessarily impartial.[63] FATA residents are also reluctant to speak freely for fear of retribution from militants or further drone attacks.

PIPS and HRCP are aware of these limitations and seldom use local contacts. "We sometimes use our local contacts to verify who has been killed, but the focus of our verification exercise is on identifying militants", said PIPS director Mohammed

[55] Crisis Group interviews, journalists and international media outlets, Islamabad, January 2013. See also Tara McKelvey, "Covering Obama's Secret War", *Columbia Journalism Review*, May/June 2011.

[56] Crisis Group interview, Islamabad, January 2013.

[57] See Crisis Group Reports, *Pakistan: Countering Militancy in PATA*; and *Pakistan: No End to Humanitarian Crises*, both op. cit.; and Briefings, *Pakistan: The Worsening IDP Crisis*, op. cit.; and N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009.

[58] Crisis Group interviews, Peshawar, January 2013.

[59] See, for instance, Sadaf Baig, "Reporting from the Frontlines: Research and analysis on the media landscape in Pakistan's tribal areas", Intermedia, 2012.

[60] Crisis Group interview, Peshawar, January 2013.

[61] Crisis Group interview, Peshawar, January 2013.

[62] "Covert U.S. strikes in Pakistan, Yemen and Somalia – our methodology", 10 August 2011, www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2. TBIJ has also conducted three field studies of its own.

[63] For instance, the Foundation for Fundamental Rights, an Islamabad-based legal non-profit organisation, has facilitated its clients' meetings with researchers. See "Living under Drones: Death, Injury, and Trauma to Civilians from US Drone Practices in Pakistan", International Human Rights and Conflict Resolution Clinic (Stanford Law School) and Global Justice Clinic (NYU School of Law), September 2012, p. 3, available at www.livingunderdrones.org/wp-content/uploads/2012/10/Stanford-NYU-LIVING-UNDER-DRONES.pdf.

Amir Rana.[64] Similarly, HRCP, fearing for their safety, refrains from mobilising a grassroots network of volunteers to report on drone casualties. "Our volunteers in FATA report on less contentious issues", said its secretary general, I.A. Rehman.[65]

Since it does not officially acknowledge the CIA-run drone program in Pakistan, the U.S. government provides no breakdown of casualties.[66] Nevertheless, the Obama administration regularly takes credit, through anonymous officials, for killing al-Qaeda or affiliated militant group leaders.[67] Yet, contradictory claims of civilian deaths are common even in Washington. While an Obama administration official placed the number of drone-related civilian deaths in Pakistan from 2009 to mid-2012 at no more than ten, others in the U.S. government estimated that 30 civilians were killed by drones between August 2009 and August 2010 alone.[68] In June 2011, John Brennan, then President Obama's chief counter-terrorism adviser (now CIA director), said not a single non-combatant had been killed in almost a year. He later modified his statement, saying that the government did not have proof of civilian deaths for that period.[69]

The U.S. government's definition of a non-combatant is controversial. Military-age men killed in a strike zone are reportedly considered combatants unless evidence later proves otherwise.[70] This deeply flawed definition should be discarded. While at least some present and former officials say that it has been done away with,[71] there is no official, credible, public rebuttal of the practice, which falls short of complying with principles of distinction.[72] Along with greater congressional scrutiny of the drone program, the Obama administration should, as far as possible, end the program's opacity, clarifying how targets were selected and what measures were taken to minimise civilian casualties.

For its part, Pakistan should allow unimpeded access to FATA for independent investigations of drone strikes. It should also change the way it conducts military op-

[64] Crisis Group interview, Islamabad, 15 January 2013.
[65] Crisis Group interview, Lahore, 22 January 2013.
[66] Cora Currier, "Everything we know so far about drone strikes", ProPublica, 5 February 2013.
[67] See, for instance, Declan Walsh and Eric Schmitt, "Drone strike killed No.2 in Al Qaeda, U.S. officials say", *The New York Times*, 5 June 2012.
[68] Justin Elliot, Cora Currier and Lena Groeger, "Interactive: How Obama Drone Death Claims Stack Up", ProPublica, 18 June 2012; Jonathan S. Landay, "Pakistan-U.S. feud boils over CIA drone strikes", McClatchy, 22 April 2011; and Becker and Shane, op. cit.
[69] Scott Shane, "C.I.A. is disputed on civilian toll in drone strikes, *The New York Times*, 11 August 2011. Micah Zenko, "The seven deadly sins of John Brennan", *Foreign Policy* (online), 18 September 2012.
[70] Becker and Shane, op. cit. See also the discussion in Section III below.
[71] Crisis Group interviews, present and former government officials, Washington, DC, March-April 2013.
[72] In his written testimony to the U.S. Senate Judiciary Committee's Constitution, Civil Rights and Human Rights Subcommittee on 23 April 2013, former Vice Chairman of the Joints Chiefs of Staff (2007-2011) General (ret.) James Cartwright called on the administration to establish an inter-agency taskforce to evaluate drone strikes and make recommendations to the president, including on the "adequacy of civilian protection standards for the identification of targets, including the reliability of 'signatures'" and the "existence and sufficiency of post-strike assessments and investigations of who is killed, including assessing the appropriateness of behaviours associated with signature strikes". He also called upon Congress to exercise oversight powers in reviewing and evaluating, among other issues, "the existence and sufficiency of post-strike assessments and investigations that determine who is killed, including the characterisation of military-age males as presumptively non-civilian".

erations in FATA and KPK province. While drone strikes have undeniably claimed innocent victims – and certainly many more than the U.S. government cares to admit – the damage they cause to the lives and property of civilians is in no way comparable to that of the Pakistan military's operations. Those operations have displaced millions, sometimes for years and on multiple occasions, and caused considerable damage to property, both public and private. They have also produced an unknown number of non-combatant deaths in air strikes and ground operations that seldom lead to the detention or killing of any senior militant leader.[73] Drone warfare does, however, affect FATA's population in ways that go beyond the death, injury and the destruction of property.

D. *Social, Economic and Psychological Impact*

Drones can hover for hours and days over an area to gather information that operators use to identify targets, guide missiles and assess the immediate impact of a strike.[74] "The buzz of a distant propeller is a constant reminder of imminent death", wrote *The New York Times* journalist David Rohde in his account of being held hostage by the Taliban.[75] According to some studies based on interviews with witnesses, when a drone is heard overhead, uncertainty over whether it will strike understandably provokes anxiety among FATA residents in frequently targeted areas.[76]

Many in FATA believe that local informants, providing intelligence and placing locator chips to guide drones towards potential militant targets, undermine the security of their communities. Militants have tortured suspected informants into coerced confessions, and occasionally release video footage of their subsequent executions, warning the local population of the consequences of collaborating with the U.S.[77]

Residents in FATA also believe that informants possibly provide false information and exploit their position to settle vendettas with local rivals.[78] The U.S. targeting policy is problematic because of its reported reliance on so-called "signature strikes" targeting groups of men based on behaviour patterns that may be associated with terrorist activity rather than known identities.[79]

Some legal scholars claim that the signature strikes approach impedes FATA's cultural and conflict-resolution activities, for example by leading to the targeting of tribal *jirgas* (councils of elders). It is contended that tribal elders now fear convening such meetings, and communities have even become reluctant to hold funerals lest

[73] See Crisis Group Reports, *Pakistan: Countering Militancy in PATA*; *Pakistan: No End to Humanitarian Crises*; and *Pakistan: Countering Militancy in FATA*; and Briefings, *Pakistan: The Worsening IDP Crisis*; and *Pakistan's IDP Crisis: Challenges and Opportunities*, all op. cit.
[74] David Zucchino, "Drone pilots have a front-row seat on war, from half a world away", *The Los Angeles Times*, 21 February 2010.
[75] David Rohde, "Reuters Magazine: the Drone Wars", Reuters, 17 January 2012.
[76] Stanford and NYU, op. cit., pp. 80-88; and "The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions", Human Rights Clinic (Columbia Law School) and Center for Civilians in Conflict (CIVIC), 2012, p. 24.
[77] Zulfiqar Ali, "Drone strike informant: spy who ensnared Mullah Nazir killed", *The Express Tribune*, 24 January 2013; Declan Walsh, "Drone war spurs militants to deadly reprisals", *The New York Times*, 29 December 2012.
[78] Stanford and NYU, pp. 99-101; Columbia and CIVIC, p. 39, both op. cit.
[79] Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (San Diego 2012), p. 41.

they attract drone strikes.[80] For instance, in the 17 March 2011 drone attack on a *jirga* in North Waziristan's Datta Khel town, only four out of 40 men killed are believed to have been militants; the rest are thought to have been *maliks* (tribal leaders) and other tribesmen.[81] These reported strikes, by fuelling local alienation, likely do far more harm than good. However, the Pakistani military and militants, each in their own way, and not drone strikes, are primarily responsible for distorting FATA's cultural and social fabric, as discussed later in this report.

[80] Stanford and NYU, op. cit., pp. 98-99; and Usama Khilji, "Living under drones", *Daily Times*, 30 May 2012.
[81] Stanford and NYU, op. cit., pp. 57-59; and Pir Zubair Shah, "Analysis: US drone strikes in Pakistan's tribal areas create backlash", *Global Post*, 10 October 2012.

III. The Legal Ground

The U.S. drone program in Pakistan raises serious concerns under both international and U.S. law. Unfortunately, the debate on the legality of the program has been hampered by the Obama administration's consistent refusal to answer even the most basic questions about drone strikes in Pakistan and elsewhere. This lack of transparency, itself inconsistent with international law and principles of governance,[82] has frustrated attempts to evaluate the efficacy of the CIA-run program in routing terrorist networks in Pakistan, most notably in FATA, and made it impossible to fully assess the legality of the program or individual attacks.[83] Vague statements of U.S. policy on drones in the absence of clear, public and authoritative guidelines risk eroding key principles of international humanitarian and human rights law. As more states develop technology for drones and their use becomes more prevalent, the covert nature of the U.S. program is setting a dangerous precedent.[84]

The use of drone strikes in counter-terrorism operations raises questions that draw on a number of legal regimes, notably the law regulating the use of force, international humanitarian law (IHL) – which governs the conduct of armed hostilities – and international human rights law. The U.S. government has to date refused to comprehensively disclose its legal basis for targeted killings carried out in various countries, including Pakistan, though comments by government officials and a number of leaks do offer some insights.

Like the Bush administration, the Obama administration has made it clear that it considers itself to be "in a non-international armed conflict with al-Qaeda and its associates".[85] The U.S. government also justifies its targeted killing program under Article 51 of the UN Charter, which recognises "the inherent right of individual or collective self defence" as an exception to the general prohibition against the use of force contained in Article 2(4) of the Charter. Customary international law allows for defensive action to be taken either in response to an armed attack, or in order to

[82] "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Study on targeted killings", UN General Assembly, A/HRC/14/24/Add.6, 28 May 2010, p. 26. Christof Heyns succeeded Philip Alston in August 2010. See also John Podesta, "Obama should lift secrecy on drones". *The Washington Post*, 13 March 2013.

[83] Discomfort has been expressed both within and outside the CIA over its quasi-military role in the U.S. drone program. Some have suggested that, if transferred to the military, the drone program would lend itself to clearer lines of decision-making, review and accountability. While the military would certainly be expected to have higher levels of training in IHL and greater institutional experience of weighting military options against IHL requirements, it is unlikely that shifting the drone program to the Pentagon would in itself increase judicial oversight of targeted killings.

[84] In mid-2012, the U.S. Government Accountability Office (GAO) estimated that the number of countries with drones had grown from 40 in 2005 to over 75. "Nonproliferation: Agencies Could Improve Information sharing and End-Use Monitoring on Unmanned Aerial Vehicle Exports", July 2012.

[85] "Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operation Leader of Al-Qa'ida or An Associated Force", U.S. Department of Justice White Paper, p. 2, at: http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf. To the extent there is an armed conflict, applicable IHL standards differ, depending on whether the conflict is of an international character, a conflict between states or of a non-international armed character, traditionally understood as an internal conflict. The law governing conduct in international armed conflict is more developed and generally more restrictive than the law governing conduct in non-international armed conflict, whose principles derive primarily from Additional Protocol II to the Geneva Conventions, and from Common Article 3 of the Geneva Conventions.

prevent such an attack if it is imminent.[86] The use of force in self-defence is not viewed as a violation of the sovereignty of the target nation. Where the target is not a nation but non-state actors based on sovereign territory, the use of force in self defence in that state has been viewed as legal, if the armed attacks of a non-state actor are ascribable to a state.[87]

John Brennan, director of the CIA and former chief counter-terrorism adviser to President Obama, has argued that "there is nothing in international law … that prohibits us from using lethal force against our enemies outside an active battlefield, at least when the country involved consents or is unable or unwilling to take action against the threat".[88] Targeted killings using drones have similarly been justified under U.S. domestic law. The September 2001 Authorisation for the Use of Military Force (AUMF), passed by Congress after the 11 September 2001 attacks, authorises the president to "use all necessary and appropriate force against those organisations, or persons [responsible for those terrorist attacks] in order to prevent any future acts of international terrorism against the United States by such nations, organisations or persons".[89] The Obama administration contends that the AUMF does not define the type of force or limit its use to Afghanistan, where the Taliban regime had refused to stop harbouring al-Qaeda.[90]

Cristof Heyns, the UN special rapporteur on extrajudicial executions, is one of several international legal experts and human rights activists who have questioned the U.S. government's claim that the targeted killings are a legally justified response to the 11 September 2001 terrorist attacks.[91] These critiques challenge the assumption that the U.S. can, more than a decade later and outside an active battlefield, still be at war with those it holds responsible and invoke the laws of war when targeting them.

Brennan's interpretation of international law standards would mean that the U.S. could legally target a member of al-Qaeda or its associated forces anywhere in the

[86] Under the law regulating the use of force (*Jus ad Bellum*), the *Caroline* case – concerning the British seizure and sinking of a ship used by U.S. sympathisers to aid Canadians rebelling against British rule – is usually cited to explain the content of the legal concept of "imminence". In a letter condemning the attack, Secretary of State Daniel Webster wrote that in order for the attack to be justifiable, there must be "a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation". This definition has been widely accepted as part of customary international law, and is most often invoked in relation to anticipatory self defence or the much broader and widely-criticised doctrine of pre-emptive self defence.

[87] *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America (Merits)*, International Court of Justice, Judgment of 27 June 1986; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, Advisory Opinion, 9 July 2004; *Case Concerning Armed Activities on the Territory of the Congo*, International Court of Justice, Judgment of 19 December 2005. The U.S. has advanced a standard of "unwilling or unable" as the basis for self-defence in the absence of target-state consent in counter-terrorism operations, but this standard remains contentious.

[88] John O. Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy", speech delivered at the Woodrow Wilson International Center for Scholars, 30 April 2012.

[89] "S.J. Res 23(107th) Authorisation for Use of Military Force", U.S. Congress, 18 September 2001.

[90] Brennan, op. cit. The AUMF appears to authorise only the use of force against individuals responsible for or tied to the September 2001 attacks on the U.S., rather than any group that after that date has allegedly associated itself with al-Qaeda as a co-belligerent.

[91] In June 2012, Heyns was quoted as saying: "It's difficult to see how any killings carried out in 2012 can be justified as in response to [events] in 2001". Owen Bowcott, "Drone strikes threaten 50 years of international law, says UN rapporteur", *The Guardian*, 21 June 2012. See also "Drone strikes test legal grounds for war on terror", ProPublica, 6 February 2013.

world, even away from a zone of active hostilities. This approach fails to show how – outside of recognised armed conflicts such as in Afghanistan – the U.S. is in fact "in a non-international armed conflict with al-Qaeda and its associates", an inquiry that under international law turns largely on the intensity of violence and the level of organisation of these groups.[92] Although what constitutes a sufficient territorial nexus – a link to the physical territory of a sovereign state – in a non-international armed conflict with a terrorist organisation is disputed, some such nexus is required under treaty and customary law.[93] To the extent the U.S. claims, as a matter of international law, to be involved in armed conflict with particular groups in specific geographic regions, particularly in FATA, the basis for that position should be explained.

Instead, the broad focus on the "transnational" nature of modern-day terrorism and the inclusion of a wide range of al-Qaeda "associates"[94] among those who pose a threat to U.S. national security dilute legal limits on the U.S.'s ability to strike suspected terrorists abroad. It also undermines the idea that war is an exceptional state of affairs and entrenches the idea of a war with no temporal or geographical constraints.

The U.S. position that it is engaged in a non-international armed conflict with al-Qaeda and associated groups would by law render an al-Qaeda member a legitimate and lawful target, regardless of whether that individual poses an imminent threat. However, the Obama administration has also sought to justify targeted killings by reference to the right of self-defence against an "imminent" attack,[95] though based on

[92] "Report of the Special Rapporteur", op. cit., p. 18, paras 46-56. The determination of the existence of an armed conflict rests on objective legal criteria. These are clear in the case of international armed conflict, but less so in the case of non-international armed conflict. In the latter, the criteria vary depending on state ratification of Additional Protocol II, as well as the type of hostilities underway. Nevertheless, there are some cumulative minimum standards: a certain threshold of violence must be reached with regard to both intensity and duration, and the non-state group must be organised and identifiable. For further discussion, see "How is the Term 'armed conflict' Defined in International Humanitarian Law?" International Committee of the Red Cross (ICRC) Opinion Paper, March 2008, at www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf. Groups cannot be considered a single organisation by virtue of a shared ideology; thus several scholars have also suggested that "there is little evidence ... that the various terrorist groups that call themselves al Qaeda or associate themselves with al Qaeda possess the kind of integrated command structure that would justify considering them a single party involved in a global NIAC [non-international armed conflict] with the U.S. .... Because of the horizontally fragmented nature of these groups, the United States cannot be considered to be in a global NIAC with 'al-Qaeda'". Though at the same time: "That does not mean, however, that the United States cannot be involved in NIACs with specific terrorist groups, some AQ-affiliated, in specific geographic areas". Kevin Jon Heller, "One Hell of A Killing Machine: Signature Strikes and International Law", *Journal of International Criminal Justice*, vol.11, issue 1, 2013. See also John Fabian Witt, "The legal fog between war and peace", *The New York Times*, 10 June 2012.

[93] "Report of the Special Rapporteur", op. cit., p. 18, para 52.

[94] Al-Qaeda "associated groups" can range from terror cells working in close collusion with the al-Qaeda command structure to groups that only very loosely identify with or take inspiration from al-Qaeda. It is highly unlikely that the latter groups meet the level or organisation required under international humanitarian law to constitute a party to a non-international armed conflict – international law requires that such groups share a common command structure (Common Article 3 to the Geneva Conventions, *Tadic* test). The organisational requirement in international law acts to constrain states tempted to use violence against groups that do not meet the level or organisation required to act as a party to an armed conflict such as criminal gangs. The legality of state action against such groups hinges on human rights law rather than humanitarian law.

[95] The imminence requirement in international law is referenced both in John Brennan's speech and in the leaked Department of Justice White Paper. Michael Isikoff, "Justice Department memo reveals legal case for drone strikes on Americans", NBCnews.com, 4 February 2013. The memo as-

a vague, broad and judicially untested concept of "imminence".[96] Again this leaves many questions to be answered – transparently and publicly — and is further undermined by widespread reports of "kill lists" and "signature strikes".

Even assuming that the U.S. is legally exercising its right to self-defence in response to an armed attack or an imminent threat, or on Pakistani territory with Pakistan's consent, questions over the lawfulness of individual strikes remain. There is scope for fatal drone strikes to be conducted within a legal framework. Nothing in drone technology is inherently illegal – it is not akin to indiscriminate weaponry such as chemical weapons or cluster munitions banned under international humanitarian law. Instead, where an armed conflict exists, the legality of U.S. drone strikes hinges on each individual strike's adherence to basic humanitarian law principles: those of humanity, distinction, proportionality and military necessity. Where a state of armed conflict does not exist, international human rights law – which permits use of lethal force only where proportionate and necessary to protect against a threat to life – constrains targeted killings. There is no legal vacuum in which a targeted killing is not subject to limits of international law.

Moreover, if Pakistan does consent to drone strikes, it is nevertheless still required under international law to protect and respect the human rights – including freedom from extrajudicial killing – of its citizens. Consent also brings with it obligations under international humanitarian law, notably the responsibility to ensure U.S. strikes conform with humanitarian law standards.

In the context of an armed conflict, civilians may not be lawfully targeted.[97] A targeted killing may only be lawful under international humanitarian law if the target is a "fighter" or "combatant" in an armed group, or a civilian directly participating in hostilities. This principle of distinction between lawful targets and civilians is the cornerstone of international humanitarian law protections. While it can be challenging to apply in contexts where fighters mingle with civilians, do not wear uniforms, or may be farmers by day, fighters by night, in cases of doubt, at a minimum, a careful assessment of that particular situation and individual must be made.[98]

serts that the concept of imminence "does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future". Notably, the White Paper addresses only legal standards for targeting U.S. citizens abroad, not non-citizens.

[96] Jameel Jaffer, cited in ibid. Privately, some U.S. officials further contend that "imminent", in the case of a drone strike against specific "personality" targets, is the last moment those individuals are vulnerable before they actually carry out the planned terrorist attack. But without details regarding the planned attack, it is impossible to judge whether this rationale would meet the temporal requirements of proximity to satisfy the imminence requirement.

[97] Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts, June 8, 1977, Article 13 (2); Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts, June 8, 1977, Article 48; Geneva Conventions Common Article 3. The principle of distinction is also considered customary international law: Customary International Humanitarian Law Rules, ICRC (2005); (ICRC Rules) Rule 1, at www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1.

[98] In situations of international armed conflict, Article 50(1) of Additional Protocol I states that "in case of doubt whether a person is a civilian, that person shall be considered to be a civilian", an assertion echoed by the International Criminal Tribunal for the former Yugoslavia (ICTY) Trial Chamber in the Milosevic Case, para. 946, at www.icty.org/x/cases/dragomir_milosevic/tjug/en/071212.pdf. Although Article 50(1) is not widely viewed as customary, and there is no equivalent provision in the laws pertaining to non-international armed conflict, Rule 6 of the ICRC commentary sets out a baseline standard that requires that "where there is a situation of doubt, a careful assessment has to be made under the conditions and restraints governing a particular situation as

Several reported drone strike practices fall short of complying with the principle of distinction. The Obama administration's reported practice, which is denied privately by several current and former officials but has not been disavowed publicly, of counting all military-aged men in a strike zone as combatants (unless sufficient evidence proves them innocent posthumously) severely undermines the principle of distinction and the protection that civilians are automatically awarded in conflict, protection which they lose only "for such time as they take a direct part in hostilities".[99] While there is not as yet a set of universally-acknowledged criteria for "direct participation in hostilities", it is unlikely that age, gender and mere presence within a combat or strike zone would qualify.

The failure to state publicly that such practices do not exist and permit independent scrutiny undermines the assertions that the U.S. is complying with international law.[100] The U.S. government has again been notably silent on what conduct it believes amounts to "direct participation", although there are indications it favours an interpretation far wider than that of the ICRC.[101]

The reported practice of signature strikes – a drone strike targeting "groups of men who bear certain signatures, or defining characteristics associated with terrorist activity, but whose identities aren't necessarily known"[102] – has been widely criticised by not only human rights groups and civil society, but also government officials and members of the U.S. Congress.[103] By engaging in the reported signature strikes, the U.S. government erodes the principle of distinction at the heart of international humanitarian law upon which all other civilian protections rest.[104] Some reports suggest that the U.S. has killed rescuers and first responders in secondary or "double tap" strikes.[105] While those reports are denied privately by some with knowledge of

to whether there are sufficient indications to warrant an attack. One cannot automatically attack anyone who might appear dubious", at www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule6.

[99] Additional Protocol II to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Non-International Armed Conflicts, June 8, 1977, Article 13 (1). Crisis Group interviews, current and former government officials, Washington DC, March-April 2013.

[100] Crisis Group interviews, current and former government officials, Washington DC, March-April 2013.

[101] See, for example, discussion on U.S. willingness to target drug traffickers with links to the Afghanistan insurgency, "Afghanistan's Narco-War: Breaking the Link Between Drug Traffickers and Insurgents, A Report to The Committee on Foreign Relations, United States Senate", 10 August 2009, p. 16, at: www.fas.org/irp/congress/2009_rpt/afghan.pdf. In 2009, the ICRC published its Interpretive Guidance on Direct Participation in Hostilities (DPH), setting out three cumulative requirements for DPH: a threshold of harm, direct causation and a belligerent nexus, www.icrc.org/eng/assets/files/other/icrc-002-0990.pdf.

[102] Klaidman, op. cit., p.41.

[103] "[S]uch reported 'signature' strikes raise the risk of innocent civilians or individuals who have no relationship to attacks on the U.S. of being killed. Letter to the President from 26 Members of Congress, 12 June 2012, http://thehill.com/blogs/defcon-hill/operations/232523-lawmakers-want-legal-justification-for-drone-strikes; text at www.justforeignpolicy.org/node/1219.

[104] The principle of distinction has been characterised as the "cardinal rule of international humanitarian law" by the International Court of Justice. Cited in Heller, op. cit., p. 93. Heller identifies several "signatures" that he contends are "always legally adequate under IHL", including planning attacks, transporting weapons and handling explosives, as well as several that are never so, including "military-age male in area of known terrorist activity" and "consorting with known militants".

[105] Stanford and NYU, op. cit., p. 74. The report also suggests that rescuers may not attend strike locations immediately due to fears of follow-up strikes.

U.S. policy, there has been no official, credible, public rebuttal of these allegations.[106] If true, such strikes would not only violate customary international law, which specifically protects medical and humanitarian aid providers,[107] but may well also violate the principle of distinction.

Even where a target is, with due respect to the principle of distinction, deemed legitimate, humanitarian law requires that any attack both serve a legitimate military objective and is not outweighed by harm to civilians – in other words, is proportionate.[108] The U.S. government's refusal to disclose how targets are selected, what the expected military advantage conferred by their killing is, and how civilian or "collateral" damage is weighed is deeply troubling and frustrates attempts to evaluate the legality of individual drone strikes. The higher body counts, particularly in reported signature strikes prior to 2012 as opposed to "personality strikes" – strikes on a known, identified individual – and the lack of clarity on the U.S. government's definition of civilians when weighing the civilian risks of any particular strike and when counting combatant versus civilian casualties are not encouraging.[109]

While John Brennan has asserted that all U.S. drone strikes respect principles of distinction, proportionality, necessity and humanity,[110] the U.S. government's expansive approach in apparent practice threatens to render the protections they confer meaningless. This will continue until there is a rigorous, publicly-defined legal framework for the use of drones that sets out clear roles for the executive, legislative and judicial branches and provides for adequate judicial and congressional oversight.

There is also reason to believe that at least some of the U.S. drone strikes have taken place outside the context of an armed conflict. In such cases, international human rights law would apply. International human rights law acts to restrict state use of lethal force outside the context of an armed conflict, but also applies concurrently with humanitarian law during conflict.[111] In peacetime or violent situations that fall short of outright armed conflict, lethal force is legal only if it is necessary to

[106] Crisis Group interviews, present and former government officials, Washington DC, March-April 2013.

[107] Customary International Humanitarian Law Rules, ICRC (2005); (ICRC Rules) Rules 25 and 31, at: www.icrc.org/customary-ihl/eng/docs/v1_rul. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, has termed any such strike a "war crime". Jack Serle, "UN Expert Labels CIA Tactic Exposed by Bureau 'a War Crime'", The Bureau of Investigative Journalism, 21 June 2012.

[108] Proportionality is a rule of customary international law and is also set out in treaty form in Article 51(5)(b), prohibiting indiscriminate attacks, and Article 57(2)(b), dealing with precautions in attacks, of Additional Protocol I. The rule is most clearly set out in the ICRC rules: "Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited". Rule 14, at www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14.

[109] Becker and Shane, op. cit. Crisis Group interviews, present and former government officials, Washington DC, March-April 2013. Also on numbers, see Peter Bergen, director, National Security Studies Program, NAF, Testimony presented before the Senate Judiciary Committee, 23 April 2013, pp. 7-8.

[110] Brennan, op. cit.

[111] "Both IHL and human rights law apply in the context of armed conflict: whether a particular killing is legal is determined by the applicable *lex specialis*. To the extent that IHL does not provide a rule, or the rule is unclear and its meaning cannot be ascertained from the guidance offered by IHL principles, it is appropriate to draw guidance from human rights law". "Report of the Special Rapporteur", op. cit., p. 10.

protect life, and if all other efforts such as capture have failed.[112] Unlike international humanitarian law, international human rights law does not countenance the killing of civilians or bystanders – any such killings are considered an arbitrary deprivation of life that could result in sanctioning measures for the state or individual. The onus is on the U.S. to capture suspected terrorists, and they are entitled to defend themselves before a court of law.

Several of the UN's thematic special rapporteurs have repeatedly demanded that the U.S. government clarify "the procedural safeguards in place, if any, to ensure in advance of drone killings that they comply with international law, and the measures the Government takes after any such killing to ensure that its legal and factual analysis was accurate and, if not, the remedial measures it would take".[113] Yet, the Obama administration has so far offered only a piecemeal explanation of both the legal basis for deadly drone strikes and the procedures that regulate the drone program.

In the run-up to the 2012 presidential election, the administration reportedly accelerated steps to codify the legal underpinnings of targeted killings. The purpose was to outline clear standards to guide the government and its successors in decisions that hitherto were often ad hoc.[114] The resulting counter-terrorism "playbook" apparently included detailed rules for targeted killing operations, including whom drones can target and authorisation requirements. It also would have transferred the program to the Pentagon. With respect to Pakistan, however, the CIA will continue to manage drone strikes for at least a year, presumably to avoid hindering counter-terrorism operations against al-Qaeda and the Taliban as the U.S. enters the final phase of its withdrawal from Afghanistan.[115] Moreover, there is no commitment to make the contents of this "playbook" public, thus institutionalising lethal strikes but adding little transparency, which, without a comprehensive disclosure of both the facts of the drone program and the legal analysis behind it, remains vulnerable to constant expansion and abuse.

In 2012, Ben Emmerson, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, repeatedly warned that the UN General Assembly, Human Rights Council, and Office of the High Commissioner for Human Rights would investigate the strikes if the U.S. government failed to reveal these processes and to put mechanisms in place for independent investigation of each drone strike.[116]

In conjunction with Special Rapporteur Heyns, Emmerson reportedly plans to establish an office in 2013 to investigate strikes and other forms of targeted killings in counter-terrorism operations.[117] In January 2013, he disclosed that he would lead an investigation into 25 drone strikes conducted in Pakistan, Afghanistan, Yemen, Somalia and the Palestinian territories, based on photographic and forensic material as

[112] UN Basic Principles on the Use of Force by Law Enforcement Officials, 1990.
[113] "Report of the Special Rapporteur", op. cit., p. 35.
[114] Becker and Shane, op. cit.
[115] Greg Miller, Ellen Nakashima and Karen DeYoung, "CIA drone strikes will get pass in counter-terrorism 'playbook', officials say", *The New York Times*, 20 January 2013. Crisis Group interviewees, Washington DC, March-April 2013, agree that the CIA is to keep control of such operations in Pakistan for a year but dispute the view that it is not bound by the new "playbook" rules.
[116] Owen Bowcott, "Drone strikes", op. cit.; and Terri Judd, "US 'should hand over footage of drone strikes or face UN inquiry'", *The Independent*, 20 August 2012.
[117] Owen Bowcott, "UN to investigate civilian deaths from US drone strikes", *The Guardian*, 25 October 2012.

well as witness accounts. The findings will be presented at the UN General Assembly in October 2013.[118]

As a part of the investigation, Emmerson conducted a three-day visit to Pakistan in March 2013. On its conclusion, he issued a statement declaring that U.S. drone strikes in FATA violated Pakistan's sovereignty, since it had no agreement with the U.S. on the use of drones on its territory – confirmed, he said, by "a thorough search of government records". Apparently taking the government officials who briefed him at their word, Emmerson's investigation ignored evidence not only of tacit Pakistani consent during the Musharraf regime, as disclosed by then-Prime Minister Gilani in 2008 and again in 2010 and subsequently confirmed by Musharraf himself, but also of continued cooperation after Musharraf's removal in mid-2008, including the presumed role of Shamsi and Shahbaz airbases.

Emmerson also based his findings of the impact of the drone program on meetings with lawyers with vested interests, since they represented individuals and groups who had brought legal proceedings against the Pakistan government on the use of drones in FATA. Meeting handpicked representatives of tribal leaders from North Waziristan, a key target of drone attacks, he appeared to have overlooked concerns about their ability to speak without duress, and hence the reliability of their accounts. With no mention of the climate of impunity thriving in FATA, the special rapporteur seemingly disregarded its isolation from the political, legal and constitutional mainstream, stating that the "Pashtun tribes for FATA" were a "proud and independent people" who "have been self-governing for generations".[119]

His conclusions, which could be misused by the military to legitimise its peace deals with FATA-based militants, were problematic: "Pakistan", he noted, "aims to a sustainable counter-terrorism strategy that involves dialogue and development in this complex region and that tackles not only the manifestations of terrorism but also its root causes. The people of Pakistan need to be given room to develop this strategy".[120] The statement came a day after the Political Parties Joint Committee on FATA Reforms, representing eleven political parties as well as other stakeholders, issued a statement calling on the UN and other international organisations to forcefully condemn the lack of human and political rights in FATA. Declaring that the army was part of the problem, not the solution, they expressed concern over "the law and order situation as well as obstacles put in place by the state, including intelligence agencies, political agents, the army, some FATA elite, as well as national and international terrorist groups, [who were] working against the political participation of FATA citizens".[121]

Before Emmerson presents his findings to the UN General Assembly in October 2013, he should visit Pakistan again to consider the views of a far broader set of stakeholders, including FATA-based journalists, NGOs, community-based organisations and other civil society groups within and outside the tribal belt, conducting inter-

[118] "United Nations to investigate drone killings", *The News*, 27 January 2013.

[119] Statement of the Special Rapporteur following meetings in Pakistan", Office of the High Commissioner for Human Rights, 18 March 2013. The investigation was reportedly requested by Pakistan and two permanent members of the UN Security Council.

[120] Ibid.

[121] "Political parties campaign in historic FATA elections", Political Parties Joint Committee on FATA Reforms, press release, 14 March 2013. The committee's eleven parties included the Pakistan Peoples Party (PPP), Awami National Party (ANP), Pakistan Muslim League-Nawaz (PML-N), Jamiat Ulema Islam-Fazlur Rehman (JUI-F) and others.

views with guarantees of confidentiality. His report should also be based on a more thorough assessment of Pakistani tacit consent and active cooperation, past and present, with the drone program.

While the rapporteur should assess the drones' impact in the wider context of militant violence, heavy-handed military operations and unaccountable governance in FATA, Pakistan should revisit the ground rules of any active or tacit cooperation with the drone program. On its part, the U.S. should reassess the efficacy of drones in advancing counter-terrorism objectives in Pakistan and the wisdom of keeping its drones program immune from public scrutiny or judicial oversight.

IV. Drones and Counter-Terrorism in Pakistan

A. *Counter-terrorism Dividends*

According to an Obama administration official, the U.S. eliminated at least twenty of al-Qaeda's 30 top leaders from 2009 to 2012 in Pakistan and Afghanistan.[122] In Pakistan alone, according to The New America Foundation, drone strikes killed 51 militant leaders, including 28 senior al-Qaeda operatives, between 2004 and early 2013.[123] They have also killed several high-level Pakistani and Afghan Taliban and al-Qaeda-affiliated leaders. TTP leader Baitullah Mehsud was killed in August 2009; Wali Mohammed Toofan, head of the Pakistani Taliban's suicide wing, on 6 January 2013; South Waziristan Taliban leader Maulvi Nazir Wazir on 2 January 2013; Badruddin Haqqani, third in command of the Haqqani network, on 24 August 2012; and Harkat-ul Jihad al-Islami (HuJI)'s Ilyas Kashmiri, a senior al-Qaeda operative, on 3 June 2011.[124] Drone attacks have thus somewhat disrupted the capacity of FATA-based local, regional and transnational extremists to plan and execute attacks on NATO and Afghan troops across the border and from Pakistani territory against the U.S and its Western allies.

Former British intelligence officials have attributed a significant reduction in the terrorist threat to the UK and other European countries to the "removal of operational planners" through drone strikes in FATA and Yemen.[125] A February 2009 classified cable sent by the U.S. embassy in Pakistan said army chief General Ashfaq Pervez Kayani "knows full well that the [drone] strikes have been precise (creating few civilian casualties) and targeted primarily at foreign fighters in the Waziristans".[126] In 2011, in a rare deviation from official criticism of the program, the Pakistani military acknowledged, "many of those being killed in these strikes are hardcore elements, a sizeable number of them foreigners".[127]

The threat of drone attacks, and in particular reported signature strikes, has led militants to avoid regrouping or using cell phones and forced a number of their leaders away from FATA and into the urban areas – thus undermining communication

[122] "Two-thirds of top Qaeda leaders 'removed' since 2009: Obama aide", Reuters, 18 December 2012.
[123] "The Year of the Drone: Leaders Killed", NAF. The data reflects figures until 6 January 2013 and is regularly updated.
[124] "TTP finally admits Baitullah killed in US strike", *Dawn*, 26 August 2009; Sailab Mehsud, "Drone kills TTP's suicide wing chief", *Dawn*, 7 January 2013; Irfan Burki and Mushtaq Yusufzai, "Maulvi Nazir among 10 killed in drone strike", *The News*, 4 January 2013; "Pakistani intelligence officials confirm reports of Badruddin Haqqani's death", *Dawn*, 30 August 2012; and Sailab Mehsud, "Drone strike kills Ilyas Kashmiri", *Dawn*, 5 June 2011. See also, Alice K. Ross, Chris Woods and Sarah Leo, "The Reaper Presidency: Obama's 300th drone strike in Pakistan", TBIJ, 3 December 2012.
[125] Ravi Somaiya, "Drone strike prompts suit, raising fears for U.S. allies", *The New York Times*, 30 January 2013.
[126] "Scene-setter for general Kayani's visit to Washington", U.S. Embassy Islamabad cable, 19 February 2009, as made public by WikiLeaks and cited in Zaidi, op. cit.
[127] In March 2011, a senior military officer, leading troops in North Waziristan, a major target of drone attacks, said, "there are a few civilian casualties in such precision strikes, and a majority of those eliminated are terrorists, including foreign terrorist elements". Zahir Shah Sherazi, "Most of those killed in drone attacks were terrorists: military", *Dawn*, 9 March 2011.

and command.[128] The torture and often-videotaped murder of suspected spies, mentioned earlier in this report, arguably indicates apprehension within militant networks.[129] According to a senior Pakistani journalist who has extensively covered militancy in FATA, "drones are the only thing militants fear".[130]

Whatever the drone program's short- and medium-term successes, its effectiveness in degrading militant networks in the long run is questionable at best. Jihadi leadership vacuums are not left unfilled for long. On 22 August 2011, for example, a drone attack in North Waziristan killed Atiyah Abd al-Rahman, al-Qaeda's number two. Less than a year later, on 4 June 2012, the U.S. targeted and killed al-Qaeda's new second in command, Abu Yahia al-Libi. In January 2008 Abu Laith al-Libi, al-Qaeda's third in command was killed in a drone attack; two and half years later another strike killed his successor, Mustafa Abu al-Yazid.[131] According to counter-terrorism expert and former CIA analyst Bruce Riedel, "the hive will always produce more bees".[132] Targeted killings also negate the possibility of acquiring any valuable intelligence that might be obtained by capturing and interrogating militants.

B. *Winning Hearts and Minds or Losing Allies?*

In debates on the drone issue, the argument is commonly put forward that drones produce more terrorists than they kill: militant groups exploit real and fabricated accounts of civilian deaths to enlist fresh recruits, including the relatives of drone strike victims, for jihad against the U.S. and its allies.[133] The actual benefit to extremist groups, including in terms of recruitment, appears, however, minimal. A local analyst who has extensively researched security and governance in FATA notes that while anti-drone rhetoric does draw some converts, "the loss of a Baitullah Mehsud or a Qari Hussain is much more damaging than the recruitment of a few dozen foot soldiers".[134]

Moreover, militant recruitment is a complex process, achieved more often on economic than ideological grounds. FATA residents often rely on various militant jihadi and criminal networks for patronage in the absence of a functioning state, civil society, and traditional tribal structures that have been decimated by militants. Forced recruitment is also common, with households in militant-controlled areas made to contribute men to the jihad.[135] Any voluntary enlistment in response to drone strikes may well be comparatively minimal.

[128] Pir Zubair Shah, "My Drone War", *Foreign Policy* (online), 27 February 2012; and Brian Glyn Williams, "The CIA's Covert Predator Drone War in Pakistan, 2004-2010: The History of an Assassination Campaign", *Studies in Conflict and Terrorism*, vol. 33, no. 10 (2010), pp. 877-880.
[129] Alex Rodriguez, "Pakistani death squads go after informants to U.S. drone program", *The Los Angeles Times*, 28 December 2011.
[130] Crisis Group phone interview, January 2013.
[131] "The Year of the Drone: Leaders Killed", op. cit., 2012
[132] Jane Mayer, "The predator war: What are the risks of the C.I.A.'s covert drone program?", *The New Yorker*, 26 October 2009.
[133] Stanford and NYU, op. cit., pp. 131-137. Also, "Drone attacks serving to recruit new militants: Sherry", *The News*, 29 July 2012; and S.M. Hali, "Drone attacks boosting terrorism", *The Nation*, 29 August 2012.
[134] Crisis Group interview, January 2013.
[135] For more on forced recruitment in FATA, see Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.

The main causes for the spread of militancy in FATA are not drone strikes but domestic factors. These include the absence of the state and insecurity due to the resulting political, legal and economic vacuum; and the military's support of, provision of sanctuaries to, and peace deals with militant groups. Heavy-handed and selective military operations have caused more damage to civilian life and infrastructure than to militant groups. This is clear, for example, in the Haqqani network's expansion from its stronghold in North Waziristan to adjoining Kurram Agency, which has secured the group new routes to Afghanistan and expanded its capacity to strike NATO and Afghan forces.[136] These factors underscore the limitations of the drone program in degrading the long-term operational capabilities and ability of violent extremists to regroup, rearm and recruit.

An effective and comprehensive U.S. counter-terrorism strategy should, therefore, focus on applying pressure in earnest on Pakistan's military to end support to any Pakistani Taliban faction; to jihadis who are oriented against India, such as the Lashkar-e-Tayyaba; and to the Afghan insurgents, particularly the Haqqani network, which is linked to al-Qaeda. If the military or elements within it continue to prevaricate on such commitments, the U.S. should apply existing conditions on military aid. As a last resort, it should consider invoking targeted and incremental sanctions, including travel and visa bans and the freezing of financial assets of key military leaders and military-controlled intelligence agencies that support extremist elements responsible for planning and conducting attacks from Pakistan's territory against its neighbourhood and beyond.

The U.S. should also encourage and support the elected government's efforts to incorporate FATA into the constitutional mainstream. So far, Washington's "stabilisation'" assistance in FATA is disbursed through discredited state institutions, such as the political agent, a federal bureaucrat, and the FATA secretariat. Created by Musharraf in 2006 to reinforce the military and civil bureaucracy's control over the tribal borderlands, the secretariat is subject to very limited internal and external accountability.[137] Inherently unable to enforce law and order or to govern accountably and effectively, these institutions are part of the problem and not the solution. Since significant funds are channelled to these institutions, and often through them to military entities such as the Frontier Works Organisation (FWO),[138] the U.S. assistance program has inadvertently bolstered players with the least incentive to reform FATA and the most capacity to block such reforms.

Washington should instead condition assistance on tangible steps by Islamabad to implement political, legal and administrative reforms in FATA that the major po-

[136] Playing military-backed peace brokers, while having participated in backing Sunni militant groups' blockade of Shias in the north of the agency, the Haqqanis were able to negotiate access through Shia-inhabited territory into Afghanistan. Jeffrey Dressler, "Haqqani Network Influence in Kurram and its Implications for Afghanistan", *CTC Sentinel*, vol. 4, no. 3 (2011), pp. 11-15. Also Daud Khattak, "A Haqqani-brokered peace in Kurram agency?", *Foreign Policy* (online), 16 February 2011.

[137] See Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit., pp. 11-12. In 2002, the Musharraf government created a separate governor's secretariat for FATA that took over responsibilities from the KPK secretariat, ostensibly to eliminate bureaucratic bottlenecks. In 2006, it was restructured as the FATA secretariat.

[138] FWO, the military's construction arm, is the recipient of lucrative U.S. Agency for International Development (USAID) infrastructure assistance. For detailed analysis of U.S. aid to FATA, see Crisis Group Reports, *Aid and Conflict in Pakistan*, pp. 26-28; and *Countering Militancy in FATA*, both op. cit.

litical parties, including the Pakistan Peoples Party (PPP) and the Awami National Party (ANP),[139] have vowed to support. The reform process should go well beyond the August 2011 reforms, which, while positive, have failed to address fundamental issues of governance and basic rights.[140] Islamabad should be urged to abolish the FATA secretariat and return its responsibilities to the relevant KPK line ministries, and to institute an effective law enforcement apparatus in FATA. The U.S. should then provide technical, financial and other support to that reformed system.

C. *Public Opinion in FATA: Claims and Counter-claims*

Reliably gauging FATA public opinion on impact of drones beyond anecdotal accounts is problematic, given the difficulties in conducting independent research in the region, discussed earlier. Responses are shaped and influenced by fear of both the military and militants, according to journalists, researchers and NGO workers in FATA and KPK.[141] "People living in FATA or who still have relatives there will tell you they are strongly opposed to drone strikes, while those (FATA residents) who have left the area will support them", said a researcher with years of experience working in South and North Waziristan.[142] According to another researcher, the responses of residents to drone strikes are primarily influenced by their dependence on patronage and protection from particular militant or criminal groups. But he also found that opponents of drone strikes often mute their criticism for fear of being labelled pro-Taliban.[143]As such, the drone program has become as much a political football as a security issue for FATA communities. It is in this context that opinion polls conducted in FATA should be assessed.

By some accounts, there is less opposition within FATA to drone strikes than among activists and commentators in the country's urban centres. This can be attributed to perceptions of their precision and a resulting decline in civilian casualties, and, most importantly, their success against top militant commanders.[144] In 2009, a survey conducted in North and South Waziristan and Kurram agencies by the Aryana Institute for Regional Research and Advocacy (AIRRA), a reputable research institute focusing on FATA and KPK, found that a majority of respondents (52 per cent) believed that drone strikes were accurate; and 60 per cent felt they weakened militant groups.[145]

A 2011 survey conducted by another local NGO, the Community Appraisal and Motivation Programme (CAMP), however, indicated that the percentage of those who felt that strikes are "sometimes justified, if properly targeted and excessive civilian casualties are avoided", had declined sharply, from 24.5 per cent in 2010 to 4.3

[139] The ANP led a coalition government in KPK, with the PPP as junior partner, from March 2008 to March 2013.
[140] The reform package lifted restrictions on political party activity, curtailed the bureaucracy's arbitrary powers of arrest and detention, excluded women and minors from the collective responsibility clause of the Frontier Crimes Regulations (FCR) 1901, established an appellate tribunal and gave the auditor general the authority to audit funds received and disbursed in FATA. Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.; see also below.
[141] Crisis Group interviews, Islamabad and Peshawar, January 2013.
[142] Crisis Group interview, Peshawar, January 2013.
[143] Crisis Group interview, Islamabad, January 2013.
[144] See, for instance, Pir Zubair Shah, "Analysis", op. cit.; and Zmarak Yousefzai, "Voice of a native son: Drones may be a necessary evil", *Foreign Policy* (online), 15 October 2012.
[145] "Drone Attacks in Khyber-Pakhtunkhwa", AIRRA, 2009.

per cent in 2011. While the increased opposition, with the largest percentage from North Waziristan, the most targeted FATA agency, could be attributed to reported signature strikes, the survey also noted that "participants from [the Shia-dominated] Lower Kurram supported the attacks, because they felt they were addressing the issue of [Sunni extremist] Talibanisation in FATA, a phenomenon that had taken the entire population hostage".[146]

In South Waziristan, also the target of drone strikes, and even in North Waziristan, opponents of extremist groups liken drones to *ababeel* (holy birds that, according to the Quran, helped defend the city of Mecca from invaders by dropping hot stones from their beaks). This was the position enunciated by the February 2010 "Peshawar Declaration" that concluded a major rally in KPK's capital led by the Aman Tehreek (Peace Movement), a broad coalition of civil society groups and a number of political parties, including the Awami National Party, which at the time led KPK's provincial government, and the PPP.[147]

Results of opinion surveys in FATA vary, due to methodology but also to additional factors, including influence (discussed later) of the pro-military segments of the Pakistani media and changes in drone targeting strategies and practices. A 2010 study by the New America Foundation, in partnership with Terror Free Tomorrow[148] and based on CAMP's field interviews, found that over three quarters of FATA residents opposed the U.S. drone program and almost half felt that civilians were a majority of those killed. About half the respondents, however, said they would support the program if it were led by the Pakistan army.[149] According to CAMP's 2011 survey, perceptions of drones as a threat to personal security increased from less than 10 per cent in 2010 to 34 per cent in 2011.[150] This is partly explained by the sharp increase in strikes in 2010, in particular the increased frequency of reported signature strikes, and perceived collateral damage.[151] Militants often attend public gatherings in areas they control. Strikes on these would undoubtedly kill non-combatants in addition to militants.

Describing the 17 March 2011 strike on a *jirga* that killed over 40 people,[152] a journalist from Waziristan wrote: "In addition to killing tens of civilians, the strike alienated and enraged not only victims' relatives … but the broader group of tribal citizens in the region, some of whom actually had a previously favourable view of discriminate drone strikes as an effective means of eliminating their Taliban enemies

[146] Naveed Ahmad Shinwari, "Understanding FATA: 2011 – Attitudes Towards Governance, Religion and Society in Pakistan's Federally Administered Tribal Areas", CAMP, 2012, pp. 88-89.
[147] "Peshawar Declaration", February 2010, text at http://criticalppp.com/archives/47109.
[148] A U.S.-based, non-partisan institute that researches attitudes towards extremism.
[149] "Public Opinion in Pakistan's Tribal Region", NAF and Terror Free Tomorrow, September 2010, pp. 3-4.
[150] Shinwari, op. cit., p. 66.
[151] According to NAF, there were 122 drone strikes in 2010 compared to 54 the year before. Their frequency gradually decreased, with 72 in 2011 and 36 the following year. "An analysis of U.S. drone strikes in Pakistan, 2004-2013", NAF, op. cit. Most strikes were reportedly signature strikes, which have increased under the Obama administration. Adam Entous, Siobhan Gorman and Julian E. Barnes, "U.S. tightens drone rules", *The Wall Street Journal*, 4 November 2011, and Pir Zubair Shah, "Analysis", op. cit.
[152] The strike killed between 42 and 53 people, according to TBIJ, and between 38 and 45, according to NAF. "Obama 2011 Pakistan strikes", TBIJ, 10 August 2011; and "2011: the Year of the Drone", NAF.

while sparing civilian lives".[153] Given the militants' brutal hold over the region, this alienation is unlikely to translate into support for the extremists but certainly plays into anti-U.S. sentiments in FATA and countrywide.

The militants, however, benefit far more from FATA's changed internal dynamics. "Previously, it was a simple breakdown", said a researcher. "You had military operations and militancy on one side, which destroyed towns and villages, and you had drones on the other, which were more precise. But now you have new players in the game, which has forced people into new alliances and choices". The new factors, he said, included Iranian support to Shia tribes and groups, manifested in an allegedly significant flow of Iranian weapons through FATA, and suspicions that Western aid workers are foreign intelligence agents, particularly since revelations in May 2011 that the CIA had used an immunisation campaign as a cover to identify bin Laden's location in Abbotabad.

With local perceptions influenced by the military's whipping up of anti-American and anti-Western sentiments, particularly playing up the perceived threats posed by so-called external interference, some tribal communities have sided with radical Deobandi groups such as the Khyber Agency-based Lashkar-i-Islami. These alliances, said the researcher, affect those communities' positions on a range of issues, including drones.[154]

[153] Pir Zubair Shah, "Analysis", op. cit.
[154] Crisis Group interview, Islamabad, January 2013.

V. Pakistan's Responsibility

That U.S. relations shape Pakistan's official posture toward drones is more than evident after the events of 2011. These included CIA operative Raymond Davis's killing of two people in Lahore in January, the Abbottabad raid in May and the November NATO attack on Mohmand Agency's Salalah checkpoint. As relations with Washington deteriorated, the military whipped up anti-American, anti-drone, sentiments through segments of the media. According to a human rights activist and informed observer, it "then used public opinion as leverage" with the U.S, particularly to try to stop it "from going after groups it doesn't want it to".[155] While the U.S. was negotiating Davis's release from Pakistani custody, drone strikes dropped from 21 in the two months before his arrest in January 2011 to 11 in February and mid-March.[156] On 17 March, a day after his release, a drone targeted a *jirga* in North Waziristan.[157] With anti-U.S. sentiments already high given round-the-clock coverage of the Davis affair, its reportedly heavy civilian toll led to street demonstrations; the CIA did not conduct a strike for another month.[158]

Similarly after the Salalah incident, with Pakistan blocking the ground lines of communications that supply the NATO mission in Afghanistan and forcing the U.S. to vacate the Shamsi base in Balochistan, Washington suspended the drone program for almost seven weeks, after which it was resumed with decreased frequency.[159] In 2012, there were only 48 strikes, compared to 75 in 2011 and 128 in 2010.[160]

The drone debate is also used by the military and some political parties to blame Pakistan's security crisis on the U.S. role in the region. "We never had any suicide bombings before the U.S. intervened in Afghanistan", said a National Assembly member.[161] This argument is an attempt to deflect responsibility for the spread of religious extremism from the military's 30-year strategy of supporting anti-India and Afghanistan-oriented jihadi proxies. The resultant spread of sectarian and militant violence by the military's former jihadi allies, including extremist Deobandi groups such as the Lashkar-e-Jhangvi (LeJ), poses the most significant threat to internal stability.[162]

However, even after the National Assembly – a body traditionally willing to do the military's bidding on national security issues – passed resolutions like the one in

[155] Crisis Group interview, Lahore, 21 January 2013.
[156] Usman Manzoor, "Drones take a nap after Davis incident", *The News*, 13 February 2011; "2011: The Year of the Drone", and "2010: The Year of the Drone", NAF.
[157] "Davis leaves Pakistan", *Dawn*, 16 March 2011; also Malik Mumtaz Khan and Mushtaq Yusufzai, "US drones kill 41 in North Waziristan", *The News*, 18 March 2011.
[158] Peter Bergen and Jennifer Rowland, "CIA drone war in Pakistan in sharp decline", CNN, 28 March 2012.
[159] Ibid.
[160] "Pakistan drone statistics visualized", TBIJ. Data reflects figures up to 21 March 2013 and is regularly updated.
[161] Crisis Group interview, Islamabad, February 2013.
[162] Some observers believe that the military retains its alliance relationship with the LeJ, a claim the military strongly denies. Following the killing of scores of Shia Hazaras in Balochistan in February 2013, Major General Asim Bajwa, director general, Inter-Services Public Relations (ISPR), said the army had no contact with militant groups, including LeJ. Muhammad Anis, "Army supports elections on time: ISPR", *The News*, 22 February 2013. For extensive analysis of extremist Deobandi outfits, see Crisis Group Report, *Pakistan: The Militant Jihadi Challenge*, op. cit.; and Asia Report N°95, *The State of Sectarianism in Pakistan*, 18 April 2005.

April 2012 that declared cessation of U.S. drone strikes an official policy objective, Pakistan has not yet taken any concrete steps to challenge the program. It has not, for instance, lodged a formal complaint with the UN Security Council. But even if Pakistan were to declare that drone strikes were not illegal, it "would still have an obligation to examine the legality of each strike", said the lawyer Hina Jilani. "Its failure to scrutinise and report is a failure of its duty to protect".[163]

Moreover, the military's appeasement deals with some Pakistani Taliban groups have jeopardised the safety of the communities those groups terrorise, including Shia and Barelvi communities and women. In the FATA context, according to Jilani, "with the military denying access to independent observers in FATA, we can't collect proof of human rights violations by militants even though we know they're on-going".[164]

The military's support to Afghanistan-oriented jihadi proxies, such as the al-Qaeda-linked Haqqani network, as well as local Taliban groups, such as those headed by Maulvi Nazir and Hafiz Gul Bahadur, invites U.S. drone strikes in the first place. Any successful and comprehensive counter-terrorism policy in FATA would have to address all these challenges candidly.

The national elected leadership has made some attempts to formulate a coherent counter-terrorism strategy with broad political buy-in. In 2012, the parliamentary committee on national security and the Senate committee on defence and defence production tried to play a more assertive role in the formulation and oversight of counter-terrorism and counter-insurgency policies. This included addressing military violations of fundamental rights and support for some militant jihadi groups.[165] Such a role, however, remains limited. Moreover, while parliamentary committees should certainly feed into the policy process, counter-terrorism is an executive prerogative. Where the government requires legal reforms, the federal cabinet will necessarily need to take its cue from the legislature; yet, on shaping the debate and defining counter-terrorism challenges and priorities, the cabinet must lead, rather than defer to legislative bodies.

A lucid counter-terrorism policy should also clarify the contours of Pakistan-U.S. cooperation, including actual policy on the use of drones. Given legitimate concerns about civilian casualties, the executive, legislative and judicial branches should apply pressure on the military to fully open FATA's conflict zones to parliamentary as well as independent, and unimpeded, scrutiny by domestic and international organisations, such as HRCP and the International Committee of the Red Cross. The government should also establish clear guidelines for remedial action if and when innocent civilians are injured or killed, whether by U.S. drones or indiscriminate Pakistani military operations, and create a compensation fund for such victims. It should also make any cooperation, tacit or active, with the U.S. drone program conditional on transparent U.S. policies and practices that respect international humanitarian law principles of humanity, distinction, proportionality and military necessity, and end any active or tacit support if the U.S. program violates such principles.

Above all, criminal justice reform should be at the heart of Pakistan's national counter-terrorism policy, aimed at enhancing the capacity of police and prosecutors to investigate, apprehend and prosecute militants.[166] FATA should be integral to,

[163] Crisis Group interview, Lahore, 21 January 2013.
[164] Ibid.
[165] "PCNS issues 15 recommendations on 'missing' persons' issue", *Dawn*, 8 January 2013.
[166] Pakistan's conviction rate is roughly 3 per cent and generally lower for more serious crimes.

rather than separate from, this agenda. This would require extending to FATA the Penal Code, Criminal Procedure Code and Evidence Act; the jurisdiction of the Peshawar High Court and Supreme Court, as provided by Article 247 of the constitution; and the jurisdiction of the KPK police. Border management cooperation with Afghanistan should also be enhanced to control militant movement.

VI. The Best Counter-terrorism Strategy in FATA: Rule of Law

Drone strikes address the symptoms of FATA's problems – the build-up of local and international militants who, taking advantage of the area's isolation and alienation, have established their bases in the agencies. Militants have done this largely because of antiquated and oppressive colonial-era laws that, on the one hand, deny residents the basic constitutional rights accorded most of Pakistan, while on the other prevent the state from extending its writ through formal rule-of-law institutions such as the police and courts and instead outsource law and order to informal tribal entities. Any serious counter-terrorism strategy for Pakistan would address these root causes by extending to FATA the legal and constitutional rights enjoyed by the rest of the country.

Under Article 247 of the constitution, only the federal executive has jurisdiction over FATA, which excludes the National Assembly and the superior judiciary. No law applies to FATA unless the president specifically authorises it.[167] Thus, the basic bodies of law governing Pakistan's criminal justice system – the Penal Code, Criminal Procedure Code, and Evidence Act – do not apply.[168] Rather than regular law enforcement agencies, FATA is policed by poorly trained and paid tribal levies, *khassadars* (tribal militias), and the paramilitary Frontier Corps (FC).[169] There are no lawyers, prosecutors, or judges – indeed, no formal justice system. Instead, the laws governing FATA, embodied in the Frontier Crimes Regulations (FCR) of 1901, deny residents basic constitutional rights of freedom, expression, assembly and dignity and endow local officials with draconian powers.

In August 2011, President Asif Ali Zardari promulgated a modest reform package aimed at curtailing these arbitrary powers of arrest and detention that, among other provisions, exempted women, children and the elderly from collective punishment; allowed political party activity; and established oversight of FATA's finances. Without proper courts to enforce the new measures, they largely exist only on paper. Women and children, for example, are still being detained under the FCR's collective responsibility clause.[170] Even these limited reforms were undermined after President Zardari, under pressure from the military, promulgated the Actions (in Aid of Civil Power) Regulations 2011 for FATA, giving the military virtually unchecked powers of arrest and indefinite detention on grounds as vague as obstructing actions in aid of civil power "in any manner whatsoever".[171]

While the August 2011 reforms allowed political party activity for the first time, stakeholders claim that the military and FATA bureaucracy are blocking implementation. Frustration at the government's failure to pursue meaningful reforms was reflected in the 14 March 2013 statement by the Political Parties Joint Committee on

[167] Article 247, constitution.
[168] For detailed analysis of Pakistan's criminal justice system, see Crisis Group Asia Report N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010.
[169] Levies and *khassadars* are tribal militias appointed by the political agent, who also serves as their commanding officer. Levies are provided small arms and ammunition, while *khassadars* use their own weapons. Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.
[170] Crisis Group Report, *Pakistan: No End to Humanitarian Crises*, op. cit.
[171] Crisis Group Report, *Countering Militancy in PATA*, op. cit.

FATA reforms, discussed earlier, which called on all parties to include the promotion of reforms in FATA in their 2013 election manifestos.[172]

Legal, political and economic isolation has turned FATA into a political and administrative no-man's land, left largely to the mercies of the militants and the military. Its population has paid the price. Indeed the military's policies in FATA, swinging between heavy-handed operations and appeasement deals with militants, have had a far more severe social and economic impact than drone strikes. Hundreds of thousands of residents have been displaced, largely because of indiscriminate military operations.[173] In 2009, over a million, almost a third of FATA's population, were displaced.[174] Almost four years later, there are still approximately 758,000 registered IDPs in FATA and KPK.[175]

Development indicators, unsurprisingly, lag far behind the rest of the country. For example, literacy is at 17 per cent, compared to a national average of 58 per cent, and maternal mortality, at 600 per 100,000, is more than double the national average. There is one doctor for roughly every 7,000 people.[176] Fourteen of the 35 polio cases reported in 2012 in Pakistan were in FATA.[177] In June 2012, Taliban commander Hafiz Gul Bahadur banned polio vaccination in North Waziristan until the CIA stopped its drone campaign – jeopardising immunisation of some 240,000 children.[178] Militants also threaten the lives of government vaccinators, believed to be potential U.S. spies.[179]

The military's restrictions on humanitarian and development aid agencies' access aggravate challenges to providing health and education in the tribal agencies. For example, as of mid-February 2013, one of the largest national NGOs active in FATA, has suspended all programs there, while awaiting re-authorisation from the army's 11th Corps – a process that began in early 2012.[180] "There are no schools, no hospi-

[172] "Political parties campaign in historic FATA elections", op. cit.
[173] Crisis Group Report, *Pakistan: No End to Humanitarian Crises*, op. cit., p. 1.
[174] Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit., p. 2.
[175] "Humanitarian Bulletin Pakistan", UN Office for the Coordination of Humanitarian Affairs (OCHA), 28 February 2013. Registration figures, however, fail to reflect the full scale of displacement, since families fleeing militant strongholds where the army has yet to intervene are in general not considered displaced. Registration is a prerequisite to all government assistance and to some international humanitarian aid (although families fleeing fighting among militant groups in Khyber agency's Tirah Valley are an exception to the rule). For instance, displaced inhabitants of North Waziristan, an agency that the government has not declared conflict-affected, do not receive assistance – a fact that may influence their ability to leave the area. Crisis Group Report, *Pakistan: No End to Humanitarian Crises*; and Briefing, *Pakistan: The Worsening IDP Crisis*, both op. cit.
[176] "Annual Plan 2012-2013", Planning and Development Division, Planning Commission, Government of Pakistan, June 2012, p. 220.
[177] Pakistan, Afghanistan and Nigeria are the only countries in which polio is still endemic. Ashfaq Yusufzai, "Two more polio cases detected in KP, FATA", *Dawn*, 24 September 2012; also, "Polio cases down worldwide, trouble spots remain", Agence France-Presse, 13 November 2012.
[178] The Haqqani network-linked Bahadar group has a peace deal with the Pakistan military.
[179] "Taliban polio ban puts 240,000 children at risk", *The Nation*, 14 July 2012, and Nasruminallah, "N. Waziristan warlord bans polio vaccination", *The Express Tribune*, 17 June 2012. Such attacks intensified after revelations in May 2011 that a doctor working on an immunisation campaign had helped the CIA identify bin Laden's location in Abbottabad. An assistant political agent in Khyber Agency sentenced him to 33 years in prison.
[180] Crisis Group interview, NGO representative, January 2013.

tals. People don't see the state anywhere except in the army that they resent", said a South Waziristan native.[181]

In the absence of a formal legal framework for economic activity, livelihood opportunities are few. Arms and drug trafficking across the Afghan border is a major source of income, and of militant financing. Civil administrators also exact a financial toll on the area's population by illegally taxing shopkeepers, business owners and truck drivers, among others – a practice increasingly adopted by militant groups. Many tribal communities are therefore forced to seek militant groups' patronage, even as they oppose their agendas, as the only viable source of livelihoods and basic protection – a role formerly played by *maliks* (tribal leaders). "The only livelihood opportunities available are working for the militants as cooks or drivers or renting out property to them", said the head of an NGO working in North and South Waziristan.[182] Another reported source of income is spying for the various players in the area – including the military, the militants or foreign intelligence agencies.[183] Some have become economic migrants in the country's urban centres or abroad.[184]

Article 247 of the constitution and the FCR (1901) should be abolished, with tribal *jirgas* replaced by district and sub-district courts, and FATA incorporated into KPK, with representation in the provincial legislature.[185] Analyst Khadim Hussain contended: "If people in FATA feel there is sincere political will to end the area's alienation and a clear change of policy towards all jihadi groups, they will support the state and pick up the fight against the militants".[186] Establishing the rule of law in the tribal belt and ending FATA's sanctuaries for local, regional and transnational jihadi groups would be Pakistan's strongest case against the U.S. drone program.

[181] Crisis Group interview, January 2013.
[182] Crisis Group interview, Peshawar, 30 January 2013.
[183] Crisis Group interviews, January 2013.
[184] Crisis Group interviews, journalists working in FATA and labour migrants from South Waziristan, Peshawar, January 2013.
[185] Condemning discrimination against FATA residents, Peshawar High Court Chief Justice Dost Mohammad Khan called for the deletion of Article 247 from the constitution. "Constitutional cover must for peace in FATA: PHC CJ", *Dawn*, 23 April 2012.
[186] Crisis Group interview, Islamabad, 29 January 2013.

VII. Conclusion

The lack of candour from the U.S. and Pakistan governments on the drone program in FATA makes a sober assessment of its impact more difficult. Secrecy has allowed hardliners in Pakistan's military establishment and elsewhere in the polity to portray the program as a violation of national sovereignty, while maintaining plausible deniability about Pakistani consent. Above all, it has enabled the Pakistani state to sidestep responsibility for the real sources of militancy in FATA, which was a legal black hole long before U.S. drone strikes began in 2004.

As the Obama administration looks to withdraw most of its troops from Afghanistan by the end of 2014, U.S. reliance on remote targeted killings to disrupt militant networks in FATA will likely to continue, if not intensify. Yet, with increasing domestic scrutiny, symbolised by the Senate Intelligence Committee's rigorous hearing for John Brennan's confirmation as CIA chief and the administration's revelation of more details to the American public, the drone program could become more transparent in the second Obama term. If not, it will continue to be exploited by hardliners in Pakistan to ignite anti-U.S. sentiment. Crucial steps would be to establish clear, rigorous and publicly available targeting guidelines in keeping with international legal principles of distinction and proportionality and to transfer control from the CIA to the Defense Department, with oversight by the Senate and House Armed Services Committees and appropriate judicial review.

Moreover, the U.S. has yet to end its dependence on the Pakistani military as its primary counter-terrorism partner. This has resulted in inadequate assistance to civilian institutions, including police and other criminal justice actors, and also failure to apply conditions on security assistance even as the military continues to support anti-Afghanistan and India-oriented jihadi groups.

Reliance on the military has also impeded a more robust dialogue on the urgent need for comprehensive political reforms in FATA. The U.S. would stand to gain by making the relationship conditional on performance and by supporting meaningful reform in FATA. Drone attacks may have killed scores of top al-Qaeda and Taliban leaders, but as long as FATA remains a lawless no-man's land, it will be a haven for an array of militant and criminal networks, and the U.S. drone program will have at best a controversial legacy.

For its part, Pakistan should define its cooperation with the U.S. in countering terrorism within the context of a comprehensive national counter-terrorism policy. As the country's democratic transition continues, with a new government formed following the 11 May 2013 general election, representative civilian institutions should seize control of the national security debate and prioritise extending the rule of law to FATA, thus diminishing Washington's perceived need to conduct drone strikes in the tribal belt

Islamabad/Washington/Brussels, 21 May 2013

Appendix A: Map of Pakistan



Based on UN Map No. 4181 Rev. 1 (January 2004), "North-West Frontier" has been changed to "Khyber Pakhtunkhwa".

Appendix B: Khyber Pakhtunkhwa and FATA



Please refer to the Pakistan map for the boundaries of Azad Jammu and Kashmir (AJK), the Line of Control (LoC) and Jammu and Kashmir" (J&K).

Appendix C: Glossary

AACP	Actions (in Aid of Civil Power) Regulations 2011, applicable to PATA (Provincially Administered Tribal Areas) and FATA, promulgated in August 2011.
AIRRA	Aryana Institute for Regional Research and Advocacy, a Pakistani non-governmental research institute focusing on FATA and KPK.
ANP	Awami National Party, which headed the coalition government in KPK with the PPP from 2008 to March 2013.
AUMF	Authorization for Use of Military Force, passed by U.S. Congress after the 11 September 2001 attacks authorising the president to use of force against those behind the attacks.
CAMP	Community Appraisal and Motivation Programme, a Pakistani non-governmental organisation working on peacebuilding and development projects in FATA and KPK.
CIA	Central Intelligence Agency, the U.S. government's civilian intelligence gathering agency.
CRSS	Center for Research and Security Studies, an independent Islamabad-based NGO.
FATA	Federally Administered Tribal Areas.
FC	Frontier Corps, a federal paramilitary force involved in counter-insurgency operations in FATA and Balochistan. It falls under the interior ministry but is headed by a serving army officer.
FCR	Frontier Crimes Regulations, a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA.
HRCP	independent Human Rights Commission of Pakistan.
IDP	Internally Displaced Person.
IHL	International Humanitarian Law, regulates the conduct of belligerents in armed conflict.
ISI	Inter-Services Intelligence Directorate, the Pakistan military's main intelligence agency.
KPK	Khyber Pakhtunkhwa province, formerly known as Northwest Frontier Province.
LeT	Lashkar-e-Tayyaba, renamed Jamaat-ud-Dawa (JD), responsible for the 2008 Mumbai attacks.
NAF	New America Foundation, a U.S.-based, non-partisan public policy institute.
PA	political agent, a centrally-appointed bureaucrat who is the top official in a tribal agency, exercising extensive executive, judicial and financial powers.
PIPS	Pakistan Institute for Peace Studies, an independent research and advocacy organisation based in Islamabad.
PPP	Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967. Since former Prime Minister Benazir Bhutto's assassination in December 2007, her widower, Asif Ali Zardari (currently Pakistan's president), and son, Bilawal Bhutto Zardari, head the party. It led the coalition government in the centre and was a coalition partner of the ANP in KPK until mid-March 2013, when the assemblies were dissolved after completing their five-year term.
TBIJ	The Bureau of Investigative Journalism, an independent organisation based at City University, London.
TTP	Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan), an umbrella organisation of predominantly Pashtun militant groups in KPK and FATA.

Appendix D: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 150 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by former U.S. Undersecretary of State and Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters is in Brussels, and the organisation has offices or representation in 34 locations: Abuja, Bangkok, Beijing, Beirut, Bishkek, Bogotá, Bujumbura, Cairo, Dakar, Damascus, Dubai, Gaza, Guatemala City, Islamabad, Istanbul, Jakarta, Jerusalem, Johannesburg, Kabul, Kathmandu, London, Moscow, Nairobi, New York, Pristina, Rabat, Sanaa, Sarajevo, Seoul, Tbilisi, Tripoli, Tunis and Washington DC. Crisis Group currently covers some 70 areas of actual or potential conflict across four continents. In Africa, this includes, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Sierra Leone, Somalia, South Sudan, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Malaysia, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, North Caucasus, Serbia and Turkey; in the Middle East and North Africa, Algeria, Bahrain, Egypt, Iran, Iraq, Israel-Palestine, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, Western Sahara and Yemen; and in Latin America and the Caribbean, Colombia, Guatemala and Venezuela.

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May 2013

Appendix E: Reports and Briefings on Asia since 2010

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Central Asia: Migrants and the Economic Crisis, Asia Report N°183, 5 January 2010.

Kyrgyzstan: A Hollow Regime Collapses, Asia Briefing N°102, 27 April 2010.

The Pogroms in Kyrgyzstan, Asia Report N°193, 23 August 2010.

Central Asia: Decay and Decline, Asia Report N°201, 3 February 2011.

Tajikistan: The Changing Insurgent Threats, Asia Report N°205, 24 May 2011.

Kyrgyzstan: Widening Ethnic Divisions in the South, Asia Report N°222, 29 March 2012.

North East Asia

The Iran Nuclear Issue: The View from Beijing, Asia Briefing N°100, 17 February 2010 (also available in Chinese).

North Korea under Tightening Sanctions, Asia Briefing N°101, 15 March 2010.

China's Myanmar Strategy: Elections, Ethnic Politics and Economics, Asia Briefing N°112, 21 September 2010 (also available in Chinese).

North Korea: The Risks of War in the Yellow Sea, Asia Report N°198, 23 December 2010.

China and Inter-Korean Clashes in the Yellow Sea, Asia Report N°200, 27 January 2011 (also available in Chinese).

Strangers at Home: North Koreans in the South, Asia Report N°208, 14 July 2011 (also available in Korean).

South Korea: The Shifting Sands of Security Policy, Asia Briefing N°130, 1 December 2011.

Stirring up the South China Sea (I), Asia Report N°223, 23 April 2012 (also available in Chinese).

Stirring up the South China Sea (II): Regional Responses, Asia Report N°229, 24 July 2012.

North Korean Succession and the Risks of Instability, Asia Report N°230, 25 July 2012 (also available in Chinese and Korean).

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Dangerous Waters: China-Japan Relations on the Rocks, Asia Report N°245, 8 April 2013.

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Sri Lanka: A Bitter Peace, Asia Briefing N°99, 11 January 2010.

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War Crimes in Sri Lanka, Asia Report N°191, 17 May 2010.

Steps Towards Peace: Putting Kashmiris First, Asia Briefing N°106, 3 June 2010.

Pakistan: The Worsening IDP Crisis, Asia Briefing N°111, 16 September 2010.

Nepal's Political Rites of Passage, Asia Report N°194, 29 September 2010 (also available in Nepali).

Reforming Afghanistan's Broken Judiciary, Asia Report N°195, 17 November 2010.

Afghanistan: Exit vs Engagement, Asia Briefing N°115, 28 November 2010.

Reforming Pakistan's Criminal Justice System, Asia Report N°196, 6 December 2010.

Nepal: Identity Politics and Federalism, Asia Report N°199, 13 January 2011 (also available in Nepali).

Afghanistan's Elections Stalemate, Asia Briefing N°117, 23 February 2011.

Reforming Pakistan's Electoral System, Asia Report N°203, 30 March 2011.

Nepal's Fitful Peace Process, Asia Briefing N°120, 7 April 2011 (also available in Nepali).

India and Sri Lanka after the LTTE, Asia Report N°206, 23 June 2011.

The Insurgency in Afghanistan's Heartland, Asia Report N°207, 27 June 2011.

Reconciliation in Sri Lanka: Harder Than Ever, Asia Report N°209, 18 July 2011.

Aid and Conflict in Afghanistan, Asia Report N°210, 4 August 2011.

Nepal: From Two Armies to One, Asia Report N°211, 18 August 2011 (also available in Nepali).

Reforming Pakistan's Prison System, Asia Report N°212, 12 October 2011.

Islamic Parties in Pakistan, Asia Report N°216, 12 December 2011.

Nepal's Peace Process: The Endgame Nears, Asia Briefing N°131, 13 December 2011 (also available in Nepali).

Sri Lanka: Women's Insecurity in the North and East, Asia Report N°217, 20 December 2011.

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Aid and Conflict in Pakistan, Asia Report N°227, 27 June 2012.

Election Reform in Pakistan, Asia Briefing N°137, 16 August 2012.

Nepal's Constitution (I): Evolution Not Revolution, Asia Report N°233, 27 August 2012 (also available in Nepali).

Nepal's Constitution (II): The Expanding Political Matrix, Asia Report N°234, 27 August 2012 (also available in Nepali).

Afghanistan: The Long, Hard Road to the 2014 Transition, Asia Report N°236, 8 October 2012.

Pakistan: No End To Humanitarian Crises, *Asia Report N°237, 9 October 2012.*

Sri Lanka: Tamil Politics and the Quest for a Political Solution, Asia Report N°239, 20 November 2012.

Pakistan: Countering Militancy in PATA, Asia Report N°242, 15 January 2013.

Sri Lanka's Authoritarian Turn: The Need for International Action, Asia Report N°243, 20 February 2013.

South East Asia

Radicalisation and Dialogue in Papua, Asia Report N°188, 11 March 2010 (also available in Indonesian).

Indonesia: Jihadi Surprise in Aceh, Asia Report N°189, 20 April 2010.

Philippines: Pre-election Tensions in Central Mindanao, Asia Briefing N°103, 4 May 2010.

Timor-Leste: Oecusse and the Indonesian Border, Asia Briefing N°104, 20 May 2010.

The Myanmar Elections, Asia Briefing N°105, 27 May 2010 (also available in Chinese).

Bridging Thailand's Deep Divide, Asia Report N°192, 5 July 2010 (also available in Thai).

Indonesia: The Dark Side of Jama'ah Ansharut Tauhid (JAT), Asia Briefing N°107, 6 July 2010.

Indonesia: The Deepening Impasse in Papua, Asia Briefing N°108, 3 August 2010.

Illicit Arms in Indonesia, Asia Briefing N°109, 6 September 2010.

Managing Land Conflict in Timor-Leste, Asia Briefing N°110, 9 September 2010.

Stalemate in Southern Thailand, Asia Briefing N°113, 3 November 2010 (also available in Thai).

Indonesia: "Christianisation" and Intolerance, Asia Briefing N°114, 24 November 2010.

Indonesia: Preventing Violence in Local Elections, Asia Report N°197, 8 December 2010 (also available in Indonesian).

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Myanmar's Post-Election Landscape, Asia Briefing N°118, 7 March 2011 (also available in Chinese and Burmese).

The Philippines: Back to the Table, *Warily*, *in Mindanao*, Asia Briefing N°119, 24 March 2011.

Thailand: The Calm Before Another Storm?, Asia Briefing N°121, 11 April 2011 (also available in Chinese and Thai).

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Indonesian Jihadism: Small Groups, *Big Plans*, Asia Report N°204, 19 April 2011 (also available in Chinese).

Indonesia: Gam vs Gam in the Aceh Elections, Asia Briefing N°123, 15 June 2011.

Indonesia: Debate over a New Intelligence Bill, Asia Briefing N°124, 12 July 2011.

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Myanmar: Major Reform Underway, Asia Briefing N°127, 22 September 2011 (also available in Burmese and Chinese).

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Indonesia: From Vigilantism to Terrorism in Cirebon, Asia Briefing N°132, 26 January 2012.

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Timor-Leste's Elections: Leaving Behind a Violent Past?, Asia Briefing N°134, 21 February 2012.

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Reform in Myanmar: One Year On, Asia Briefing N°136, 11 April 2012 (also available in Burmese and Chinese).

The Philippines: Local Politics in the Sulu Archipelago and the Peace Process, Asia Report N°225, 15 May 2012.

How Indonesian Extremists Regroup, Asia Report N°228, 16 July 2012 (also available in Indonesian).

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Indonesia: Dynamics of Violence in Papua, Asia Report N°232, 9 August 2012.

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Malaysia's Coming Election: Beyond Communalism?, Asia Report N°235, 1 October 2012.

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The Philippines: Breakthrough in Mindanao, Asia Report N°240, 5 December 2012.

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