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Studying Drones

The Low Quality Information Environment of Pakistan's Tribal Areas

C. CHRISTINE FAIR

Pakistan captures the attention of those interested in U.S. drone policy because it has experienced far more drone strikes than any other country from 2004 onward. Even though the U.S. Central Intelligence Agency (CIA) and the U.S. Air Force developed the capacity to weaponize remotely piloted aerial vehicles (RPVs)¹ well before the events of September 2001,² it took the events of 9/11 to galvanize the Bush administration to finally approve the use of armed drones in what became the U.S.-led "Global War on Terror" (Frisbee 2004). Analysts believe that the CIA first employed a weaponized drone on February 4, 2002, in an effort to kill Bin Laden near the city of Khost, in Afghanistan's Paktia province. In what now seems unusual, Secretary of Defense Donald Rumsfeld, using the passive voice of government obfuscation, acknowledged the strike: "A decision was made to fire the Hellfire missile. It was fired" (Sifton 2012). The United States then expanded the use of armed RPVs to kill alleged terrorists and insurgents in Pakistan's Federally Administered Tribal Areas (FATA).³ Subsequently, and consistent with the expanding scope of the global war on terror, the U.S. intelligence and military agencies employed armed RPVs in Yemen, Somalia, Libya, and elsewhere. However, the most notorious of these theaters is the FATA in Pakistan, which has been the site of the vast majority of U.S. armed RPV strikes since they began after 9/11.

As the covert use of RPVs in Pakistan proliferated, so has the body of writing on the program and its consequences. Unfortunately, many of these analyses fall short because they pay inadequate attention to the specificities of the program in Pakistan. In this chapter, I first provide

important contextual information that should foreground any study of RPV usage in Pakistan. Next, I discuss some of the problems with popular notions of “Pakistani sovereignty” that undergird commentary about the RPV program there. I then evaluate Pakistan’s willingness and ability to do more to protect the international community from the terrorist groups ensconced in its territory. Following this, I critique recent human rights advocacy reports, highlighting the methodological, and even ethical, problems that undermine their examination of drones. I conclude with a number of thoughts on how scholars can improve the quality and thus reliability of their work to understand the impact of the RPV program in Pakistan and perhaps other low information environments.

The Covert Armed RPV Program in Pakistan

The first RPV strike in Pakistan’s FATA was what some U.S. officials call a “good will kill” to eliminate a notorious Pakistani militant leader Nek Mohammad. Mark Mazzeiti (2013) recounts how on a hot June day in 2004, Nek Mohammad was killed by a RPV while lounging in his mud compound in South Waziristan. He had been speaking on a satellite phone with one of the numerous reporters who frequently interviewed him. The Pakistani military claimed responsibility for the strike and the militant’s demise. This was the first lie in what would become a concatenation of unsustainable fictions.

In fact, the CIA had executed the man, even though he was not an al-Qaeda operative and did not target the United States or its forces in Afghanistan. Nek Mohammad was an enemy of the Pakistani state, responsible for killing Pakistani troops and humiliating the army after making and then breaking a peace accord with the Pakistani army. The targeted killing was the CIA’s first “good will kill.” It inked, with Mohammad’s blood, a secret bargain between the CIA and Pakistan’s military and intelligence agency (the Interservices Intelligence Directorate [ISI]) that would grant the CIA access to Pakistan’s air space and thus use RPV strikes to kill America’s enemies. Bound by conditions of the covenant with the ISI, the CIA’s RPVs would be constrained to narrow “flight boxes” in the FATA. This was to ensure that U.S. spies would not have access to “places where Islamabad didn’t want the Americans to go: Pakistan’s nuclear facilities, and mountain camps where Kashmiri mili-

tants were trained for attacks against India” (Mazzeiti 2013, 109). The ISI also insisted that the United States operate all RPV flights in Pakistan under the CIA’s covert-action authority, often referred to as “Title 50” operations (Wall 2011). This meant that the United States could never acknowledge that such strikes were taking place and “Pakistan would either take credit for individual kills or remain silent” (Mazzeiti 2013, 109). Also, FATA’s unique and archaic governance structure would facilitate this plausible deniability and obfuscate any details of the program. President Musharraf, who brokered the deal with President Bush, believed maintaining the ruse would be easy; telling a CIA operative during the negotiations that “in Pakistan, things fall out of the sky all the time” (Mazzeiti 2013, 109).⁴

In the early years after the Nek Mohammad killing, the United States used armed RPV attacks sporadically. Between 2004 and 2007, there were only 9 attacks. Then, however, the Bush administration became increasingly convinced that RPV attacks were an effective way to defeat the militants in Pakistan’s tribal areas, and in 2008 alone, the Bush White House launched 33 strikes. When Barack Obama became the U.S. president, he became ever more reliant upon armed RPV strikes to achieve his strategic objective of defeating al-Qaeda. In 2009, there were 53 RPV strikes, in 2010, the “year of the drone,” there were 118 RPV attacks, and in 2011, there were 70 RPV attacks (Bergen and Tiedemann 2010). According to data from the New America Foundation (2013), there were 48 RPV strikes in 2012, and 13 in 2013 as of May. Despite the attention to the RPV program in international media, the program in Pakistan is still technically covert. Accurate information about the program is thus very difficult to obtain, and even accounts in peer-reviewed journals contain many errors. U.S. government officials are generally prohibited from even acknowledging any particular RPV strike in Pakistan, despite the fact that RPVs are heavily reported in Pakistani and international media, albeit without reliable and confirmable details (Savage 2013).⁵

The Question of Pakistani Sovereignty

Officials in both the Bush and Obama administrations have justified the CIA RPV program by referencing both domestic and international law. As discussed in earlier chapters (see Chapter 1 and 6, for example),

the 2001 Authorization for the Use of Military Force (AUMF) authorizes U.S. counterterrorism operations to target and kill members of the Afghan Taliban and al-Qaeda and its affiliates wherever they may be. Congress passed the AUMF just days after the 9/11 attacks. This statute permits the U.S. president “to use all necessary and appropriate force” to pursue those parties responsible for the 9/11 terrorist attacks. With respect to international law, the Obama administration justifies the program with reference to the right to self-defense, as laid out in Article 51 of the United Nations Charter. The Obama administration asserts that because the United States is in a state of armed conflict with al-Qaeda and associated forces, it is entitled to target them under the doctrine of self-defense (Masters 2013).

Critics reject this legal rationale (see Sonnenberg, Chapter 5, Glazier Chapter 6, and Eviatar, Chapter 7 for varying degrees of this argument). The Stanford-New York University Law School Clinics’ report, “Living under Drones” (International Human Rights and Conflict Resolution Clinic, 2012), which examines the impact of U.S. RPV policy on civilians living in northwest Pakistan, voices skepticism that killings carried out today can be justified by the AUMF of 2001. The authors of the report also take considerable issue with the mobilization of the UN principle of self-defense to justify the attacks. The authors question whether the American RPV program violates Pakistan’s sovereignty, an issue that hinges upon whether or not Pakistan has consented to the program and whether the United States is lawfully acting in self-defense. On the issue of Pakistani consent, different authors and organizations take different positions. Some are willing to concede that elements of the Pakistani state assented to the RPV attacks at least in the past, even if the state of current cooperation is unknown (Mazzetti 2013; Sanger 2012; IHR 2012). The International Crisis Group suspects that elements of the Pakistani state remain complicit and rebuff those who take Pakistani public denouncements at face value.

In contrast, Ben Emmerson, the UN special rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, made categorical statements that the U.S. RPV program violated Pakistan’s sovereignty. After his three-day visit to Pakistan in March 2013, Emmerson announced that there was no evidence of a U.S.-Pakistan agreement on RPV use and that Emmerson’s official

position was buttressed by “a thorough search of government records,” an exceedingly unlikely scenario (International Crisis Group 2013, 20). The International Crisis Group expressed dismay that Emmerson “ignored evidence not only of tacit Pakistani consent during the Musharraf regime, as disclosed by then-Prime Minister Glani 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” (2013, 20).

While Pakistani officials deny any such agreement, American officials who can speak on this matter often reaffirm its existence, as Daniel Markey, a member of the Secretary of State’s Policy Planning Staff from 2003 to 2007, does. In an interview with Ritika Singh, he explains:

Musharraf’s consent represented both that of the Pakistani military and its civilian government. Not only did he grant his consent, but initially, the Pakistani military tried to take credit for these kinds of attacks—claiming that they weren’t the work of drones, but Pakistani air strikes. This wasn’t a very credible claim on Pakistan’s part, but it worked for a while because the strikes were initially much less frequent than they are now. And the misdirection helped the Pakistani government weather the domestic backlash. (Singh 2012)

Musharraf did not follow through on any of his public complaints, confirming the mutual understanding that such protests were political drama for domestic consumption. As Markey explains, “One can only assume . . . that the private messages from the Pakistani government were different from their public messages” (Singh 2012). David Sanger, the chief Washington correspondent for the *New York Times*, suggests that this permission continued at least until 2011. Investigating the rules of RPV deployment in Obama policy, one of Sanger’s interlocutors explained that with respect to host-nation permission, “a country must expressly invite the United States to use RPVs to strike targets inside its territory—which was the case with Pakistan until the traumas of 2011 . . . or they must be employed in a country that is ‘unwilling or unable to suppress the threat.’”⁶ Sanger further cites “a senior intelligence officer who is responsible for overseeing the program [who] insists that the United States sticks to those rules” (2012, 258).

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Although Nawaz Sharif and his Pakistan Muslim League-Nawaz (PML-N) campaigned on an anti-drone platform, he tempered his opposition upon becoming prime minister in May 2013 (Shah 2012). Despite Sharif's insistence that the United States halt the use of RPVs, Pakistani former officials confirm that Pakistan's military and intelligence agencies support the strikes. The preferences of the military and intelligence agencies seem again and again to trump those of Pakistan's elected officials. Speaking of this civil-military discord, Husain Haqgani, Pakistan's former ambassador to the United States, explained:

The Pakistani ISI actually resisted U.S. efforts to keep its own government in Islamabad informed. . . . The ISI did not like Pakistani civilian officials finding out anything about their dealings with the United States about armed Predator drones, but the U.S. government wanted the civilian leadership to remain in the picture. . . . [The ISI was in the habit of] protesting against the drones publicly while privately negotiating over whom the drones would target. (Quoted in Hirsh 2013)

Such recent reporting vindicates the suspicions of those analysts and organizations, such as the International Crisis Group, who have long suspected that some parts of the Pakistani state are complicit. Writing from an authoritative position on Pakistan's domestic politics and civil-military relations, the International Crisis Group observed that "even after the National Assembly . . . passed resolutions like the one in 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" (2013: 29–30). Even if Pakistan's official position cannot be clarified, the Pakistani government continues to "deconflict" the airspace; in other words, they continue to ensure that RPVs operating in Pakistan do not collide with other aircraft—civilian or military—in the area. It should be recalled that RPVs do not simply "sneak in, bomb, and sneak out." Rather, a mix of RPVs hovers at different levels of altitude in Pakistan for hours and even days.

For those unfamiliar with Pakistan, the public statements by politicians condemning the RPVs may be adequate evidence that the Pakistani state does not facilitate, much less approve of, these attacks.

However, analysts who are more familiar with Pakistani politics understand that elected officials do not exercise control over national security policy. In fact, when democracy returned in 1990 following the death of dictator General Zia ul Haq and the electoral victory of Benazir Bhutto's Pakistan's People Party, the army "allowed Ms. Bhutto" to become the prime minister, provided that she agreed not to interfere in the affairs of the armed forces (Khan 2012, 227–228).

This remains the case. In July 2013, the official commission established by the Pakistan government to investigate the U.S. raid on Osama bin Laden's safe haven in Pakistan concluded that while setting defense policy constitutionally falls under the purview of the civilian government, "in reality . . . defense policy in Pakistan is considered the responsibility of the military and not the civilian government even if the civilian government goes through the motions of providing inputs into a policymaking process from which it is essentially excluded" (Abbottabad Commission 2013, 159).⁷

Is Pakistan Willing to and Capable of Acting against Targets on Its Soil?

Closely related to the issue of Pakistan's sovereignty is the question of Pakistan's ability and willingness to exercise the rule of law and take action against those militants operating in and from Pakistan. On this matter the Stanford-NYU Law School Clinics' report concedes that "in the absence of Pakistani consent, U.S. use of force in Pakistan may not constitute an unlawful violation of Pakistan's sovereignty if the force is necessary in self-defense in response to an armed attack—either as a response to the attacks of September 11, 2001, or as anticipatory self-defense to mitigate threats posed by non-state groups" in the FATA (IHR 2012, 106–107). The report further points out that for this use of force to be lawful in Pakistan, Pakistan must also be shown to be "unwilling or unable to take [the appropriate steps, itself, against the non-state group]" (IHR 2012, 107). The report thus casts doubt upon whether contemporary RPV attacks can be justified by reference to the events of 9/11. The authors are also doubtful about the resort to "anticipatory" self-defense because it is unlikely that the majority of the drone strikes have averted attacks that are "instant, overwhelming, and leaving no choice

of means, and no moment of deliberation" (HR 2012, 107-108; see also Sonnenberg, Chapter 5; Glazier, Chapter 6; Eviatar, Chapter 7).

Indeed, recent reporting casts doubt upon the U.S. claims that RPV strikes target al-Qaeda and Taliban operatives or their associates to prevent imminent attack on the United States and its interests. Recent reporting by Jonathan Landay, based upon a privileged review of primary source materials, indicated that as many as "265 of up to 482 people who the U.S. intelligence reports estimated the CIA killed during a 12-month period ending in September 2011 were not senior al-Qaeda leaders but instead were 'assessed' as Afghan, Pakistani and unknown extremists. Drones killed only six top al-Qaeda leaders in those months, according to news media accounts" (2013). This is consistent with interviews with American and Pakistani officials, who concede that the U.S. RPVs are killing "Pakistani terrorists," such as Pakistani Taliban leaders (e.g. Nek Mohammad in 2004, Baitullah Mehsud in 2009, Waliur Rehman in 2013, among numerous others). What motivation does the United States have to eliminate Pakistan's enemies, who pose no significant imminent threat to the United States? Simple. The United States has a supreme interest in Pakistani domestic security and stability and seeks to help Pakistan achieve this, even while the two countries remain mired in other differences.

It is from this perspective that the issue of Pakistan's sovereignty becomes very difficult to assess. It is well established that Pakistan has cultivated Islamist militancy from the earliest days of the state. The state has employed Islamist militants to prosecute Pakistan's proxy war with India over the disputed disposition of Kashmir and India's rising position in the international system since 1947. Pakistan has instrumentalized political Islam in Afghanistan since the mid-1950s and Islamist militancy there since the early 1970s. Yet it is also the case that in recent years, some of Pakistan's erstwhile allies have mobilized to target the state. The most prominent of these is a network of commanders who operate under the banner of the Tehreek-e-Taliban-e-Pakistan (Pakistani Taliban, or TTP) and who have set their sights upon dismantling Pakistan's democracy. They have killed tens of thousands of Pakistanis, including women and children, military and paramilitary personnel, police and other law enforcement entities, bureaucrats and political figures alike (Fair 2011a).

While well-cited reports such as those by the afore-noted Stanford-NYU collaboration and that of Columbia University Law School (2012) do not focus upon this question of Pakistani sovereignty and intent, the International Crisis Group (ICG) report engages with it directly. The group considers that Pakistan's military has a record of forging deals to appease some of Pakistan's Taliban groups and that these initiatives "have jeopardised the safety of the communities those groups terrify, including Shia and Barelyvi communities and women" (2013, 30). The International Crisis Group also observes that the military denies access to independent observers in FATA, precluding them from collecting proof of human rights violations by militants. The ICG believes that "the military's support to Afghanistan-oriented 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" and argues that "any successful and comprehensive counter-terrorism policy in FATA would have to address all these challenges candidly" (2013, 30). The ICG also explains that whereas the national elected leadership had tried to be more assertive on the issues of oversight of counterterrorism and counterterrorism policies, their role remains limited, with the dominant role played by the army.

The restriction of the RPV program to Pakistan's FATA (which is comprised of seven tribal agencies and six frontier regions) is important to understanding why the RPV policy is problematic in Pakistan and the difficulty in assessing Pakistan's will and capacity to do more to contend with terrorists within its territory. The FATA is governed by a colonial instrument called the Frontier Crimes Regulation, or FCR, which effectively renders residents of FATA to be "second class citizens" (Fair 2014a). As a consequence, foreign journalists are prohibited from travelling to FATA without the approval of the Ministry of Interior and/or an escort from the military and intelligence services. Even ordinary Pakistanis cannot legally visit the area unless they themselves have families there. Thus, it is extremely difficult to obtain accurate information from what has long been something of an informational black hole. These restrictions serve the Pakistani state's interests because it has long used FATA to host a dizzying array of Islamist militant groups operating in Afghanistan, India, and even Pakistan itself (Haqqani 2005; Rubin

2002; Hussain 2005; Swami 2007). Some of Pakistan's most hardened Islamist militants have found sanctuary in FATA as a consequence.

Several aspects of the FCR have enormous and nearly universally unacknowledged implications for the U.S. use of armed RPVs in FATA. Under the FCR, an entire family or clan can be punished just because one member has granted terrorists sanctuary in their home. This clause has been used to justify the Pakistani air strikes and draconian army operations that have caused enormous civilian casualties and forced displacement. As of March 2013, the United Nations reported that there are still some 758,000 persons who are internally displaced due to ongoing security operations in FATA as well as parts of Khyber Pakhtunkhwa (UNOCHA 2013). Part of the unrecognized legitimizing discourse surrounding the use of armed RPVs in FATA is the unfortunate fact that residents of FATA are second-class citizens, and the legal regime under which they are governed permits the state to ignore individual innocence and guilt. The United States exploits this predicament, and Pakistan perpetuates it by sustaining a legal regime that discriminates between the citizens of the so-called "settled areas," where the constitution applies, and "lesser" citizens under the rule of the FCR.

There is another, equally unappreciated aspect of the tribal areas: because FATA is governed under the FCR, it has no police forces; instead, paramilitary, military, and tribal militia forces keep order. As a result, the arrest of militants, collection of evidence, and subsequent prosecution in Pakistan's courts are not viable options in FATA. (In contrast, high-value targets captured in the rest of Pakistan are tried under Pakistani law or, in some cases, remanded to the United States.) While law and order approaches may be infinitely preferable to the use of armed RPVs, successive Pakistani governments have closed this route by choosing to defer from bringing the area and its people fully under Pakistan's constitution (White 2008). Thus, the only alternatives to doing nothing to combat the militants in FATA are devastating and indiscriminate Pakistani military operations or special forces raids into Pakistani territory by Afghanistan-based troops (Pak Institute for Peace Studies 2008, 2009, 2011).⁸

Questions about Pakistan's will and capacity to protect its own citizens from the ravages of the various terrorist organizations located in FATA, coupled with the state's insistence upon maintaining the FCR,

have important humanitarian implications for the residents of FATA. Is it even the case that the U.S. armed RPV program is the biggest source of human insecurity in FATA? Given that more Pakistanis in FATA die from Pakistani military operations and terrorist attacks alike, why does the use of armed RPVs in FATA, clearly conducted with coordination with Pakistani military and intelligence agencies, attract the attention of international humanitarian organizations? The implication is that a person's death is less noteworthy unless it can be attributed to an armed RPV.

Methodological Issues in the RPV Civilian Impacts Debate

There is no question that U.S. RPV strikes have killed innocent persons. What is at stake is how many of the persons killed are in fact innocent civilians (Singh 2012). Numerous organizations, such as the New America Foundation, the *Long War Journal* of the Foundation for the Defense of Democracies, the Bureau of Investigative Journalism, Columbia Law School, among others have all sought to track RPV strikes and their outcomes. As well-intended as these efforts may be, the data are most certainly flawed. When one compares accounts of the same strike in the various databases, there is important disagreement about who was targeted and with what outcomes. Sometimes there is even disagreement about *where* the strike took place. For example, Amnesty International (2013) reported that an elderly woman (Mamana Bibi) was killed while tending her crops in her village in Ghundi Kala. However, according to the New America Foundation (2012), this attack took place in the village of Tapi. Such divergence occurs "because news accounts, upon which these databases rely, sometimes disagree about these details, and for reasons described above, it is impossible to independently verify which—if any—account is accurate" (Fair 2014b).⁹

While it is *difficult* to independently confirm media reports of RPV strikes in FATA, it is not impossible as some claim (for example, Stanford-NYU Law School Clinics; Amnesty International). Sebastian Abbot of the Associated Press did just that when he dispatched Waziristan-based stringers to independently investigate ten of the reportedly deadliest strikes from the previous year and a half. The team spoke with about eighty villagers at the sites, and, contrary to the wide-

spread perception that civilians—rather than militants—are the principle victims, the team was told that a “significant majority [70 percent] of the dead were combatants” (Abbott 2012). Furthermore, those figures were driven by one very deadly attack on March 17, 2011. When the Associated Press team excluded that extraordinary attack, they found that nearly 90 percent of the people killed were militants, according to the villagers interviewed (Abbott 2012).

Although there is considerable uncertainty about how many innocent persons U.S. RPV strikes have killed, even those who have long opposed the use of armed RPVs now concede that civilian casualties may not be the single most salient objection to the program. The New America Foundation, based upon trend analysis of its own data on civilian casualties, accepts that “it seems clear the civilian casualties have now dropped dramatically, thanks to more precision weaponry and greater care—and the casualties are far lower than if conventional bombs were dropped” (Sanger 2012, 250). Nonetheless, the specter of civilian casualties animates much of the opposition to RPVs. Unfortunately, some of the critical methodological, analytical, and empirical shortcomings of specific reports on drones and human rights are less than desirable.

In “Living under Drones,” published jointly by the law school clinics of Stanford University and New York University, the authors attempt to document the civilian cost of the U.S. RPV program in Pakistan’s tribal agency of Waziristan. When authors veer away from their core legal expertise and into social sciences, they make several fundamental and avoidable empirical blunders beginning with their problematic convenience sample. A fundamental problem with the study is that it is funded and facilitated by an organization opposed to the use of armed RPVs in Pakistan and elsewhere. The authors explain that “in December 2011, Reprieve, a charity based in the United Kingdom, contacted the Stanford Clinic to ask whether it would be interested in conducting independent investigations into whether, and to what extent drone strikes in Pakistan conformed to international law and caused harm and/or injury to civilians” (International Human Rights 2012, 1). It is important to note that Reprieve, and its Pakistani partner organization, the Foundation for Fundamental Rights (FFR), have been vigorous opponents of the RPV program and have argued forcefully for its termination. Thus, at the inception of this project, the law schools were asked to conduct

research on behalf of an organization that is fundamentally opposed to RPVs. This represents a fundamental conflict of interest, which the authors do not seem to recognize.

The researchers compounded this ethical problem by allowing Reprieve and FFR to provide the research team with logistical support in Pakistan. In fact, the FFR “assisted in contacting many of the potential interviewees, particularly those who reside in North Waziristan, and in the difficult work of arranging interviews” (International Human Rights 2012, 1). The group made no attempt to describe the outcome of a “typical” RPV encounter; rather, the authors sought out persons who self-identified as some form of RPV victim. The authors note that their analysis is based upon a meager 130 “interviews with victims and witnesses of RPV activity, their family members, current and former Pakistani government officials, representatives from five major Pakistani political parties, subject matter experts, lawyers, medical professionals, development and humanitarian workers, members of civil society, academic, and journalists” (International Human Rights 2012, 2).¹⁰

The authors concede that they did no interviews in North Waziristan or any of the other agencies comprising the FATA. Rather, they conducted their interviews during two separate trips to Pakistan in March and May 2012. All of the interviews took place in the twin cities of Islamabad and Rawalpindi, Peshawar, and Lahore. The authors claim that they conducted interviews with sixty-nine “experiential victims,” who claimed to be “witnesses to drone strikes or surveillance, victims of strikes, or family members of victims from North Waziristan” (International Human Rights 2012, 2).

The authors of the report readily concede that the “majority of the experiential victims interviewed were arranged with the assistance of the Foundation for Fundamental Rights, a legal nonprofit based in Islamabad that has become the most prominent legal advocate for drone victims in Pakistan. . . . Some interviews also included a researcher from either Reprieve or the Foundation for Fundamental Rights” (International Human Rights 2012, 3). The role of this organization in selecting and interviewing respondents raises numerous ethical and empirical concerns, not the least of which is social desirability bias (Spector 2004).¹¹ Even though the interviewees were not compensated, they were provided with travel arrangements by FFR. This situation also creates

opportunities for respondent coercion. The respondents may fear that should they offer accounts that differ from FFR/Reprive's preferred anti-drone position, they may be unable to return home or not be selected for future interviews, which may provide the opportunity for travel. To summarize, the sample on which the researchers based their conclusions is at best a non-random convenience sample, fraught with dependent-variable selection bias as well as respondent social desirability bias (and in the worst case, possible coercion).

The authors could have sought to provide a countervailing perspective by including the views of pro-drone Pakistanis, which are captured in surveys and in Pakistani editorials (Fair, Kalenthaler, and Miller, 2014; Zalmay 2013; Yousefzai 2012; "Silent, Fearful Support for U.S. Drones in Tribal Pakistan" 2013; "Drop the Pilot" 2013; Taj 2012; Husain 2010). Researchers who have actually interacted with residents of Waziristan, some of whom are from the tribal areas themselves, have found that many residents in FATA vigorously support the U.S. armed RPV program and even compare them to *ababil*, the holy swallows mentioned in the Koran (Surat-al-Fil, or Verse of the Elephant). In that incident, Allah dispatches the *ababil* to repel a Yemeni warlord (Abraham) and his army of elephants, which invaded Mecca, by dropping black stones upon the invaders (Taj 2010). For many persons in FATA, there are few other means to target those militants who are terrorizing parts of the tribal areas and the rest of Pakistan. There are no police or other law enforcement entities in the tribal areas. The Pakistani security forces conduct ground offensives, artillery bombardment, and air strikes that kill many innocents¹² (Watson Institute 2014) and displace millions (International Crisis Group 2010; UNOCHA 2014b; Internal Displacement Monitoring Centre 2014).¹³ The Stanford-NYU collaborative effort—and virtually every other advocacy-driven report for that matter—fails to ponder these other concurrent uses of force, even peremptorily. It is not enough simply to say that most Pakistanis oppose drones. This is especially the case when this majority does not experience any of the externalities of the drone program, the varied militants in the tribal areas and their predations, or the haphazard efforts of the Pakistani military to deal with the militants selectively while maintaining a governance architecture (FCR) that is conducive to sustaining the militancy. Arguably, the views of those persons most exposed to the externalities of these

realities deserve a privileged place in the policy, ethics, and political narratives surrounding these realities.

The authors of the Stanford-NYU report acknowledge that there is fear of retribution "from all sides—Pakistani military, intelligence services, non-state armed groups—for speaking with outsiders about the issues raised in this report" (International Human Rights 2012, 4). Despite this admission, the authors were surprisingly willing to take every utterance by their interviewees at face value. The authors explain:

The research team has made extensive efforts to check information provided by interviewees against that provided in other interviews, known general background information, other reports and investigations, media reports, and physical evidence wherever possible. Many of the interviewees provided victims' identification cards and some shared photographs of victims and strike sites, or medical records documenting their injuries. We also reviewed pieces of missile shrapnel. (International Human Rights 2012, 5)

Alas, the team did not include forensic or munitions experts and thus cannot verify that purported damage to human life or property was due to RPVs. There is no chain of custody surrounding these artifacts that can demonstrate that they came from a drone or that the fragment—or its parent missile—is responsible for the event in question. As lawyers, the team well understands these evidentiary issues, but ignores them in this report.

These concerns are significant. Pakistani media have reported individuals and groups who have circulated fraudulent photos of persons who they alleged were injured by drones but were not ("Right-Wing Bigots Circulating Fake Pictures of Drone Victims to Deflect Attention From Taliban's Attack on Malala" 2012; Khan 2012). Given pervasive corruption in Pakistan, fake birth and death certificates can be easily acquired for a small fee. There are also numerous other possible explanations for ordinance debris and injuries. After all, drone strikes occur where terrorists conduct operations and secure safe haven (Pakistan Commission for Human Rights, 2012). Pakistan military and paramilitary organizations have also operated in the tribal areas, devastating the agencies in which they operate. Not only can terrorists and Pakistan's

security forces account for some of the alleged injuries and debris; they may also account for the post-traumatic stress disorder and other disruptions to ordinary life that the authors attribute solely to the omnipresent RPVs.¹⁴

Other studies make similar mistakes. In 2013, Amnesty International conducted its own study of drones in Pakistan and published its findings in a report provocatively titled "Will I Be Next? U.S. Drone Strikes in Pakistan," with a photograph of young girl looking wistfully at the camera. The title and cover of the report imply that drones are so indiscriminate that any child has a reasonable fear of dying in an RPV attack. Amnesty International explained that it interviewed some sixty "survivors of drone strikes, relatives of victims, eyewitnesses, residents of affected areas, members of armed groups and Pakistani officials" between late 2012 and September 2013 (2013). The Amnesty International team did conduct interviews in some parts of North Waziristan, in addition to Khyber Pakhtunkhwa, Islamabad, and Rawalpindi, and they did make efforts to account for the violence perpetrated by state and non-state actors in the region. Despite these methodological improvements over the Stanford-NYU effort, Amnesty International focused mainly on two of the most controversial RPV strikes, which were clearly outliers. The organization made no effort to contextualize the RPV strikes in relation to all other drone strikes in Pakistan, even though the organization notes that it reviewed "all 45 reported U.S. drone strikes in Pakistan from January 2012 to August 2013" (2013, 18).

Amnesty International, like other advocacy organizations, put an enormous amount of weight upon the testimony of the alleged eye witnesses, including children as young as fifteen, eight, seven, and even five years of age.¹⁵ In the report's study of the killing of a sixty-eight-year-old woman referred to as "Mamana Bibi," they rely heavily upon the testimony of Zubair Rehman, one of her teenaged grandsons. While the report details the ages of her other grandchildren cited in the report, nowhere does it state Zubair's age (he is depicted in a photo with his father, and it appears as if he is a teenager). The reliance upon Zubair's testimony is problematic because he reports seeing things that suggest that the aircraft that killed his grandmother could not have been an RPV. He claims, "The drone planes were flying over our village all day and night, flying in pairs sometimes three together. We had grown used

to them flying over our village all the time" (2013, 19). There are at least two problems associated with this testimony; if it is accurate, RPVs cannot fly in formation as he suggests.¹⁶ Equally disconcerting is Amnesty International's claim, without reference to any particular witness, that "Mamana Bibi was blown into pieces by at least two Hellfire missiles fired concurrently from a U.S. drone aircraft" (2013, 19). As presumed evidence, Amnesty International published photos that allegedly depict "debris from the missiles fired from a U.S. drone aircraft that killed Mamana Bibi" (2013, 22). However, David Axe, an American military correspondent, notes of this report that the "mangled metal pieces could just as easily have come from a TOW missile or another munition launched by a Pakistani military plane or helicopter" (2013).¹⁷

If Zubair Rehman's testimony is accurate, his account suggests that his grandmother was killed not by an RPV, but by Pakistani fighter aircraft (such as F-16s), which do fly together in formation and can launch munitions simultaneously as Zubair suggests. Indeed, Pakistan's military is quite active in the FATA. In November 2011, Pakistan's then air chief marshal, Rao Qamar Suleman, stated that "in the first two years of counter-insurgency operations, the air force conducted more than 5,500 strike sorties, dropped 10,600 bombs and hit 4,600 targets" (Trimble 2011).

A staple of nearly every advocacy-driven report on drones, including the reports by Amnesty International and the Stanford-NYU Law School clinics, is to opine that residents of the tribal areas are traumatized by the incessant sound of RPVs buzzing overhead. Amnesty International quotes an interviewee who says, "When the drone plane comes and we hear the sound of 'ghommmi' people feel very scared. The drone plane can launch missiles at any time" (2013, 29). Another interlocutor explains that "everyone is scared and they can't get out of their house without any tension and from the fear of drone attacks. People are mentally disturbed as a result of the drone flights. . . . We can't sleep because of the planes' loud sound. Even if they don't attack we still have the fear of attack in our mind" (2013, 31). This theme also figures prominently in the report of the Stanford-NYU Law School Clinics. While these claims are popular, they are untenable. Most of the RPVs that the United States uses in the FATA are for surveillance. Not only are these RPVs flying in altitudes where they tend to be inaudible,¹⁸ but such a noisy platform

would be a useless for surveillance (U.S. Air Force 2010a, 2010b; Kelly 2002).

Conclusions: Can We Do Better?

There is virtually no likelihood that the information environment in Pakistan will improve. It is also unlikely that interest in the RPV program will disappear. The questions that the varied reports addressed herein will not go away. It is imperative that all persons studying the use of RPVs in Pakistan—or elsewhere—attempt to be as rigorous as possible. There are a number of important improvements that researchers and organizations can and should implement.

First, as the work of Sebastian Abbot attests, it is possible to interview persons in the vicinity of drone blasts. As his work has demonstrated, judicious use of trained and professional stringers with local knowledge and language skills provide insights that are invaluable. This does add costs, but it also adds accuracy.

Second, authors should be aware of the problematic ways in which they draw their samples. Some advocacy organizations want to focus upon the most salacious and outrageous of outcomes. This is irresponsible and disingenuous. Consumers of their reports are entitled to know how typical or atypical a particular event is.

Third, all researchers need to treat all interlocutors' accounts with skepticism for the various reasons noted above. The implied assumption of these advocacy-driven accounts is that so-called eyewitnesses are always truthful, but American government officials are always untruthful. Organizations should demur from relying upon the testimony of children. Countless research into the problems with children as witnesses shows that they have difficulty with accurate recall and are vulnerable to suggestion. These problems attenuate with age. Scholars who do research on children must obtain special dispensation from ethical review boards, although this is typically hard to obtain because the risk to the child that can result from participating in social science research may exceed the potential value of his or her participation.

Fourth, simple photographs of injuries and scrap metal are not evidence, and they should be not treated as such. If the same lawyers who

included them in their report were litigating the defense, they would be first to cry foul about their inclusion as evidence.

Fifth, these organizations need to be more conversant with the legal, social, and political dynamics of the countries they wish to understand. As noted above, these details matter not only for the contexts of these studies, but also for the interpretation of events that these authors observe.

Sixth, they must become more knowledgeable about the weapons system they are studying. The Stanford-NYU effort does reproduce many technical specifications. Despite this, the authors proliferate the canard of the incessant buzzing of drones hovering above hapless civilians living in distress below. As this chapter shows, there is an enormous amount of open source commercial information about drones, and numerous avionics experts who can be consulted. Amnesty International could have saved itself some embarrassment had it run Zubair's claims by persons knowledgeable about different aircraft platforms and their capabilities.

Seventh, advocacy organizations should consult with munitions, forensics, and even satellite imagery experts. These professionals can provide some assessment of the probability that a given crater is due to an event described by an eyewitness. Different kinds of munitions have different explosive characteristics and may inflict different kinds of injuries, depending upon the distance from the point of explosion, exposure to the munition, and other details about the alleged victim and his or her location with respect to a given blast.

Finally, advocacy organizations should work with social scientists to improve their methods. For example, why not choose case studies of drone strikes based upon a random sample of drone strikes, as social science norms dictate? The answer is clear: a random sample of RPV strikes may not be as outrageous as the particular strikes that attract the advocacy organizations. While it is impossible to do a "random sample" of drone witnesses for any number of reasons, the exclusion of pro-drone Pakistanis is simply unethical.

If advocacy organizations do not want to adhere to the best standards of social science possible, they should simply concede that they are trafficking in public outrage and stop referring to their efforts as "research" and "analysis." The public should treat these efforts accordingly.

NOTES

- 1 While RPVs are popularly known as “drones,” in this chapter I mostly use the term “RPV” to remind the reader that these vehicles are indeed piloted, albeit remotely. Many human rights organizations, in contrast, prefer to use the expression “drones” in their publications, which gives the impression that these are killing machines with little human oversight. Most Pakistanis use the expression “drone,” and, for this reason, I also use this expression as context dictates.
- 2 This chapter is based upon C. Christine Fair, “Drones, Spies, Terrorists and Second Class Citizenship in Pakistan” (2014), and Christine Fair, “The Problems with Studying Civilian Casualties from Drone Usage in Pakistan: What We Can’t Know” (2011).
- 3 The peculiarity of this region and the laws that govern it are discussed herein.
- 4 There are two kinds of covert armed RPV attacks that are used in Pakistan and elsewhere: personality strikes and signature strikes. While the covert armed RPV program has garnered domestic and international criticism generally, the increasing use of “signature strikes” has been particularly controversial because such strikes are targeted at “men believed to be militants associated with terrorist groups, but whose identities aren’t always known” (Entous, Gorman, and Barnes 2011). Whereas personality strikes require the operator to develop a high level of certainty about the target’s identity and location, based on multiple sources such as “imagery, cell phone intercepts and informants on the ground” (Miller 2012), operators may “initiate a signature strike after observing certain patterns of behavior” (CLS 2012, 32–33). Simply put, “The CIA had approval from the White House to carry out missile strikes in Pakistan even when CIA targeters weren’t certain about exactly who it was they were killing” (Mazzetti 2013, 290). In principle, when conducting signature strikes, the United States assesses whether the individuals in question exhibit behaviors that match a pre-identified “signature” (that is, a pattern of observable activities and/or personal networks) that suggests that they are associated with al-Qaeda and/or the Pakistani or Afghan Taliban organizations (Zenko 2013). Because the identity of the target is unknown, even during and after the strike, innocent civilians may die in the strikes—a likelihood that both current and former U.S. government officials concede (IHR 2012). While the Bush administration employed personality strikes from 2004 and signature strikes from 2008 in Pakistan, the Obama administration redoubled the use of both types until the end of 2013, when RPV strikes sharply declined in Pakistan (Entous, Gorman, and Barnes 2013). Whereas the United States routinely offers apologies and compensation for civilian casualties in Iraq and Afghanistan, the United States has no mechanism to recognize civilian harm much less make amends for the same in Pakistan.
- 5 Acting U.S. ambassador to Pakistan met with anti-drone Code Pink activists in November 2011. Even discussing the existence of the program and the possible outcomes of the strikes caused Hoagland to remark, “I probably just, you know, got into big trouble with what I just said” (“Acting U.S. Ambassador to Pakistan Met with Code Pink, Discussed ‘Classified’ Drone Casualty Counts”). In April 2013 the Obama administration offered its first detailed justification of a program it had previously refused to discuss.
- 6 The “traumas” included several incidents that raised tensions between the United States and Pakistan. For example, on January 27, 2011, a CIA agent, Raymond Davis, killed three Pakistani civilians in Lahore (Walsh 2011). Later in the year, in November a NATO “attack” caused the deaths of at least twenty-four Pakistani soldiers in the Mohmand tribal region of Pakistan and led to a two-month suspension of RPV strikes in Pakistan (Masood and Schmitt 2011).
- 7 In essence, the United States is colluding with the military over the expressed wishes of Pakistan’s elected officials and exploiting the peculiar situation that prevails with respect to civil-military relations in Pakistan. In Pakistan, it is the military and its intelligence agencies that make all pertinent national security decisions, not the elected officials. The U.S. government officially professes to support democratization in Pakistan and civilian control over the military. Unfortunately, this is just one of several cases in which the United States has pursued priorities that undermine longer term prospects for civilian control over the military and democratization. However, ultimately, the United States does not control who makes the most germane decisions, even if it is in a position to benefit from the prevailing situation in which the army is in control. (As such, the case of Pakistan provides counter-evidence to Thomas Nichols’s argument about the erosion of sovereignty, Chapter 4).
- 8 Militants in the FATA operate against international forces in Afghanistan and are reportedly responsible for killing some 43,000 Pakistanis since 9/11 (Pak Institute for Peace Studies). Like many databases, that of the Pak Institute for Peace Studies is not always clear about what sorts of attacks it tallies and what criteria it uses to code different kinds of violence. The following numbers are from the institute’s annual reports from 2008 and 2011: 7,107 Pakistanis were killed in 2011; 10,003 in 2010; 12,632 in 2009; 7,997 in 2008; 3,448 in 2007; 907 in 2006; and 216 in 2005, for a total of 42,310.
- 9 While the United States typically takes the blame for the near total information blackout about who is targeted and with what outcomes, Pakistan is perhaps equally if not more culpable. From the inception of the program, Pakistan insisted that it be covert and restricted to FATA, which is difficult to access. As explained above, Pakistanis cannot go to FATA unless they have family ties. It is almost impossible for foreigners to go to FATA legally without the approval and even escort of Pakistan’s military and intelligence agencies. (The author went on one such trip to South and North Waziristan in August 2010.) Pakistani newspapers report casualty figures based upon Taliban self-reports or even Pakistani government officials’ statements, and these figures are in turn picked by international papers. There is rarely any attempt to independently confirm details, and often the details of these accounts are contradictory about numbers of casualties and other aspects of the strikes, such as the exact location and the persons who were targeted.

- 10 This sample is still relatively large compared to similar work by other advocacy organizations such as Amnesty International. Its October 2013 report is discussed below.
- 11 Moreover, given that Reprieve and FFR are staunch drone foes, readers should be dubious that the organizations would provide an unbiased selection of interview subjects for the study. (After all, would anyone be persuaded by the findings of a study of the health effects of cigarette smoking funded and facilitated by a company that produces and/or sells cigarettes?) However, even if the organizations in question had intended to provide an unbiased sample, the methodology of selecting interviewees obviates any such intention.
- 12 The Watson Institute at Brown University estimates that Pakistan's armed forces have killed at least 52,000 Pakistanis (combatant and noncombatant) and injured more than 50,000 since 2004.
- 13 By July 2009, there were some 2.8 million persons who were internally displaced due to military operations in the Malakand region of Khyber Pakhtunkhwa. In September 2009, the military undertook operations in Khyber agency that displaced between 56,000 and 100,000 persons in less than one month. Later, in October 2009, the Pakistan military commenced military operations in South Waziristan, causing 428,000 residents, or more than half of the agency's population, to flee. In March 2010, the military began a second major military offensive in Orakzai and Kurram, which displaced another 328,000. After the summer 2014 Pakistan military operation in North Waziristan, at least 457,000 persons were displaced, according to the United Nations Office for Coordination of Humanitarian Affairs (UNOCHA). Since 2004, the Internal Displacement Monitoring Centre estimates that some five million persons have been displaced from Pakistan's northwest. Pakistan's IDP population peaked in 2009, when some three million persons were displaced.
- 14 Needless to say, the continuous buzzing of drones is also more of a myth than a reality. A surveillance platform that created such noise would not be very efficacious. Moreover, drones typically fly at altitudes that render them invisible and inaudible.
- 15 Many of the authors of these reports are lawyers. As lawyers understand, the testimony of children is extremely unreliable (Ceci and Bruck 1995; Stolzenberg and Pezdek 2013; Quas et al. 1999). For a view that is more optimistic about the utility and accuracy of children witnesses, see (Pozzullo and Warren 2003).
- 16 Predators and Reapers, the two armed unmanned systems that the United States use in Pakistan, cannot fly in pairs much less triplets because their pilots, who are seated in cubicle-like pods thousands of miles away from the theater, do not have the visibility that permits them to fly in close formation with other drones, or any other kind of aircraft for that matter. While the Air Force is seeking to develop "sense and avoid" technology that would permit RPVs to fly as described, that technology is still in the experimental phase. According to a February 4, 2012 article in the *Air Force Times*, "The military's

unmanned aircraft do not have the ability to 'sense and avoid' nearby aircraft. . . . The Air Force can't install sense-and-avoid equipment on the Predators because the necessary gear—radars, infrared cameras, transponders—is either too big or consumes too much power. A Predator equipped with sense-and-avoid equipment 'can't carry anything else,' said Dave Bither, Mav6's vice president for strategic development. 'Right now, the technology is a generation away'."

17 Pakistan's air force uses Lockheed Martin F-16s as well as AH-1 Cobra attack helicopters, which also fly in groups of two and even four.

18 The Reaper has a ceiling altitude of 50,000 feet. The Predator has a ceiling of 25,000 feet. While these aircraft can fly at higher altitudes, they tend to fly at much lower altitudes in theater. For example, according to one report, the Predator is "most effective at about 10,000 feet, within range of most anti-aircraft fire" (Kelley 2002). This comports with the claim of Army General Raymond Odierno who said that the "Predator flies at about 10,000 feet," adding that "it's so high up [the insurgents] have trouble hearing it" (Axe 2013).

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