

FIRE FROM THE BLUE SKY

Mirza Shahzad Akbar & Umer Gilani

- *Drone attack victims from Pakistan, their voice and their struggle*

ABSTRACT

The United States' continued deployment of Unmanned Aerial Vehicles, or drones, across Pakistan, and in particular the Federally Administered Tribal Areas, has serious human rights implications on Pakistani citizens. In increasing numbers, citizens are becoming collateral damage in the war against terror. In this article, the authors describe the difficulty of counting the number of victims, given the refusal by the US to release any official figures. After examining the best available figures, collated by the Bureau of Investigative Journalism, the authors offer three stories of victims of drone attacks. The voices of the victims are too often forgotten in the general discourse surrounding the legality of the drone programme. The cases they have brought within Pakistan offer a sense of hope to Pakistani citizens, many of whom continue to live under the constant threat of "fire from the blue sky".

PALAVRAS-CHAVE

Drones | Pakistan | War on Terror | Victims

Since 2004, the US and some of its allies have come to rely upon a form of aircraft that unleashes indiscriminate and lethal violence mostly upon civilians: the Unmanned Aerial Vehicles (UAVs) popularly known as drones. Predecessors of a dark future where lethal autonomous weapons such as killer robots¹ might wage wars across the globe, drones continue to terrorize the communities living under them through their constant visible presence.

One of the key target regions of US drone strikes is FATA – the Federally Administered Tribal Areas – which constitutes Pakistan's north-western boundary with Afghanistan. In the period 2004-2015, between 423 and 965² civilians have been killed in this poverty stricken part of the world. As drones continue to fly above FATA, millions of others citizens in the region live terrified lives, their souls crushed by knowing that there is a fire in the blue sky which can come down, upon any one of them, any time, any day – even if only on account of mistaken identity.

Nevertheless, the true human rights implications of drone strikes get ignored in both the policy and legal circles.³ As various perceptive commentators have pointed out,⁴ the public discourse has so far largely missed out on the human side of the story. Few seem to be seriously interested in listening to the voice of those rights-bearing individuals, the actual human beings, who lie behind the aggregated numbers but whose suffering can never be fully depicted by statistics. For this reason, we bring to the fore the life stories of the victims of these strikes. By telling these stories, we aim to contribute towards fostering a public discourse on drone strike in which the victims are viewed not just through a strategic or legal perspective but through a more human lens that captures both the depth of their suffering and the magnitude of their struggle for seeking justice.

1 • The Stats: Scale of the Drone War in Pakistan's Federally Administered Tribal Areas

Since the US drone programme is shrouded in secrecy, the US government has never published exact figures about when it began. But it seems that the first drone strike in the FATA region occurred in 2004.⁵ Since then, there have been an average of 38 strikes per year, peaking in 2010 when 128 strikes took place.⁶

The number of fatalities resulting from drone strikes in Pakistan has also never been officially disclosed by the US. The only time it reports a fatality is when an influential terrorist has supposedly been killed. However, using media reports and leaked government documents, experts at The Bureau of Investigative Journalism (TBIJ), have estimated that a minimum of 3,989 people have been killed.⁷ Of these, 965 were confirmed to be civilians.⁸ Between 172-207 of those killed by drone strikes in Pakistan were children⁹ and thousands have been injured or have lost their property or means to a living. Another study estimates that for every militant killed, at least

ten to fifteen civilians are killed.¹⁰ A comprehensive investigation by TBIJ found that only 4% of drone victims have been named and reportedly identified as members of Al Qaeda by available records – although the group was the original intended target of the drone programme.¹¹ According to one study the US seems to have killed at least 1,147 unnamed civilians to achieve assassination of 41 named militant targets in drone strikes in Pakistan.¹²

TBIJ’s estimates of casualties are more reliable than those of daily newspapers and news channels because TBIJ staff identify all the dead through open-source reports and leaked Pakistani government reports, before tallying a total. So, for instance, in news reports, often the same militant is alleged to have been killed in three different drone strikes. The actual number of civilian casualties caused by drone attacks is, however, expected to be even higher than the TBIJ estimates, since journalists have little or no access to the war zones where the drone strikes are being carried out and, as already noted, the US does not release the names of any of the deceased. The only exception to this rule was in early 2015 when President Obama admitted and apologised for having killed Warren Weinstein and Giovanni Lo Porto, two western hostages, in a drone strike.¹³

All evidence points to the fact that civilians are not just collateral damage but rather account for the overwhelming proportion of drone strikes victims –it is therefore crucial that their stories are heard.

2 • The Victims: Their Stories and Struggles¹⁴

To show the human effects of drone strikes the voice of three human beings, who are in the middle of the conflict, are detailed below. These drone victims have narrated their stories to us, as their lawyers practicing at the Islamabad-based NGO Foundation for Fundamental Rights.¹⁵ By telling their stories and narrating the legal struggles that they are waging, we hope to counter the general narrative that depicts drone victims as mere passive objects.

A – Karim Khan’s Story

Before the drones forced him out, Karim Khan was a permanent resident of the Federally Administered Tribal Area. He hails from the Wazir tribe and his family has been living in the village of Machi khel, Mir Ali, North Waziristan for centuries.¹⁶ Karim now lives with his family in Mardan after being forced to leave his home.

Karim says he has seen drones in the sky on a daily basis since 2004. He says that most of the drones he has seen are white, “have a blade in the front” and make a frightening “znnng znnng” sound. When the missile attacks, there is “fire everywhere” and “everything burns”. His most tragic encounter with drones was on 31 December 2009.

That day, around 9 p.m., missiles, fired from a drone, landed on Karim's *hujra* (family house). Three people were inside and died immediately. The attack also left the house badly damaged. The three killed included Karim's son Zahirullah Khan, who was a high school student. He was intelligent, had memorised the Quran and was in the top ten percentile in his class at school, as well as in the recitation of the Quran. Karim's brother, Asif Iqbal, was also killed in the attack. He was a respected secondary school teacher at a local government school. The third casualty was Khaliq Dad, a mason, who was renowned in the entire region for his skill at building domes and minarets. Khaliq had come to Karim's village in order to assist in the construction of the village mosque. All the deceased were peaceful and law-abiding people who cannot even remotely be connected with terrorism; their death in a drone attack came as a shock to everyone in the area.

Karim notes the irony that those killed by drones are often reported by the media as terrorists even, when they include children as young as three-years old. "How could children as young as three ever be considered as terrorists?", he asks.

Although devastated by the loss of his son and brother and forced out of his homeland because of the fear of drones, Karim was neither daunted by the risk of prosecuting the mightiest country in the world nor short of hope. In November 2010, he submitted a request for registration of a First Information Report, against Jonathan Banks, the CIA station chief based in Islamabad at the time the order for the drone strike was given. Initially, and not surprisingly, the local police force was reluctant to register his case. Karim therefore sought an injunction from the judiciary. The lower courts too were initially reluctant to grant it. However, on 7 April 2015, the Islamabad High Court finally concluded the matter by issuing an order in *Karim Khan v. The Inspector General of ICT Police*, ordering the commencement of criminal proceedings against the accused CIA personnel.¹⁷ Left with no other choice, on 29 April 2015, the Islamabad Police registered a First Information Report No. 91/2015 at the Police Station Secretariat implicating Jonathan Banks for murder and other offences. Fueled by a desire to seek justice for drone survivors, Karim is pushing Pakistan's domestic court system closer towards finding the top CIA operative in the country guilty of murdering civilians by drone.



Karim Khan holding up pictures of Asif and Zahirullah (deceased)

B – Nabila ur-Rehman’s Story

6-year-old Nabila was playing in the fields as her grandmother, 67-year-old Maimana Bibi, worked on the family’s vegetable farm. It was the 24 October 2012, a sunny afternoon in Tappi village near Miranshah, Waziristan. Maimana Bibi’s other grandchildren were also around - Naima, Asma, Safdar, Kaleem, Zubair, Samad, Rehman Saeed and Shahid. All were aged between three and seventeen years old. The younger children were playing while the older ones were helping their grandmother in preparation for the upcoming feast for *Eid-ul-Azha*.

Around 2.30 p.m., a hellfire missile was fired from a drone, striking Mamana Bibi. She fell to the ground in front of her grandchildren. Thereafter, a second missile was fired by the drone which hit the same spot; Mamana Bibi’s body was blown to pieces. Her son Rafiq put together the pieces of his mother’s body from all over the field before she could be buried. Many of the children were also seriously injured. The family’s livestock, an important source of their meager income, was also destroyed in the attack. Nabila, Zubair, Shahid and Kaleem were taken to Mirali hospital after the attack. Kaleem’s injuries were more severe so he was taken to a hospital in Peshawar. A few days later Zubair was brought to Ali Medical Hospital in Islamabad, where his injuries were checked. Zubair needed an expensive laser treatment for his foot. The medical expenses incurred in the treatment of Nabila, her siblings and cousins have left the family heavily in debt.

Nabila, now 11 year of age, and her father Rafiq have not given up on the idea of justice. They have emerged as leading campaigners in the drone victims’ struggle. They have knocked on every possible door, seeking justice. On 29 October 2013, Nabila appeared before a Congressional meeting in Washington D.C. and testified together with her father and brother. The visit received widespread media coverage and was significant in creating a new, more informed and rights-conscious discourse on drones.¹⁸ In November 2015, Nabila visited Japan where she narrated her story on, amongst other forums, prime-time TV, and vowed to continue her struggle to protect human rights.



Naima, Nabila’s sister, who was injured in the October 2012 drone attack. She lost her grandmother in the attack. Here she is at the Foundation for Fundamental Rights (FFR) office holding up “peace cranes” sent to her by schoolchildren in the US to show solidarity and hope for peace. Nabila’s family has now been displaced as the result of the Zarb-e-Azb operation and they are living as internally displaced people.

C – Noor Khan’s Story

Malik Daud Khan, Noor Khan’s father, was a well-respected member of his community and had been recognised by the Government of Pakistan for his assistance to the Pakistan armed forces. He worked to empower women, as evidenced by his efforts to establish the Women Skills Development Center in his village, and headed a tribal *Jirga*, a meeting of elders, who had assembled in North Waziristan.

On 17 March 2011, Daud Khan was heading a *Jirga* which was trying to resolve a dispute over the ownership of a chromite mine through a mutually acceptable settlement. At around 11am, the gathering was struck by missiles fired by a CIA-operated drone. Over 40 people were killed, including Daud Khan.

Noor Khan has since been fighting for justice in Pakistan and the United Kingdom. He became one of the co-petitioners at a landmark case before the Peshawar High Court known as *Foundation for Fundamental Rights (FFR) v. The Federation*.¹⁹ In this case, the petitioners asserted that the continuing drone strikes represented a violation of the citizens’ fundamental rights, including the right to life, seeking from the Court both a declaration with regard to the illegality of these strikes and a court order against drone strikes. After a litigation spanning over year and half, the Court granted the petition on 11 May 2013 and came out decisively in favour of drone victims.

Peshawar High Court held that drone attacks are illegal under international law since “neither the Security Council nor the UNO in general at any point of time [...] permitted the U.S Authorities particularly the CIA to carry out drone attacks within the territory of Pakistan, a sovereign State...” (*para. 7*) The Court declared these strikes to be “a War Crime, cognizable by the International Court of Justice or Special Tribunal for War Crimes, constituted or to be constituted by the UNO for this purpose.” for which “the US Government is bound to compensate all the victims’ families....” The Court directed that the Government of Pakistan should take the matter before the Security Council and, if necessary, requisition a General Assembly session for passing a Resolution condemning drone strikes. If, after the passage of the envisaged resolution the US still did not stop these strikes, the Court opined that the Government of Pakistan must “sever all ties with the USA and as a mark of protest shall deny all logistic & other facilities to the USA.”

The *FFR v. The Federation* judgment represents a major victory for the civilian victims of US drone strikes from Waziristan and an important milestone for protection of human rights judicially. No court anywhere else in the world has issued such a sharply worded critique of these strikes and presented a more activist strategy for defending human rights. In that sense, the judgment represents the finest rights-protective streak of the public law jurisprudence developed by the judges of Pakistan.

While, to date, the FFR judgment remains largely unimplemented by the executive branch of government, it does nonetheless represent the value of human rights

litigation. If nothing else, the litigation succeeded in bringing otherwise ignored human voices into the jurisprudential field – which would not have been possible without the bravery of the petitioners such as Noor Khan.

3 • Conclusion

In this paper, we have presented the human stories of individuals who have become the casualties of the US drone campaign in Pakistan. We have highlighted the struggle that drone survivors are waging for justice, hoping to pierce the thin legal armour of the drone campaign. There is an emerging consensus in human rights circles that US drones strikes in Pakistan are illegal and indefensible. At the very least, international law requires States – both conducting and being affected by drones – to put in place transparency and accountability systems, including taking seriously allegations of international crimes.²⁰

It is our position that US drone strikes run contrary not only to international humanitarian law and to international human rights law but also the domestic law of Pakistan. CIA personnel who are perpetrating these attacks do so at the risk of exposing themselves to criminal liability under these various legal regimes. Likewise, the states which either conduct or facilitate these strikes - or fail to protect their citizens from such strikes - expose themselves to various forms of legal liability. We are confident that as more victims speak out against the atrocities inflicted upon them, the drone programme will no longer be justifiable – from neither an ethical nor a legal perspective. For that, the victims' voices must be heard.

NOTES

1 • Denise Garcia, "The case against killer robots: Why the United States should ban them," *Foreign Affairs*, May 10, 2014.

2 • <https://docs.google.com/spreadsheets/d/1NAfjFonM-Tn7fziqiv33HIGt09wgLZDSCP-BQaux51w/edit#gid=1000652376>.

3 • See a UN report launched in October 2015 on the matter from a legal and policy point of view, United Nations Office for Disarmament Affairs (UNODA), *Study on Armed Unmanned Aerial Vehicles:*

Prepared on the Recommendation of the Advisory Board on Disarmament Matters (New York: United Nations, 2015), accessed October 28, 2015, <http://www.un.org/disarmament/publications/more/drones-study/drones-study.pdf>.

4 • See Madiha Tahir, "The Business of Haunting," *Wounds of Waziristan*, September 2, 2013, accessed October 26, 2015, <http://woundsofwaziristan.com/business-of-haunting/>; Thomas Gregory, "Drones, Targeted Killings, and the Limitations of

International Law," *International Political Sociology* 9, no. 3 (2015): 197–212.

5 • Steve Coll, "The Unblinking Stare," *The New Yorker*, November 24, 2014, accessed October 26, 2015, <http://www.newyorker.com/magazine/2014/11/24/unblinking-stare>.

6 • Covert War on Terror," *The Bureau of Investigative Journalism*, accessed October 13, 2015, <http://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/> for a view of the data as infographic, see: <http://drones.pitchinteractive.com>; Naureen Shan, "Drone Strike Casualty Estimates likely understated," New York, Columbia Law School Human Rights Clinic, accessed October 13, 2015, <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/CountingDroneDeathsPresserFINAL.pdf>; Jo Becker and Scott Shane, "Secret 'Kill List' Proves a Test of Obama's Principles and Will," *New York Times*, May 29, 2012, accessed October 13, 2015, <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&r=0>.

7 • The Bureau, "Covert"; Shan, "Drone Strike"; Becker and Shane, "Secret".

8 • Ibid.

9 • Ibid.

10 • Daniel Byman "Do targeted killings work?" *Brookings*, July 14, 2009, accessed October 28, 2015, <http://www.brookings.edu/research/opinions/2009/07/14-targeted-killings-byman>; Saeed Shah and Peter Beaumont, "US Drone strikes in Pakistan claiming many civilian victims says campaigner," *The Guardian*, July 17, 2011, accessed October 28, 2015, <http://www.theguardian.com/world/2011/jul/17/us-drone-strikes-pakistan-waziristan>.

11 • Jack Serle, "Drone strikes in Pakistan," *The Bureau of Investigative Journalism*, October 16, 2014, accessed

October 28, 2015, <https://www.thebureauinvestigates.com/2014/10/16/only-4-of-drone-victims-in-pakistan-named-as-al-qaeda-members/>.

12 • Spencer Ackerman, "41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground," *The Guardian*, November 24, 2014, accessed October 28, 2015, <http://www.theguardian.com/us-news/2014/nov/24/sp-us-drone-strikes-kill-1147>.

13 • Peter Baker, "Obama Apologizes after Drone Kills American and Italian Held by Al Qaeda," *New York Times*, April 23, 2015, accessed October 28, 2015, http://www.nytimes.com/2015/04/24/world/asia/2-qaeda-hostages-were-accidentally-killed-in-us-raid-white-house-says.html?_r=0.

14 • The resource <http://drones.pitchinteractive.com> lists all the drone attacks that are discussed below, along with the many others.

15 • The stories and photos shared in this article have been used with the consent of the victims. More information on the work of The Foundation for Fundamental Freedoms can be found at <http://rightsadvocacy.org>.

16 • Interview with Karim Khan, 29 February 2012.

17 • Sabrina Toppa, "Pakistan Could End up Charging CIA Officials with Murder over Drone Strikes," *Times*, April 16, 2015, accessed October 28, 2015, <http://time.com/3824666/pakistan-drone-strikes-cia-jonathan-bank-john-a-rizzo/>.

18 • Emily Greenhouse, "The Drone-Strike Victims Coming to Congress," *The New Yorker*, October 22, 2013, accessed October 26, 2015, <http://www.newyorker.com/news/news-desk/the-drone-strike-victims-coming-to-congress>.

19 • The full judgment is available at <http://www.peshawarhighcourt.gov.pk/images/wp%201551-p%2020212.pdf>.

20 • UNODA, *Study on Armed*.

**MIRZA SHAHZAD AKBAR** – *Pakistan*

Mirza Shahzad Akbar is the co-founder, legal director and a trustee of Foundation for Fundamental Rights, an organisation that provides legal aid to enforce fundamental rights guaranteed under the constitution of Pakistan. He is a barrister-at-law, having earned his LLM from University of Newcastle (UK) and LLB from University of London (UK/Pakistan). He has served as a legal consultant and special prosecutor for the National Accountability Bureau (Islamabad/Lahore, Pakistan).

**UMER GILANI** – *Pakistan*

Umer Gilani is a Staff Attorney at the Foundation for Fundamental Rights and also a Bertha Fellow. He has an LLB from the Lahore University of Management Sciences and an LLM from the University of Washington, Seattle (United States), as a Fulbright scholar. He has previously clerked for the Supreme Court of Pakistan.

Received in November 2015.

Original in English.



“This paper is published under the Creative Commons Noncommercial Attribution-Share Alike 4.0 International License”