Counting Drone Strike Deaths

COLUMBIA LAW SCHOOL

HUMAN RIGHTS CLINIC

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Summary & Recommendations

Popular debate on U.S. drone strikes often centers on how many individuals are killed, and which of two categories the individuals killed fall into – militant or civilian. U.S. officials emphasize the precision of drone technology and contend that extremely few civilians have been killed. Yet others have questioned these claims and stated that there is evidence to suggest that deaths, and civilian deaths in particular, are much higher than U.S. officials admit.

The uncertainty about civilian deaths is largely due to the U.S. government's resistance to openly providing information about strikes. In the absence of official data, the most common source for drone strike casualty figures is news reports about particular strikes. Some organizations have catalogued and aggregated these news reports to provide overall estimates of the total number of individuals killed, including the number of "militants" versus "civilians." The Bureau of Investigative Journalism, Long War Journal and New America Foundation ("tracking organizations") are among the most influential of such organizations, and their work has in many instances catalyzed debate about the effectiveness and humanitarian cost of strikes.

We are concerned about overreliance on the tracking organizations' estimates of drone strike casualties, although we find the estimates valuable and a good faith effort. The estimates reflect an echo chamber of sorts: the tracking organizations collect news reports of particular strikes and make an estimate of who is killed based on them; these estimates are then regularly cited and repeated in subsequent news stories and media analysis pieces.

In the limited public debate on drones, the tracking organizations' estimates substitute for hard facts and information that ought to be provided by the U.S. government. We—the public, the analysts and experts, and the policymakers—still do not know the true impact or humanitarian cost of drones; the estimates, though well-intended, may provide false assurance that we know the costs and can fairly assess whether to continue drone strikes. Furthermore, where the tracking organizations' estimates significantly undercount the number of civilians killed by drone strikes, they may distort our perceptions and provide false justification to policymakers who want to expand drone strikes to new locations, and against new groups.

Because the stakes are high, the Columbia Human Rights Clinic set out to thoroughly examine the data and methodology of the three tracking organizations. Our findings are two-fold. First, despite the strong efforts of the tracking organizations, their estimates of civilian casualties are hampered methodologically and practically. Two of the organizations, according to our independent review of the media sources available, significantly and consistently underestimated the potential number of civilians killed in Pakistan during the year 2011. Second, while some of the flaws we identify can be fixed, others are inherent to the process—and these inherent flaws underscore that the U.S. government has the responsibility to step in and describe its own accounting on the civilian casualty question. The tracking organizations provide important information, but in light of the methodological and practical limitations we identify, their estimates are an inadequate and dangerous substitute for official government estimates and information regarding civilian deaths.

We note that some of our conclusions described below are corroborated by other studies, in particular, a September 2012 report by the human rights clinics at NYU School of Law and Stanford Law School that examined a distinct and more recent dataset. Taken together, the various studies underscore the need for a U.S. government accounting of drone strike deaths, as well as greater care by media outlets and observers in describing the impact of drone strikes.

Flaws in Media Reporting on Drone Strike Deaths: We analyzed the tracking organizations' data collection for strikes in Pakistan during 2011 and found that while their estimates are useful, they necessarily reflect the biases and flaws of their media report sources, i.e., the news stories about particular strikes which they aggregate to arrive at their own estimates. Media coverage of drone strikes is inconsistent, and it is likely that some deaths and even entire strikes are not captured by tracking organizations, particularly to the extent they rely on English-language media sources. The media reports often rely on very limited sources, in particular the word of anonymous Pakistani officials who will not put their names to a statement. There is no standard definition that the media sources use to categorize a person as militant or a civilian, nor a standardized measure by which the media sources weigh and corroborate their information.

Our Recount: Examining the same media reports that the tracking organizations cited, we found a significantly higher number of reported deaths overall and civilian deaths in particular than is reflected in the counts of the New America Foundation and Long War Journal; our count was similar to that of the Bureau of Investigative Journalism. Of the three organizations, only the Bureau has consistently purported to actively track *civilian* casualties—as opposed to focusing on providing an estimate of the overall number of individuals killed. Nevertheless, news analysis and political commentary frequently cite New America Foundation and Long War Journal's numbers in making conclusions about the impact of drone strikes on civilians and local communities. Exclusive or heavy reliance on the casualty counts of these two organizations is not appropriate because of the significant methodological flaws we identify. While we do not agree with the Bureau's analysis of media sources in all cases, it appears to have a more methodologically sound count of civilian casualties, commensurate with its special focus on that issue.

Our recount found reports of between 72 and 155 civilians killed in 2011 Pakistan drone strikes, with 52 of the reportedly civilian dead identified by name – a relatively strong indicator of reliability. By comparison, New America Foundation's count is just 3 to 9 "civilians" killed during this period; Long War Journal's count is 30 civilians killed. In percentage terms, and based on their and our minimum numbers, we counted 2300 percent more "civilian" casualties than the New America Foundation, and 140 percent more "civilian" casualties than New America's "civilian" and "unknown" casualty counts combined. We counted 140 percent more minimum "civilian" casualties than the Long War Journal. The Bureau of Investigative Journalism's count of between 68 to 157 civilians killed in Pakistan during 2011 is closest to our own: we counted only 5.9 percent more minimum civilian casualties. We describe our standards for the recount below.

It is important to note that despite the great care we took in reviewing the data and original media sources, our recount does not purport to be reliable or an accurate indicator of the actual number of

civilian or "militant" casualties of U.S. drone strikes. Rather, our recount reflects the extent to which civilian casualties that are credibly reported are nonetheless missed by the tracking organizations; it underscores that the public and policymakers do not have complete information about the humanitarian cost of drone strikes.

Discrepancies in Tracking Organizations' Estimates: In comparing the tracking organizations' studies, we found that their methodologies vary, leading each of them to arrive at different estimates of the number and identity of individuals killed. We identified four principal reasons for the discrepancies in tracking organizations' overall casualty counts and counts per strike: (1) the number of media sources the tracking organizations relied on; (2) the Bureau of Investigative Journalism's use of non-media sources; (3) the New America Foundation and Long War Journal's decision not to update figures in some cases where media sources change their casualty counts in subsequent reports; and (4) the tracking organizations' decisions not to include some data from some of their own listed sources.

U.S. Government's Responsibility to Provide Estimates: The discrepancies in counts by the tracking organizations—credible and well-resourced institutions—underscore the difficulty of gaining an accurate understanding of the impact of drone strikes from media reports alone. The public and some policymakers are compelled to rely on these estimates to judge the impact of drone strikes because the U.S. government has not officially provided information on drone strike deaths. While touting the success of the drone program and particular high-profile strikes, U.S. officials have avoided providing specifics—and cited national security. The public has no information on how and whether the U.S. tracks and investigates potential civilian deaths.

Yet, in other conflict settings such as Afghanistan, U.S. officials have provided some of this information—without compromising U.S. security. As the U.S. government anticipates the continued and expanded use of lethal drone technology, it owes the public a genuine assessment of the impact of drone strikes, including the effects on local civilian populations. The U.S. government should, to the extent practicable, provide its own estimate of the number of individuals killed and their identities. Moreover, instead of seeking to discredit on-the-ground reporting by journalists and human rights groups that puts forward evidence of civilian casualties, the U.S. government should investigate and address the reported strikes and casualties.

Media & Tracking Organizations' Roles: We encourage media and observers to reconsider the way they address the question of who is being killed in drone strikes. They should qualify their use of estimates provided by the tracking organizations. These estimates are not actual body counts—they are reports from a region where even seasoned journalists and investigators suffer from limited access, and where witness statements and officials' explanations may be biased. When media and commentators use civilian casualty estimates, they should acknowledge these limitations and the ambiguity of terms like "militant." Likewise, tracking organizations should acknowledge the limitations of their studies, and address the methodological problems we have identified.

Recommendations

TO THE U.S. GOVERNMENT

1. To the extent practicable, collect and release estimates regarding past drone strike casualties and provide information on new strikes after operations are completed, including the following information:
    a. The total number of individuals killed or injured in U.S. drone strikes outside of Afghanistan
    b. The total number of individuals killed whom the U.S. identifies as combatants or persons subject to direct attack under U.S. legal standards or U.S. interpretations of humanitarian law.
    c. The total number of individuals killed whom the U.S. identifies as not subject to direct attack under U.S. legal standards, including: civilians killed collaterally (i.e. killed in an attack on a military objective, and not identified as a civilians directly participating in hostilities); civilians killed mistakenly (e.g. killed based on mistaken identity); or individuals otherwise afforded protection from direct attack under U.S. legal standards or U.S. interpretations of humanitarian law.
    d. The total number of drone strikes and the location and date of each drone strike.
2. Disclose the legal standards and definitions the U.S. government uses in categorizing the individuals killed as military targets or individuals subject to direct attack; civilians subject to direct attack (e.g. civilians directly participating in hostilities); civilians entitled to protection and killed collaterally.
3. Investigate credible reports of civilian death by media and nongovernmental organizations, and make amends to families and local communities where appropriate.

TO TRACKING ORGANIZATIONS

1. Publish estimates with a prominent disclaimer, including in regard to the sources for its dataset, the variance of reporting among news outlets and over time and the potential biases of primary sources on which identification of “militants” versus “civilians” are based.
2. For organizations that rely on a limited set of media sources, expand the range of media sources in cataloguing deaths; where more media reports are unavailable, qualify estimates as incomplete or uncorroborated.
3. In describing the findings of media reports that cite unnamed Pakistani officials, acknowledge the potential political bias or use qualifying language such as “alleged” and attributive language such as “according to.” Where a decision is made to discard certain reported figures in any particular strike estimate, indicate which report was discarded and explain why.

TO MEDIA AND COMMENTATORS

1. When describing the overall number and identity of individuals killed by drone strikes:
    a. "Reported" Deaths**:** Acknowledge that information about drone strike casualties is limited as a general matter, and describe the tracking organizations' estimates as collations of *reported* deaths—in a context where virtually no media reports are based on information gathered inside the region firsthand or able to be verified by the media organization itself, and where media reports sometimes rely on biased sources, e.g., anonymous government officials.
    b. Different Estimates: When citing a single tracking organization's estimate of the number or identity of individuals killed, acknowledge where there are discrepancies between that estimate and estimates by other organizations.
2. When reporting on particular strikes:
    a. Limited reporting: Where appropriate, acknowledge limits of reporting and information about a strike, e.g., that information provided by local sources could not be verified due to limited access to the region.
    b. "Militant" Deaths:
        i. Regarding estimates of the number of "militants" versus "civilians" killed, acknowledge that the determination of whether a casualty is categorized as "militant" or "civilian" is ambiguous and controversial, e.g., by using the term "alleged."
        ii. In recognition of its ambiguous and controversial character, avoid using the word "militant" unless quoting a government official; use more specific identifiers where possible.

I. Introduction: Drone Death Estimates as False Assurance in Public Debate

Debate about lethal drone operations by the United States often centers on the number of resulting casualties, and which of two categories individuals killed fall into—militant or civilian. In explaining and justifying the expansion of U.S. drone strikes beyond Afghanistan, U.S. officials emphasize the precision capabilities of drone technology and limited number of civilian casualties.[1] Yet others have questioned these claims and stated that there is evidence to suggest that deaths, and civilian deaths in particular, are much higher than U.S. officials admit.[2]

Although the Obama administration has recently acknowledged its covert drone strike campaigns in Pakistan and Yemen, it continues to avoid disclosure of basic details—including the number and identity of individuals killed. Because of U.S. government secrecy, the most common source for casualty figures is media reports from international and local news outlets. Media reports of particular strikes are published by a range of outlets: prominent Western newspapers, international wire services, regional news agencies and Pakistani newspapers. New America Foundation, Long War Journal and Bureau of Investigative Journalism ("tracking organizations") are among a number of other organizations that track these media reports and, cataloging the reports, provide estimates of the total number of individuals killed, including the number of "militants" killed.

Over the last year especially, the tracking organizations' estimates have permeated and significantly impacted debate on drone strikes. News analysis and commentary by political observers and experts often cite these estimates. Even human rights experts, such as the U.N. Special Rapporteur on

[1] President Obama has described drone strikes as "precise, precision strikes against Al Qaeda and their affiliates." *See* Christi Parsons and Michael A. Memoli, "Obama Opens Up about Drone Strikes in Pakistan," L.A. Times, January 31, 2012 (quoting Obama in a "virtual interview" on Google+ and YouTube). Obama administration officials have repeatedly emphasized that drone and other advanced technology can "ensure that the best intelligence is available for planning and carrying out operations" with the result that "the risk of civilian casualties can be minimized or avoided altogether." Various administration officials have spoken in nearly verbatim terms. *See* Attorney General Eric Holder, *Attorney General Eric Holder Speaks at Northwestern University School of Law* (Mar. 5, 2012) *available at* http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html/ ("In fact, the use of advanced weapons may help to ensure that the best intelligence is available for planning and carrying out operations, and that the risk of civilian casualties can be minimized or avoided altogether."); Harold Koh, Legal Adviser, U.S. Department of State, Speech at the Annual Meeting of the American Society of International Law, (Mar. 30, 2010) available at http://www.state.gov/s/l/releases/remarks/139119.htm ("Indeed, using such advanced technologies can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations."); Jeh Johnson, National Security Law, Lawyers and Lawyering in the Obama Administration, Remarks at Yale Law School (Feb. 22, 2012), available at www.lawfareblog.com/2012/02/jeh-johnson-speech-at-yale-law-school/ ("Advanced technology can ensure both that the best intelligence is available for planning operations, and that civilian casualties are minimized in carrying out such operations.").

[2] *See, e.g*, Scott Shane, *C.I.A. Is Disputed on Civilian Toll in Drone Strikes*, N.Y. Times (Aug. 11, 2011).

extrajudicial, summary, or arbitrary execution, refer to the estimates.[3] Scholarship and think tank studies take tracking organizations' estimates as a starting point for further analysis.[4]

On their websites and in interviews and exchanges with Columbia, none of the tracking organizations' researchers present their estimates as definitive. We believe the tracking organizations are engaged in a good faith effort to inform and encourage public debate, and have not set out to provide conclusive answers. Nevertheless, in the absence of other information, these estimates transmute into something like actual body counts. Among concerned policymakers and observers, the estimates are sometimes discussed as though they were based on credible, corroborated and firsthand research—rather than a compilation of news articles and other material that only rarely includes on-the-ground research.

The problem is that as the estimates are assimilated into fact, they threaten to become what everybody *knows* about the U.S. covert drone strikes program. The estimates provide a dangerous assurance: the human toll is something we have identified, debated and considered. If we know who and how many people we have killed, calls to examine and deliberate on the drone program—and calls to end it—lose their urgency. We may come to falsely believe that covert drone strikes are an "open secret" when in fact, the U.S. government continues to resist disclosure of basic and important information about the drone strikes program. Moreover, where the tracking organizations' estimates significantly undercount the number of civilians killed by drone strikes, they may distort our perceptions and provide false justification to policymakers who want to expand drone strikes to new locations, and against new groups.[5]

Our study underscores the need for responsible engagement by the U.S. government on the issue of drone strikes, and in particular, the impact on local civilian populations. It builds on the work of scholars and observers who, based on their familiarity with reporting processes and local dynamics, have for the past few years questioned the reliability of drone strike death estimates.[6] While the estimates of

[3] Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, "Follow-up to country recommendations – United States of America", 30 March 2012, A/HRC/20/22/Add.3, at para. 81.

[4] *See, e.g.*, Patrick B. Johnson & Anoop Sarbahi, "The Impact of U.S. Drone Strikes on Terrorism in Pakistan," (February 25, 2012), available at http://patrickjohnston.info/materials/drones.pdf

[5] For a discussion of drone strikes and the expansion of groups and individuals of who may be targeted, see Columbia Human Rights Clinic & Center for Civilians in Conflict, *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions* 67-77 (2012).

[6] This reliance has sparked critiques by journalists and scholars skeptical of the reliability of the tracking organization's counts and media reports. *See, e.g.*, Conor Friedersdorf, "Flawed Analysis of Drone Strike Data is Misleading Americans," The Atlantic (Blog) (July 18, 2012); Chase Madar, "Search for a Method," The New Inquiry.com (July 2, 2012); Muhammad Idrees Ahmad, "The Magical Realism of Body Counts," Aljazeera.com (June 13, 2011); NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 43-54 (2012).

Pakistan-based tracking organizations are outside of the scope of this report, their use of a wider range of sources, such as local media reports in local languages and hospital records, is instructive. [7]

II. Our Methodology

This report builds on previous studies by the Columbia Human Rights Clinic and Human Rights Institute regarding the impact of drone strikes on local communities and the ambiguity in U.S. legal standards regarding who may be targeted lethally.[8]

In this report, we set out to examine the assumptions and accuracy of information about drone strike deaths, including the identity of the individuals killed. New America Foundation, Long War Journal and Bureau of Investigative Journalism each arrive at different estimates of the total numbers of individuals killed and their identities. To find out why, we reviewed each organization's data for all strikes in Pakistan in 2011, including the media reports they referenced, and independently counted reported casualties. Our study consisted of all reported drone strikes in Pakistan in 2011—a significant and discrete dataset that allows us to compare our results to those of the other organizations, strike-by-strike, and in end-of-year statistics. Our complete strike-by-strike comparison, analysis and dataset is available online.

In addition to the analysis and critique of methods in this report, we recounted the reported casualties for each strike using each tracking organization's own sources and arrived at our own estimates. We used only the sources listed by the organizations, which are hyperlinked on their websites (or in the case of New America, provided in a separate PDF document which is hyperlinked on their website). We did not seek out additional sources, but where a hyperlink was broken and appeared to be the source of an organization's upper or lower casualty figure, we have tried to re-source the article.

We gave each organization an opportunity to review and respond to our data and findings. Bill Roggio of the Long War Journal spoke with us extensively about the organization's methodology; the Bureau of

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[7] We do not focus on these studies in part because international media rarely cite their figures, but also because their counts are based on Urdu and other language sources that we do not have the resources to verify. The three most well-known Pakistan tracking organizations are Pakistan Institute for Peace Studies, Pakistan Body Count and Conflict Monitoring Center. According to its website, the Pakistan Institute for Peace Studies' Conflict and Security Database team monitors around 100 local and national newspapers, magazines and journals on a daily basis, relying heavily on regional correspondents to cross-check information and seek further details of issues covered by the media. See Pak Institute for Peace Studies, Digital Database on Conflict and Security, available at http://www.san-pips.com/app/database/index.php?id=3 (subscription only); EveryCasualty, International Practitioners Network, Pak Institute for Peace Studies, available at http://www.everycasualty.org/practitioners/pips see also http://san-pips.com/ind ex.php?action=reports&id=tml3; Pakistan Body Count, available at http://pakistanbodycount.org/drone_attack; Conflict Monitoring Center, available at http://cmcpk.wordpress.com/drone-attacks-in-pakistan/.

[8] *See* Columbia Human Rights Clinic & Center for Civilians in Conflict, *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions* (2012); Human Rights Institute, Columbia Law School, *Targeting Operations with Drone Technology: Humanitarian Law Implications* (March 25, 2011).

Investigative Journalism's Chris Woods reviewed and commented on our data findings and spoke with us extensively about the Bureau's methodology. We are grateful for their insights and comments. Despite numerous attempts to discuss our findings with New America Foundation, they declined to comment, but did substantially alter their data after we provided our detailed strike counts.[9]

The only organization that chose to respond directly to us about each strike count where we reached a different result was the Bureau of Investigative Journalism. Some initial differences between our counts have been eliminated through this process, as the Bureau changed its data based on some of our work, and vice versa. In cases where we continue to disagree, we have incorporated the Bureau's specific responses in our dataset.

To arrive at our independent recount, we took into account the lowest and highest reported numbers presented by listed media sources, except in cases where we were satisfied that certain figures had been superseded by later reports or, in a few cases, where they contained evident typographical errors.[10] As discussed below, we believe that this is the appropriate and most accurate approach. We have tried to discard outdated numbers very conservatively, doing so only when there is a clear difference over time and where the same news agencies publish updated figures. In our view, as the majority of media reports provide so little information and rely on so few sources, it is a rare case where a reported figure can be confidently discarded on any other basis. We have tried to be as transparent as possible about how we have reached our count and its comparison to all of the reported figures within the strike-by-strike analysis.

In cases where we had concerns with the media sources, we have taken a lower figure of 0. In cases where there are conflicting reports about the identity of the individuals killed as either militants or civilians, our figures reflect both possibilities—for example, if 5 people were reported killed, we take a lower figure of 0 and an upper figure of 5 in both categories.[11]

It is important to note that despite the great care we took in reviewing the data and original media sources, our estimates do not purport to be reliable or accurate indicators of the actual number of civilian or "militant" casualties of U.S. drone strikes. The U.S. government should provide such figures

[9] In an email response on July 30, 2012, Peter Bergen of the New America Foundation declined to speak with us, stating: "We publish all of our data and update it continuously on our website and so any questions you might have should be answered by what is on the site." Following several repeated inquiries, in an email on August 12, 2012, Jennifer Rowland of the New America Foundation asked for our written findings and on August 15, 2012 indicated they were under review. Despite repeated attempts at contact by email and phone, New America has not responded with comments or other information. However, in late August 2012, New America significantly changed the way that its datasets are recorded and changed a number of individual strike accounts, per the specific data discrepancies our findings had identified.

[10] Our recount's upper and lower figures are based only on media sources, all of which are listed as footnotes in our dataset. The media sources do not include unknown blogs or websites purportedly run by militant groups.

[11] This is also the reason why our minimum civilian and militant casualty figures do not add up to our minimum figure for total killed.

and clarify its standards for the permissibility of direct targeting. Rather, our recount reflects the extent to which civilian casualties which are credibly reported are nonetheless missed by the tracking organizations; it underscores that the public and policymakers do not have complete information about the humanitarian cost of drone strikes.

III. Weaknesses of Media Reports as a Metric for Drone Strike Deaths

Media reports are at present the best and perhaps only way to get a picture of the frequency and scope of U.S. drone strikes outside of Afghanistan and an idea of the overall number of people being killed by them. However, there are systematic flaws and biases in the reporting. While in some rare cases there is in-depth reporting on the circumstances of particular strikes, this is unfortunately far from the norm.

Limited Media Access and Few Details

Media reports of particular drone strikes are based on limited reporting, with the same few journalists and news outlets providing the same materials to multiple wire agencies and national or international press. Moreover, media reports are usually based on limited on-the-ground investigation (with the exception of some Pakistani newspapers, which we note below). Wider and more in-depth reporting is typically reserved for cases where a high-level militant leader has been reported killed, or cases with an unusually high number of overall and reportedly civilian casualties. Reports often provide no more information than the location of the strike, the alleged or apparent target (such as a "compound" or a vehicle), the number of people reported dead and an official claim that those killed were militants.

While the public and policymakers may view international media reports as especially credible, these outlets—including the New York Times, the BBC and wire services such as Reuters and the Associated Press—are generally unable to access the tribal areas where drone strikes are occurring, making them reliant on local journalists or "stringers" for their reporting. International media sometimes report the number and identity of those killed based on the reports of several local stringers. However, the stringers themselves may be unable to go to the area where a drone strike actually occurred due to security issues, making their reports substantially dependent on the word of a handful of local officials—a problem we explore further below. Even when stringers are able to reach the areas where drone strikes occurred and conduct their own on-the-ground reporting, resulting reports may fail to reflect possible civilian casualties; if only one stringer finds evidence of civilian casualties, compared to three or four other stringers who do not, international media will ordinarily not report the possibility of civilian casualties.[12]

On the other hand, reports of civilian casualties based on statements of unnamed witnesses or "local villagers" may be flawed. Soon after a strike, local militant groups may move the bodies of individuals killed, for burial or to obscure the identity of those killed. Witnesses may fear retaliation by local militant groups if they discuss what occurred; it is possible that local government officials, covert agents, or

[12] See Asia Pacific Forum WBAI 99.5 FM, "Killer Drones: Counting the Human Costs" (Interview with journalist Madiha Tahir), audio available at http://www.asiapacificforum.org and transcript on file with Columbia Human Rights Clinic; see also NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 37-38 (2012).

militant groups could influence witnesses—either against providing information at all, or toward providing misinformation about who is killed—although we do not know of reports to this effect.

Who Defines "Militants" versus "Civilians"?

Reporting on drone strike casualties, and the tracking of those reports, typically divide the dead in two categories: "militants" and "civilians." The hidden bias of this categorization stems from the ambiguity of the terms: they are not defined by the U.S. government, though U.S. officials use them; the terms sound vaguely legal, although they only loosely track legal and scholarly debates about who may be lawfully targeted. Without a universally accepted or standardized definition for these terms, categorization of "militant" and "civilian" deaths is biased by the definition of the individuals to whom media reports cite for identifying the dead. Whether these primary sources are unnamed U.S. and Pakistani officials, or unnamed local villagers and witnesses, identification of those killed as "militants" or "civilians" is likely driven by political interests, and colored by the perspective and experiences of the source. As these terms appear in media reports and the tracking organization studies, they might be better understood as moral categories of who should and should not be killed. They are, to that extent, inherently limited and biased.[13]

Our review of the media reports and tracking organization studies suggests that they regularly use "civilian" to refer to a person for whom there is no allegation of affiliation with a militant group, and "militant" for a person for whom there is. As colloquial expressions, these understandings appear intuitive. Thus, in media and tracking organization reports, named and well-known militant group leaders are categorized as "militants" and young children and women are often categorized as "civilians."

The distinction between "militant" and "civilian" is more muddled and controversial, however, than these examples reflect.[14] The slippage between "militant" and "civilian" as colloquial terms and legal terms causes confusion and may be a reason for different accounting of who is a "civilian." As a legal matter, under some circumstances civilians may lawfully be targeted—perhaps leading U.S. and Pakistani government sources to refer to such civilians as "militants."[15] The circumstances under which

[13] Other observers have also made this conclusion. See, e.g., NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 30-31 (2012).

[14] Even the examples of militant leaders and young children and women carry controversy. Some commentators would argue that militant leaders cannot be targeted while they are not directly participating in hostilities. Moreover, civilian women and children could be targetable under humanitarian law, although younger children could presumably not form the affiliations or intentions necessary to lose protection as civilians. See Avril McDonald, "The Challenges to International Humanitarian Law and the Principles of Distinction and Protection from the Increased Participation of Civilians in Hostilities," Asser Institute (April 2004), available at http://www.asser.nl/default.aspx?site_id=9&level1=13337&level2=13379; *infra* note 15.

[15] The international humanitarian law principle of distinction requires parties to a conflict to distinguish in attack between combatants, as defined in Article 4 of the Third Geneva Convention, and civilians. In an international armed conflict, individuals who are not members of the armed forces are civilians and

civilians lose protection under humanitarian law and become subject to direct attack is a matter of hotly contested debate among lawyers and scholars in the U.S. and internationally.[16] Government sources might provide lower civilian casualty estimates than local witnesses because internal government standards permit targeting of an expansive range of civilians—such as civilians who, though not members of a militant group, are suspected of some affiliation or of providing some material support to militant groups—sometimes beyond conventional interpretations of humanitarian law.

Yet there are assumptions and biases at play in defining such individuals as "militants" or insisting they are "civilians": on the one hand, governments may justify targeting based on an individual's provision of supplies to a local militant group, while on the other hand local witnesses might characterize the individual as innocent and note that the supplies were food or medicine, or provided only under duress.[17] Likewise, governments may justify targeting local groups who are meeting or mixing with individuals identified as militants; yet local witnesses and observers might characterize those meetings and talks as attempts at reconciliation or peace-building, and decry drone strikes for targeting civilians.

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are entitled to protection against direct attack. In a non-international armed conflict, a customary rule of distinction applies, which is formulated in similar terms. *See* Geneva Convention Relative to the Treatment of Prisoners of War, Art. 4, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (defining "combatant"); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), art. 50-51, June 8, 1977, 1125 U.N.T.S. 3, 23 [hereinafter Additional Protocol I]; Rules 1 and 3, ICRC, Customary International Humanitarian Law Database, http://www.icrc.org/customary-ihl/eng/docs/home [hereinafter ICRC, Customary Law Database]. The U.S. is not party to Additional Protocol I, but regards some of its provisions as customary law. In this report, we refer to customary law as recognized by ICRC's study on customary law, although its views do not always reflect those of the U.S. government. There is nonetheless substantial debate about how to categorize individuals who may be targeted by drone strikes, as members of non-state armed groups or civilians directly participating in hostilities.

[16] Among the areas of debate, two of the most highly contested issues are: (1) who may be targeted as "directly participating in hostilities" and for how long; and (2) who may be targeted as fulfilling a "continuous combatant function," a status by which members of organized armed groups cease to be civilians and lose protection against direct attack. For a brief summary of positions and controversies, *see* Human Rights Institute, Columbia Law School, *Targeting Operations with Drone Technology: Humanitarian Law Implications* (March 25, 2011), 15-23 *available at* http://www.law.columbia.edu/ipimages/Human_Rights_Institute/BackgroundNoteASILColumbia.pdf (discussing and referencing, inter alia, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law (Nils Melzer ed., 2009); Michael Schmitt, Deconstructing Direct Participation in Hostilities: The Constitutive Elements, 42 N.Y.U. J. Int'l L. & Pol. 697, 699 (2010); 5 Ryan Goodman & Derek Jinks, The ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law: an Introduction to the Forum, 42 N.Y.U. J. Int'l L. & Pol. 637, 640 (2010); Kenneth Watkin, Opportunity lost: organized armed groups and the ICRC "Direct Participation in Hostilities" Interpretive Guidance, 42 N.Y.U. J. Int'l L. & Pol. 640, 692 (2010); Nils Melzer, "Keeping the Balance Between Military Necessity and Humanity: A Response to Four Critiques on the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities," N.Y.U. J. Int'l L. & Pol. 831, 833 (2010)).

[17] See Columbia Human Rights Clinic & Center for Civilians in Conflict, *The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions* 41-42 (2012).

Our review of media reports from 2011 suggests that, beyond the children and named militant leaders, there is rarely enough information provided in media reports for an outsider—including a tracking organization—to independently assess whether the use of the "militant" or "civilian" label is accurate, according to its own standards or presumed legal standards.

A rare example of deeper media reporting on the identities of those killed followed a strike on Barmal, South Waziristan, on July 12, 2011,[18] but the greater level of detail underscores our point that the labels "militant" and "civilian" may turn on the perspective of the primary sources, and are difficult for tracking organizations to independently assess. Media reports cited anonymous officials as indicating the strike killed militants. Pakistan Today provided further detail, stating 5 "youngsters", " associated" with the Haqqani Network were killed, and it named three of them. Digital Journal reported that a statement in an Urdu daily from one of the deceased's university professors described him as an "innocent, intelligent student who had countless good qualities and who devoted all his time to his studies." The statement from the teacher describing one student as "innocent" is not, in our view, enough to amount to a report that he was a civilian. On the other hand, while these are quite clearly media reports of "militant" deaths, we do not know what it means to be a "youngster" (under 18 and thus a child?) who is "associated" with the Haqqani Network in Waziristan—the extent to which the association includes actual involvement in militant activities, or behavior which would make him directly targetable under unknown U.S. standards.

Media Reports' Reliance on Unnamed Pakistani Government Sources

Media reports provide a weak basis for determining the identity of those killed because they typically categorize the dead as "militants" by citing unnamed Pakistani officials, although in some cases they corroborate statements by officials with statements by anonymous residents. We do not know who the unnamed Pakistani officials are, although observers believe they are Pakistani Army officials. What definition these officials use to categorize a person as a militant or civilian is unknown. Nor do we know how the Pakistani Army confirms such deaths or the quality of information it is able to rely on, given the limited accessibility of some of the tribal regions to even the Army. Critics of the Pakistani military argue that it does not conduct on-the-ground investigations before issuing "on the condition of anonymity" announcements that the dead are militants; these critics contend that it is plausible the Army has a political interest in categorizing as many of those killed in drone strikes as "militants".[19]

Beyond government sources, media reports rarely provide any additional identifying information about the dead that would enable the reader—or tracking organizations—to reach their own judgment on the matter. Our review of the 2011 data for Pakistan shows that out of 330 to 575 militants reported dead, for between 100 to 219 individuals identified as militants, the sole source media reports provide is anonymous officials. In the case of 36 to 71 of those dead, absolutely no further identifying information is provided beyond the claim that they were militants or alleged militants. For the remaining 64 to 148 dead, some identifying information is provided, such as an alleged connection to a particular militant

[18] See Columbia Dataset, Strike 46.

[19] See, e.g., Muhammad Idrees Ahmad, "Gunboats and gurkhas in the American Imperium," AlJazeera.com (July 14, 2012).

group or leader.[20] Often the additional identifying information is simply a claim that the deceased were "foreign", which might conflict with other reports claiming they were "local".

The trend of heavy reliance on anonymous officials is not limited to the 2011 dataset. New York University School of Law's Global Justice Clinic and Stanford's International Human Rights and Conflict Resolution Clinic analyzed the articles relied on by the New America Foundation for its data on drone strikes in Pakistan from January to July 2012. NYU's analysis found that in 74 percent of the articles, the only source for the number of "militants" killed was anonymous government officials (almost always unnamed Pakistani officials).[21]

Inconsistent Reporting Among Media Reports and the Implication for Tracking Organization Counts

In the majority of strike reports that we analyzed, diverse death counts are reported among different sources. Inconsistencies as to the number of dead, the identity of the dead, the object targeted, and even the location of a strike are not uncommon.

Among reputable news organizations, the reported number of dead often diverges. Sometimes different reported numbers reflect the death count changing over time as more information becomes available, but more often it appears that figures are simply conflicting. Sometimes the difference is significant, but even where the differences are small, the totals add up. To varying extents, the tracking organizations' choices of a pool of sources skewed their counts upward or downward.

Of the three tracking organizations whose data we analyzed, the Bureau of Investigative Journalism typically cites the largest number of sources. The Bureau is followed by the New America Foundation, with the Long War Journal typically relying on the fewest sources, often only one or two articles. The divergences in media reports and varying media report pool sizes is one reason why the Bureau has the highest upper casualty figures, followed by New America and then by the Long War Journal.[22] In terms of individual strikes, the reliance on a larger number of sources by the Bureau and New America often leads to the incorporation of lower, as well as higher figures. The most significant difference that results however is a much higher upper figure, and a wider gulf between upper and lower figures.

The divergences in media reports and the relationship between the number of sources and higher casualty figures underscores that media tracking organizations should use a wide range of credible and reliable media in cataloguing deaths. Moreover, where it is not practically feasible for tracking

[20] See "Counts of Militants Reported Killed (Pakistan 2011)" (chart), *infra* at 22.
[21] See NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 43-54 (2012); see also Conor Friedersdorf, "Flawed Analysis of Drone Strike Data is Misleading Americans," The Atlantic (Blog) (July 18, 2012), http://www.theatlantic.com/politics/archive/2012/07/flawed-analysis-of-drone-strike-data-is-misleading-americans/259836/.
[22] See Columbia Dataset, Strike 4, Strike 11, Strike 12, Strike 15, Strike 42, for examples of cases in which reliance on limited sources by some organizations was the cause of varying casualty counts.

organizations to collate all relevant reports, their statistics on "reported deaths" are incomplete and should be provided with a qualification that they do not represent all reports.

Moreover, reliance on English-language sources significantly limits the number of reports that can be accounted for by the tracking organizations analyzed, as well as for our own count. [23] This is particularly relevant in a context where local media outlets in non-English speaking regions may be more willing and able to investigate the particular strikes. Bill Roggio, Managing Editor of the Long War Journal, told us that necessary reliance on English-language sources is a hindrance in his work.[24]

A further limitation of media tracking in general is that reporting on every single alleged drone attack, and following up on these attacks as death counts change over time, is not necessarily the priority of journalists and media outlets (particularly English language as opposed to more local ones). In particularly controversial or "important" cases, where strikes have allegedly killed a large number of civilians or important militant leaders, media coverage is more extensive.

Uncounted Strikes

Diverse reporting illustrates not only how easy it can be to miss some reported figures, but it may also be the case that entire strikes go unreported, or that reports of strikes are overlooked.

The Bureau of Investigative Journalism lists a number of cases which may or may not be drone strikes, for which a single source is available. While these strikes are listed in the Bureau's data, the figures are not incorporated into the Bureau's casualty count.[25] For example, The News, a reputable Pakistani source, reported that a second strike took place on August 22, 2011, killing an Arab family. It is the only identified source to have reported on the strike. In another case, Urdu TV station Ajj reported that a strike on September 4, 2011 killed up to 7 alleged militants.[26] The only identified source is Chinese outlet Xinhua, which regularly cites foreign language media reports in its own English-language reporting.[27]

The decision not to count these single-source strikes in casualty counts is a sensible one, reflecting concern about the failure of the media to more widely report the strike. We cannot tell why particular strikes are not more widely reported in international and Pakistani English-language media, and while it may be a reflection on the credibility of the report, it may also be a reflection on the priorities of the media in any particular news cycle, or on the difficulties of reporting from such remote regions. As such, it may well be that a family was killed by a strike in August, and that their deaths have gone unaccounted for in the casualty figures.

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[23] However, the Bureau has cited to news reports in other languages, including Urdu.
[24] Columbia Human Rights Clinic phone interview with Bill Roggio (July 23, 2012).
[25] Bureau of Investigative Journalism, "Covert US Strikes in Pakistan, Yemen and Somalia – our methodology," http://www.thebureauinvestigates.com/2011/08/10/pakistan-drone-strikes-the-methodology2/ (last visited October 9, 2012).
[26] Strike Ob240c in the Bureau's dataset.
[27] Strike Ob240ci in the Bureau's dataset.

The potential for entire strikes to be missed is also illustrated by the delayed reporting of a strike on October 26, 2011. Reports of the strike did not surface until October 28, with Reuters reporting: "Security officials and Taliban sources said the remote location of the suspected strike prevented it from being reported earlier, and reports of the strike only surfaced when the injured arrived at a hospital in Mir Ali."[28] The strike, which reportedly killed between 13-22 people, including a senior Taliban member, had been missed entirely by the New America Foundation, but they added it to their dataset after we provided them our findings.[29]

While in some cases, such as with the missed October 26 strike, a more rigorous methodology may improve the estimates of tracking organizations, a persistent problem is the biases of media sources we described above. Taken together, these flaws make aggregation of media reports an inadequate metric for determining the number and identity of individuals killed. While on-the-ground and in-depth reporting are always limited in war zones, we are concerned that the public and policymakers may fail to recognize that estimates of drone strikes deaths, while provided in good faith, are incomplete and may fail to reflect the true humanitarian cost of strikes.

IV. Our Recount of Drone Strike Deaths

We conducted an independent review of the media sources relied on by tracking organizations and arrived at different counts on the overall number of individuals killed and their identities. The discrepancies we describe between our count and that of the tracking organizations are not meant to impugn the efforts of the organizations. Rather, our recount reflects the extent to which civilian casualties which are credibly reported may nonetheless be missed by the tracking organizations; it underscores that the public and policymakers do not have complete information about the humanitarian cost of drone strikes and should not use the estimates to justify an expansion or continuation of drone strikes.

Based on a close review of each tracking organization's data and media sources, we came to different counts of the total number of individuals killed, the number of alleged civilians killed, and the number of alleged militants killed. When we compared each of the tracking organizations' own overall estimates with their individual strike counts, we found some discrepancies. Moreover, when we reviewed the original media sources the tracking organizations' relied upon, we came to different counts; our counts were similar to that of the Bureau of Investigative Journalism, but our count of reported civilian casualties in particular was significantly higher than the counts by New America or the Long War Journal. Below we explain further the causes of differences between the three tracking organizations analyzed, and our own work. We have also endeavored to be as transparent as possible about our methodology for each individual strike in our strike-by-strike analysis.

[28] Jibran Ahmad, "Suspected U.S. drone kills 13 Pakistani Taliban," Reuters, Oct. 28, 2011.
[29] Columbia Dataset, Strike 67.

Comparing Tracking Organizations' Overall Numbers and Strike-by-Strike Tallies

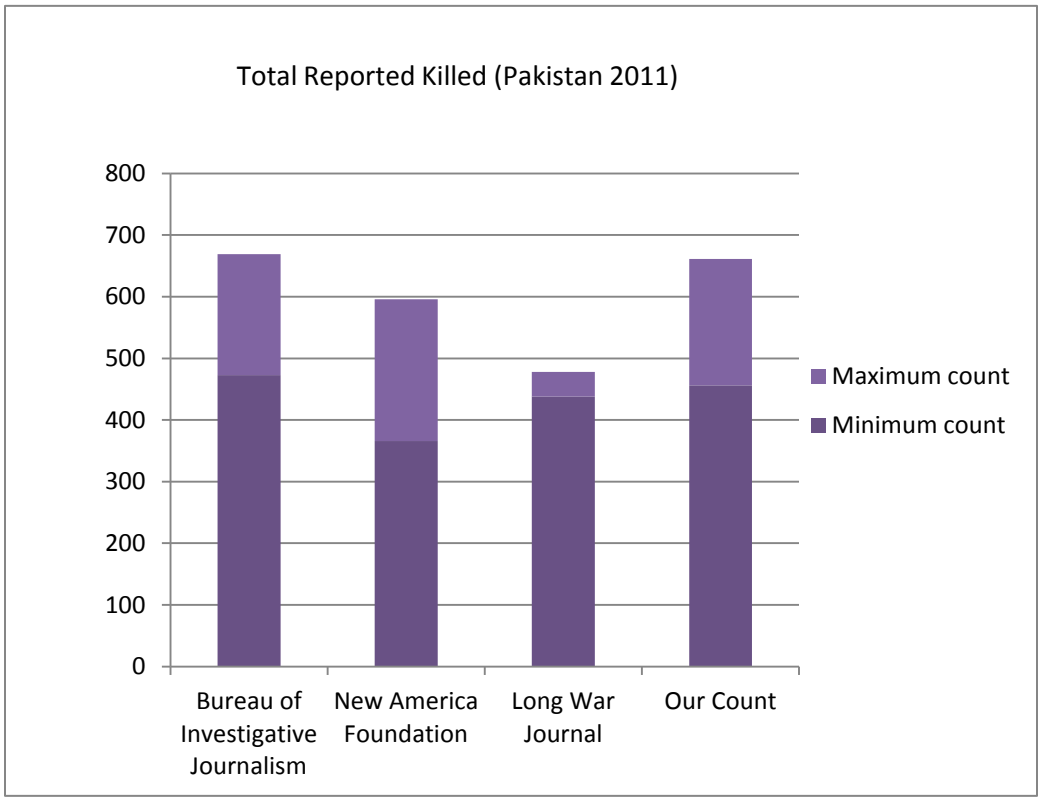
When we conducted a strike-by-strike review based on the tracking organizations' listed counts for Pakistan 2011, we in some cases came to different overall counts of deaths than the organizations reported as their overall estimates. Below we list our recount of the organizations' information, with their total counts in parentheses:

- The Bureau of Investigative Journalism
    - *Total killed*: Counting the Bureau's own figures on a strike-by-strike basis, we counted a range of 473 to 669 total individuals killed (compared to the Bureau's own total count of 473-663)
    - *Civilians*: A range of 68 to 157 civilians killed (the Bureau reports an upper range of 154 civilians)
- New America Foundation:
    - *Total killed*: A range of 366 to 599 total individuals killed (consistent with New America's own tally)
    - *Militants*: 331 to 524 militants killed (New America reports a range of 336 to 535)
    - *Civilians*: A range of 3 to 9 civilians killed (consistent with New America's own tally)
    - *Unknown*: A range of 32 to 66 unknowns killed (New America reports a range of 27 to 58)
- The Long War Journal:
    - *Total killed*: A range of 438 to 478 total individuals killed (Long War Journal reports 435 total)
    - *Militants*: A range of 421 to 475 militants killed (Long War Journal reports 405)
    - *Civilians*: A range of 3 to 38 civilians killed (Long War Journal reports 30)

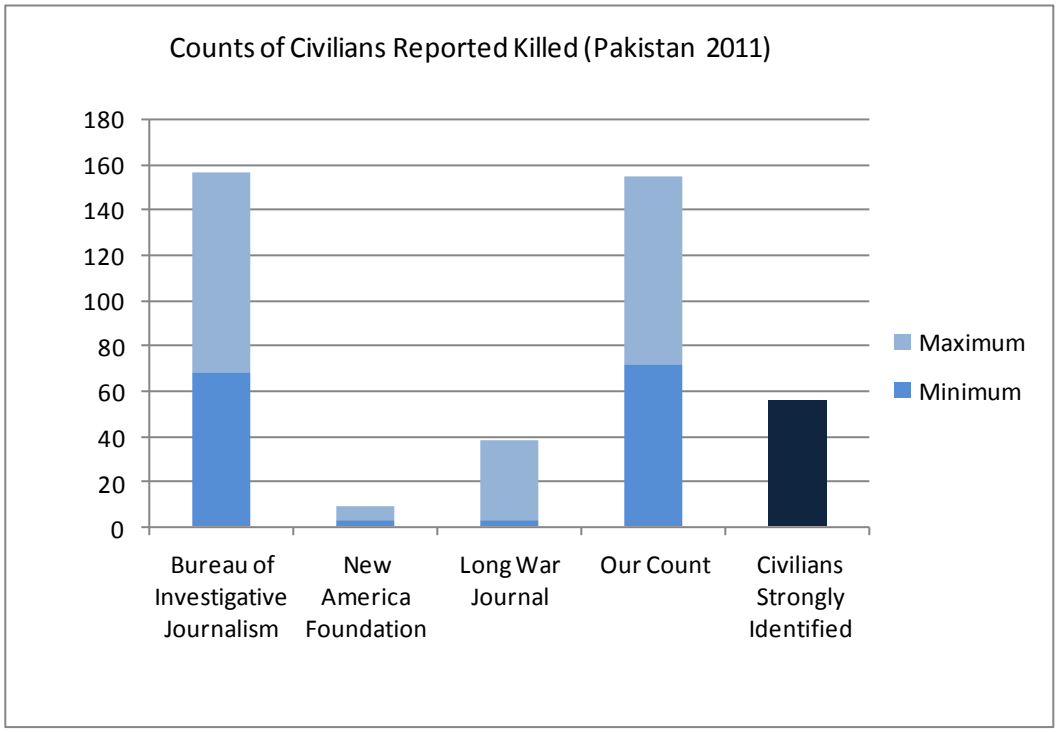
In the case of the Bureau of Investigative Journalism and the New America Foundation, the differences here are very minor, apply only to the maximum figures, and are likely the result of a small counting error in the compilation of data.[30] The differences in the Long War Journal's totals are more significant, and are likely the result of the Journal's less extensive form of reporting. Whereas New America and the Bureau list a strike-by-strike count on their website, our strike-by-strike figures for the Journal come from separate articles published on each strike. Bill Roggio of the Long War Journal told us that generally, the Journal's total statistics reflect what is published in the articles, but on occasion the figures might be updated without publishing a new article. We found that in some cases, an article's conclusion on the number or identity of the dead was ambiguous – our tally of the Journal's figures reflects that ambiguity, whereas the Journal's own single-figure totals do not.[31]

[30] We were not able to determine the source of the counting error.

[31] The most significant example is the strike on March 17, 2011, listed as strike 21 in our dataset. The Journal puts reported deaths at between 14 and 35, and notes that accounts differed as to the identity of the deceased (as either militants or civilians). As such, our tally for the Journal is 14-35 total deaths, 0-35 militants, and 0-35 civilians. We consider this to be the most accurate portrayal of the content of the



article, however it is clearly not commensurate with the Journal's own total tally, which includes only single figures, and in particular, a total civilian casualty figure of 30 for the entire year.



Comparing Our Independent Count and Criteria to the Tracking Organizations' Counts

After recalculating the tracking organizations' estimates based on a strike-by-strike review, we reviewed the media sources the tracking organizations relied upon, and came to an independent count of individuals killed:

- *Total*: 456 to 661 total killed
- *Alleged militants*: 330 to 575
- *Alleged civilians*: 72 to 155

Using the minimum casualty figures, we counted 2300 percent more civilian casualties than were reported by the New America Foundation as "civilian casualties"; we counted 140 percent more "civilian" casualties than were reported by New America Foundation as either "civilian" or "unknown" casualties; we counted 140 percent more civilian casualties than the Long War Journal reported; and we counted 5.9 percent more civilian casualties than the Bureau of Investigative Journalism, to which our count was substantially similar.

Our range, and the discrepancy between our estimates and that of the tracking organizations, partly reflects the difficult of assessing the identity of those killed based on media reports. Below we set out our criteria for this assessment, but we recognize these are subjective determinations and that every count will vary; this inevitable variance underscores the inherent uncertainty about drone strike death

estimates based on media reports, and that the U.S. government has ultimate responsibility for accounting for civilian casualties and providing an official estimate.

Criteria for Identifying "Civilians" and "Militant" in Estimates

As we have noted, too often the media reports on which tracking organizations base their casualty counts are weak, both because of the ambiguity of the terms "militant" and "civilian" and the limitations of the media reports' primary sources. We reviewed the 2011 media reports cited by tracking organizations closely to determine the relative strength of the identifications of "militants" and "civilians." Our own analysis is circumscribed by the ambiguity of these terms, yet we have tried to isolate relative strengths and weaknesses based on the following criteria:

- *Strong identification* – where the deceased are individually identified by name, and/or where the reported identification of the deceased is corroborated by an independent investigation (the on-the-ground investigation conducted by the Associated Press and published in February 2012, and the primary investigations of the Bureau of Investigative Journalism's researchers in Waziristan.)
- *Medium identification* – where there are multiple original sources for the identification of the dead. For example, both anonymous officials and a local resident.
- *Weak identification* – where there is only one source for the identification. For this purpose we treat multiple anonymous officials as one source, and plural unnamed residents as one source.

While we have treated identification by name as a "strong" identification, not all such cases are equal. In some cases, the name of an otherwise unknown person is all that is reported. In other cases, such as the March 17 strike, the identification of civilians both by name and by an unusually wide array of original sources, a strong narrative explaining the circumstances of how so many civilians apparently came to be attacked, and reporting of mass protests against civilian deaths as a result of the attack, provide for an even more convincing identification of civilian deaths, particularly in absence of a reasonable counter-narrative.

While most named militants are leaders, the named militants killed also include the three named "youngsters" from the July 12 strike discussed above. Even the strongest militant identifications, identifying named and known militant leaders, are fallible. This has been proven in numerous instances where the reported dead have later surfaced alive and well.[32]

[32] A notable example is Hakeemullah Mehsud, the leader of the Pakistani Taliban who was incorrectly reported dead on a number of occasions. See Bill Roggio, "Hakeemullah Mehsud – not dead yet," The Long War Journal, April 29, 2010 http://www.longwarjournal.org/archives/2010/04/a_senior_pakistani_i.php. See also Bill Roggio, "Hakeemullah Mehsud rumored killed in recent drone strike," The Long War Journal, January 15, 2012, available at http://www.longwarjournal.org/archives/2012/01/hameemullah_mehsud_r.php.

Recognizing that such categorizations are more an art than a science, we have tried to be as transparent as possible as to how we have categorized each strike in our strike-by-strike analysis. We have also broken some of the figures down into more objective subparts[33]:

- Strongly Identified "Militants": Total 105 out of 330-575 (32% of the minimum militant count)
    - 34 are identified by name – the deaths of 23 are unconfirmed, while there is some level of confirmation for the remaining 11 deaths
    - 71 of the deceased's reported identification as a militant is corroborated by an independent on-the-ground investigation

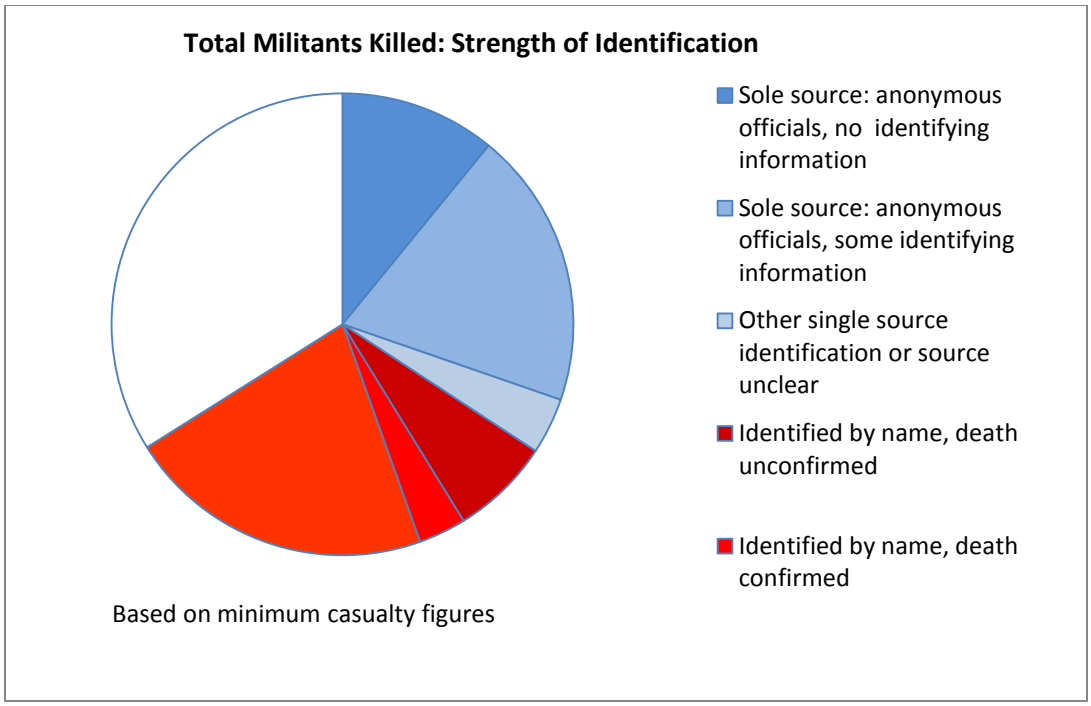
- Strongly Identified "Civilians": Total 56 out of 72-155 (78% of the minimum civilian count)
    - 52 are identified by name
    - 16 of the deceased's reported identification as a civilian is corroborated by an independent on-the-ground investigation
    - This includes 12 individuals who are both identified by name and whose civilian identity is corroborated by independent investigation

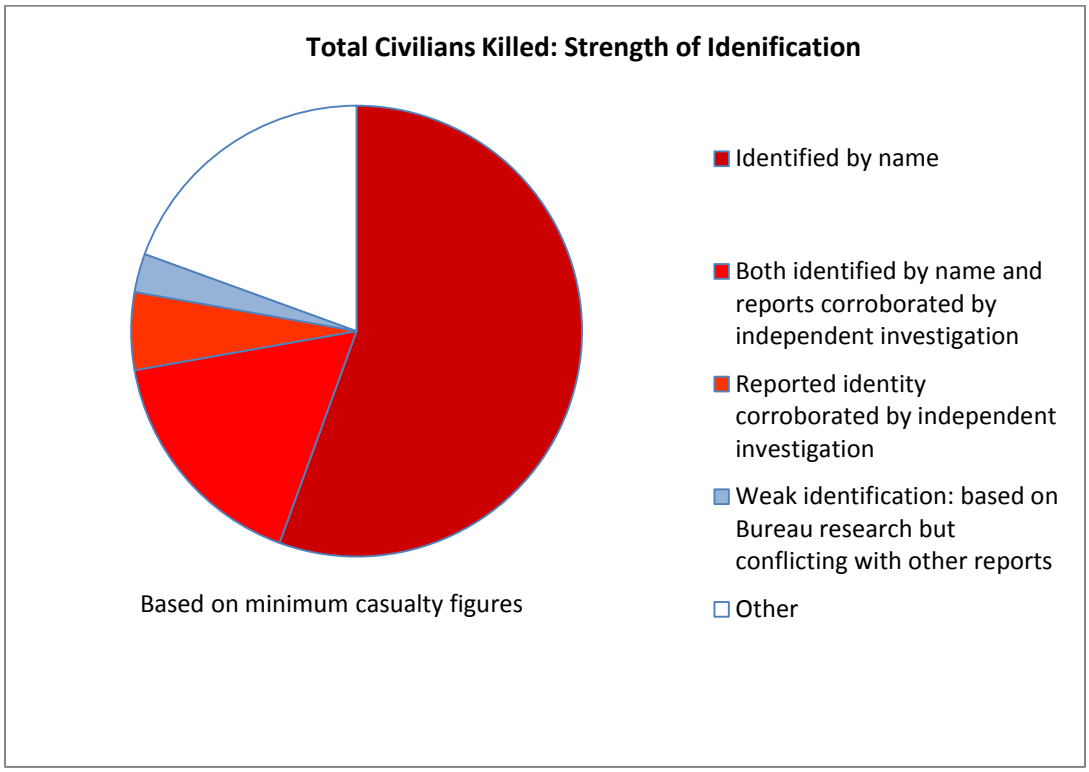
- Weakly Identified "Militants": Total 113-232 out of 330-575
    - 100-219 are identified as militants solely by anonymous officials. Of these:
        - Absolutely no identifying information is provided for 36-71 of the deceased
        - Some identifying information is provided for the remaining 64-148 (for example, that they were "foreign", a link to a particular militant group)
    - 13 are identified by a different single original source, or the original source is not apparent in reports

- Weakly Identified "Civilians": Total 2-73 out of 72-155
    - 2-12 are identified as civilians solely by the Bureau of Investigative Journalism's primary research, in cases where there are conflicting accounts
    - 0-53 are identified as civilians solely by a resident or local sources
    - 0-8 are identified as civilians solely by an anonymous official

These breakdowns are represented in the graphs below, as a portion of the *minimum* figures for total militants and total civilians killed. "Strong" identifications are represented in red, and "weak" identifications are represented in blue.

[33] Our dataset and our analysis of the strength of existing reports does not incorporate the investigations reported in NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 57-66 (2012), available at www.livingunderdrones.org. This report, released after the finalization of our data, provides further relevant testimony relating to the strikes on March 17 and June 15, and is cited by the Bureau of Investigative Journalism.


Total Militants Killed: Strength of Identification
Sole source: anonymous officials, no identifying information
Sole source: anonymous officials, some identifying information
Other single source identification or source unclear
Identified by name, death unconfirmed
Identified by name, death confirmed
Based on minimum casualty figures


Total Civilians Killed: Strength of Idenification
Identified by name
Both identified by name and reports corroborated by independent investigation
Reported identity corroborated by independent investigation
Weak identification: based on Bureau research but conflicting with other reports
Other
Based on minimum casualty figures

V. Comparison of the Tracking Organization Estimates

We compared the casualty tracking conducted by the Bureau of Investigative Journalism, the New America Foundation, and the Long War Journal, for drone strikes in Pakistan in 2011, with the primary motivation of understanding the quite stark differences between each organization's results. The influence these tracking organizations have makes it crucial to understand their methodologies and the reasons why they arrive at different estimates. Where tracking organizations significantly underestimate the number of civilians killed, they may distort our perceptions and provide false justification to policymakers who want to expand drone strikes to new locations, and against new groups.

We gave each organization an opportunity to respond on a strike-by-strike basis in those cases where our conclusion on casualty figures differed from theirs. As noted above, the New America Foundation declined to speak with us, but did significantly change their data after receiving our critiques.[34] Bill Roggio of the Long War Journal spoke to us and provided many insights into his work, but did not respond directly to our strike-by-strike differences. The Bureau of Investigative Journalism did respond and engaged in a dialogue with us on particular strikes. In a number of cases, the Bureau's feedback caused us to revisit our analysis, or the Bureau agreed with us and decided to change their own data to take account of points that we raised.

Tracking Civilian Casualties

In comparing each organization's work with regards to civilian casualties in particular, it is important to note that the Bureau of Investigative Journalism is the only organization to have consistently and actively tracked civilian casualties.

While the Long War Journal does provide a civilian casualty count, Bill Roggio noted that this is not the Journal's primary focus. Rather the focus and expertise of the Long War Journal is in patterns of operations – "that the U.S. is conducting this program, who they're targeting, where they're targeting, whose areas are being targeted, which Taliban commander has purview over those areas." This is clearly reflected in the Journal's work – unlike the Bureau and New America, the Long War Journal does not publish a strike-by-strike list of casualties, which makes their total casualty count somewhat less transparent. It does however publish separate articles tracking each strike, in which a great deal of contextual information is provided to help the reader understand the place of each strike within wider U.S. operations. The Journal also does exceptional work in tracking the alleged deaths of militant leaders.

Until late August 2012, the New America Foundation's dataset did not include a category for "civilians" and tracked only the deaths of "militants", "militant leaders", and "others." The "other" category was ambiguous and New America's calculus for it was unclear; in all of the Pakistan 2011 strikes where the New America Foundation had counted "other" deaths, we found that there were in fact reported civilian deaths. In late August 2012, New America replaced the "other" category with "civilian" and "unknown" categories. This is a positive development, making the dataset more transparent. According to New

[34] Whether this was a contributing cause to New America's changes is unknown.

America, the "unknown" category is used if "the various media reports are so contradictory that [New America is] not comfortable drawing a conclusion."[35]

New America's new "civilian" estimate is surprisingly low compared to its old "other" count – a low-range figure of only 3 "civilians" killed compared to a low-range figure 16 "others" killed in Pakistan in 2011. Also perplexing is that New America's new civilian count is only one per cent of its total death count for the year, whereas it had until recently claimed a civilian death rate in 2011 of 7 percent.[36] The shifting classification of casualties and the ambiguous data underscore the lack of standardization across tracking organization counts, and the fallibility of these estimates as a gauge on the true number of civilian deaths.

Reasons for Discrepancies in Tracking Organizations' Casualty Estimates

1. The number of media sources relied on

As discussed above, the wider the range of credible media sources relied upon, the wider the recorded reported casualty figures will be. In many cases, one organization has a lower minimum and/or higher maximum casualty figure than the others simply because it cited to an additional article providing that higher or lower number. As discussed above, the diversity and inconsistency in the reporting on drone casualties in Pakistan makes the entire business of media tracking difficult, as there is always the possibility that another credible article with an again different casualty figure is out there. We have pointed out to tracking organizations where they are missing an additional source which would justify a lower or higher casualty figure. The Bureau of Investigative Journalism was the only organization to respond to this information, including by incorporating our additional source and updating their figures.

In our view, the wider the number of credible sources relied upon, the more accurate the casualty count is as a figure which is intended to reflect reports of deaths. In light of the sparse content and limited sources relied on in reports, there is rarely enough information for a tracking organization to be able to discard a report, except in the case of updated figures.

2. The Bureau's non-media sources

The Bureau has undertaken two field investigations into possible civilian casualties in Pakistan. This primary research is one of the Bureau's sources for its casualty figures, but is not incorporated by either the New America Foundation or the Long War Journal. The failure to take the Bureau's own research into account is one cause of discrepancies between the Bureau's figures on the one hand, and New America and the Journal's on the other. Interestingly, the only organization to cite any of the others' work is the Bureau, which occasionally cites to Long War Journal articles.

[35] New America Foundation, "The Year of the Drone: Methodology" available at http://counterterrorism.newamerica.net/drones/methodology.
[36] Peter Bergen and Jennifer Rowland, "CIA drone war in Pakistan in sharp decline," CNN, Mar. 28, 2012, available at http://edition.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html?iref=allsearch.

The Bureau's researchers undertook field investigations in Waziristan, where almost all drone strikes in Pakistan in 2011 took place. Journalists do not typically have access to the area, and virtually no media reports are based on information gathered inside the region first hand or are able to be verified by the media organization itself. As such, the Bureau's on-the-ground research is particularly useful as a tool for corroborating information presented in media reports.

In light of the Bureau's access to the region, their primary research is in our view at least as reliable and credible as the standard media reports which all three organizations rely on, if not significantly more so. In a number of cases, the Bureau's researchers have also been able to provide a wealth of information regarding the identity of the dead, including names and tribes. This level of information is rare in media reports except in cases where an important militant leader has allegedly been killed.

In light of the above, we have included the Bureau's primary research in our own count. As discussed above, here the Bureau's research corroborates the reported identity of the dead, we have treated that identification as particularly strong.

The Bureau has also cited other non-media sources that are not incorporated by the New America Foundation or the Long War Journal, such as legal documents filed on behalf of the alleged civilian victims of drone attacks. Such documents are sometimes able to provide more detailed information, including the names of the deceased, than is available in media reports. While it might be argued that these documents are biased, having been filed on behalf of a party to litigation, they sometimes provide additional corroborating details—sometimes, far more information than provided in media reports that cite unnamed an "resident" or "official."

3. The problem of updating figures

It is not unusual for death counts to change over time. This is to be expected in any instance of bombing, as more information becomes available, as more bodies are pulled from the rubble, or as initial survivors die from injuries.

Given the common inconsistencies in the reporting on drone casualties, and the fact that each strike is not commonly revisited with a number of updated articles by the same media outlet, it is often very difficult to determine whether differences in reporting indicate that later information has been updated, or whether the differences are just another instance of inconsistent reports. Given the difficulty of determining this issue, we have tried to approach it conservatively.

The organizations analyzed appear to treat this issue differently, which is one of the causes of the discrepancies between their figures. In a number of cases we have also approached the issue differently to the organizations analyzed, leading to some discrepancies between our own count and theirs. Due to a lack of clarity in the reporting, there is some room for reasonable disagreement on how this matter is treated. In fairness to the organizations analyzed, we also have the advantage of coming to this exercise at a later point in time. We appreciate that media tracking of casualties is an extremely time-intensive, and one may not have the resources to track all new strikes while continuing to revisit all of the old ones.

Each such incident is discussed on a case-by-case basis in our strike-by-strike analysis, but in general inconsistent updating adds another layer of ambiguity to the data currently informing public debate on drones. In general, however, the Bureau of Investigative Journalism appears to update its counts based on later reports more consistently than the other organizations. In some cases, the Bureau has treated earlier figures as superseded where we have conservatively decided to continue to treat those figures as relevant.[37]

The New America Foundation and the Long War Journal have in some cases continued to use figures which, in our view, have been superseded. Bill Roggio told us that occasionally, the Long War Journal might update its total figures without publishing a new article on the strike which the new figure comes from. As discussed above, we have based our analysis of the Long War Journal's figures on its articles, and for that reason we cannot be completely sure that any individual figure has not been updated. In a number of cases, the Long War Journal's articles have cited figures which we believe have clearly been superseded.[38]

For example, for a strike in North Waziristan on June 15, 2011, the Long War Journal relies on a now dead link to Dawn for its count of 5 militants killed. However Dawn reported again on the strike on June 17, identifying 4 civilians who were reportedly killed.

Prior to its recent data overhaul in August 2012, a failure to update its figures was also a major problem with the New America Foundation's casualty count. The Bureau of Investigative Journalism described New America's data during this time as being of a "snapshot nature" that only takes into account a few articles on the day of the strike.[39] Since updating its data and its website, New America has made significant improvements in this respect.[40] However despite updating its data, there are a few instances in which New America continues to use figures which we believe have been superseded.[41]

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[37] See for example, in the Columbia Dataset: Strike 10, February 20, 2011; Strike 18, March 13, 2011; Strike 36, June 8, 2011; Strike 41, June 27, 2011; Strike 58, September 11, 2011; Strike 74, November 16, 2011.

[38] See for example in the Columbia Dataset: Strike 11, February 21, 2011; Strike 21, March 17, 2011; Strike 24, May 6, 2011; Strike 73, November 15, 2011.

[39] Chris Woods "Analysis: CNN expert's civilian drone death numbers don't add up" The Bureau of Investigative Journalism, July 17, 2012, available at http://www.thebureauinvestigates.com/2012/07/17/analysis-cnn-experts-civilian-drone-death-numbers-dont-add-up/

[40] But see NYU Center for Human Rights and Global Justice & Stanford International Human Rights Clinic, *Living Under Drones* 48 (stating that "New America Foundation's strike data do not appear to be 'updated regularly' to include the most up-to-date information about the number and identities of victims killed in drone strikes").

[41] See in the Columbia Dataset: Strike 11, February 21, 2011; see also Strike 21, March 17, 2011. It is puzzling that New America does not incorporate the AP's independent investigation from February 2012 in its list of sources, although Associated Press's figure fits roughly within New America's range. As one of the very few instances of on the ground investigation, Associated Press's report is, in our view, a particularly valuable and credible source. In a CNN article before its data update, Peter Bergen compared New America's figures to Associated Press's – a curious approach for a media tracking organization which one might expect to incorporate such reports. See Peter Bergen and Jennifer

4. Disregarding Sources

In some cases, the organization's figures do not reflect the range reported in its own listed sources. Where lower figures in a range are disregarded by the organization citing them, we assume this is because the organization citing them has treated those figures as superseded, a matter which we address above. Disregarding upper figures is however, in our view, slightly harder to explain.

In some cases it may simply be an error. This was the case with the one instance in which we found the Bureau had not incorporated the upper figure from one of its listed sources, a simple mistake which the Bureau then rectified.

The failure to include some figures is however deliberate in the case of the Long War Journal, which does not count a range of casualty figures, with an upper and lower count, but rather provides a single figure. Bill Roggio explained to us that where there is an inconsistency between the sources that he cites, he takes the figure that he believes is the most reliable.[42]

In some instances the New America Foundation has also failed to incorporate an upper figure reported in its sources.[43] Since New America ordinarily reports a range of media figures, the reason for these omissions is not always clear. New America indicates in its methodology that it will only count reported civilian deaths if they are reported in more than one media source.[44] For reasons discussed above, in our view this is not appropriate. As reports of drone strikes are based on so few original sources, the reporting is erratic, and the basis for identification is generally extremely weak, it is not necessarily sensible to treat a claim as reliable based solely on the number of outlets it is repeated in. For example, while the same "officials" may be quoted in the wires, perhaps only one paper will quote a "resident" or a family member. As "officials" are the most commonly cited source, this also skews sources. For example, in regard to the March 17 strike, New America lists only a variety of "officials" as the original source, whereas our own analysis identifies an exceptionally large and diverse array of sources.[45]

Rowland, "Civilian casualties plummet in drone strikes," CNN, July 14, 2012, available at http://edition.cnn.com/2012/07/13/opinion/bergen-civilian-casualties/index.html.

[42] Mr. Roggio gave one example of Xinhua reporting 11 militants killed, and Agence France Presse (AFP) reporting 12 militants killed. As the AFP report was published a little later and he trusted AFP's information more, he used the AFP number. Columbia Human Rights Clinic phone interview with Bill Roggio (July 23, 2012).

[43] See for example in the Columbia Dataset: Strike 7, January 23, 2011; Strike 28, May 16, 2011 (failure to incorporate CNN's upper figure of 10, although perhaps treating it as a total for two strikes on the day).

[44] New America Foundation, "The Year of the Drone: Methodology" available at http://counterterrorism.newamerica.net/drones/methodology

[45] Including: anonymous officials; named officials (including Army Chief of Staff Gen. Ashfaq Kayani, Ambassador Hussain Haqqani, Foreign Secretary Salman Bashir, Governor Masood Kasur, Prime Minister Gilani, Member of National Assembly Kamran Khan); the Taliban; unnamed and anonymous locals/tribesmen; named locals/tribesmen (farmer Gul Ahmed, Samiullah Khan); Bureau investigation; legal documents and court proceedings lodged on behalf of victims.

In another example, New America had initially included a number of references to the reputed Afghan publication Pajhwok. While Pajhwok had reported civilian casualties, New America had not incorporated these claims into its data. In the most recent version of the dataset, all of the references to Pajhwok have simply been deleted.

Moreover, in some cases where there are multiple strikes on one day, New America appears to treat the fact that some media outlets have not reported on all of the strikes as evidence that not all of the strikes occurred. For example, for two strikes on July 11, 2011, media reports indicate that at least 5 people were killed in one strike, and at least 10 in another strike. However, New America takes a minimum count of 7 for both strikes together, based on a BBC report. The BBC report, though, refers only to one of the two strikes: an attack on a vehicle, and not an additional attack on a compound. As such, New America's data either intentionally or mistakenly conflates the two strikes, with the effect that its minimum casualty count misses an entire strike. If New America's omission was deliberate and based on the BBC's failure to report the second strike, it would not in our view be appropriate; most individual media outlets do not report on every single strike.

In our view, accounting for a range of casualty figures, as is done by the Bureau of Investigative Journalism and generally by the New America Foundation, is a more accurate and informative way of tracking reported casualties than the Long War Journal's approach. What is being tracked is reports of deaths, and where credible reports present diverse results that should be reflected.

If upper or lower figures are discarded and sources are used selectively for any reason other than the existence of updated information, these reasons need to be made clear and explicit in the data and with the final counts, as what is being counted is then something more refined than "reported deaths" which is how the statistics are presented.

4. New America Foundation's "unknown" and "civilian" categories

As noted above, New America includes an "unknown" category in cases where there are conflicting reports about the identity of the dead. This is a recent development that was added after we had completed our own 2011 analysis. Our own approach to conflicting reports has been to take a lower figure of 0 in both the civilian and militant counts.

In our view, New America's approach in this respect is a reasonable and methodologically sound one. However in practice, our view is that the use of the "unknown" category in the March 17 strike has unrealistically skewed the civilian death count downwards. Although the numbers are difficult to precisely determine in that case, reports are, in our view, clear that a large number of civilians and some militants died. In our view, 24 civilians from this strike alone are particularly strongly identified.

The use of the "unknown" category also sits somewhat uncomfortably alongside New America's methodology of not counting reported civilian deaths unless they are found in more than one (English language) news outlet. As such, while the "unknown" category is used in cases where we would categorize the identification of civilians as strong, a number of reports of civilian deaths are not accounted for in either the upper- civilian casualty figure or the "unknown" count. This is a matter of

methodological difference in opinion, but in our view the final result is not an entirely accurate portrayal of what is presented in the media.[46]

Problematic Civilian Casualty Estimates

Our close review of the data suggests methodological problems in the civilian casualty tracking of the New America Foundation and the Long War Journal. While in many cases there is room for reasonable disagreement on the methodological approach taken, the total effect of numerous problems we found results in significant undercounting of civilian casualties in particular. As discussed, since the purported focus of Long War Journal is not civilian casualty tracking, this is perhaps not surprising.

The severity of the undercount is apparent when we compare our findings of "strongly" identified civilian deaths to New America and Long War Journal's findings of civilian deaths generally. We have assessed 52 of the reported dead as strongly identified as civilians; they are identified by name in media reports. Our figure is significantly higher than the *total* civilian death counts of New America and the Long War Journal, at 3-9 and 30, respectively. Their figures do not even capture the range of reported civilian dead in one single strike on March 17, 2011—one for which there is an exceptionally strong case of numerous civilian deaths.

Interestingly, the same severity of undercounting compared to strength of reporting is not apparent in the militant casualty counts. The militant casualty counts rely heavily on what we have assessed as very weak reported identifications. New America and the Long War Journal's lower militant count is higher than our own, and significantly higher than our count of strongly identified militants. While the latter is to be expected, it contrasts sharply with the comparison to our civilian casualty statistics.

[46] See for example the New America Foundation's data and reporting of the following strikes (all in 2011): 7 January Ghar Laley; 21 February Spalga; 8 March Landidog; 27 June Mantoi; 1 August Azam Warsak; 16 August Miranshah.

VI. U.S. Government's Responsibility to Account for Drone Strike Deaths

The discrepancies in counts by the tracking organizations—credible and well-resourced institutions—underscore the difficulty of gaining an accurate understanding of the impact of drone strikes from media reports alone. The public and some policymakers are compelled to rely on these estimates to judge the impact of drone strikes because the U.S. government has not officially provided any information on drone strike deaths. While touting the success of the drone program and particular high-profile strikes, U.S. officials have avoided providing specifics—and cited national security. Indeed, although it has acknowledged operations in Pakistan and Yemen as a general matter, it has refused to officially acknowledge the existence of its drones program in court or open sessions of Congress—foreclosing effective litigation and preventing informed public debate.[47] On the other hand, the CIA has aggressively fended off criticism through anonymous leaks to the press—a forum in which its claims cannot be actively questioned.

The public has no information on how and whether the U.S. tracks and investigates potential civilian deaths. Yet, in other conflict settings such as Afghanistan, U.S. officials have provided some of this information, without compromising U.S. security.[48] As the U.S. and other governments anticipate the continued and expanded use of lethal drone technology, they owe the public a genuine assessment of the impact of drone strikes, including the effect on local civilian populations.

In *Civilian Impact of Drones: Unexamined Costs, Unanswered Questions*, a September 2012 report by the Human Rights Clinic and the Center for Civilians in Conflict, we explained that covert drone warfare enjoys wide political support because it is considered an attractive alternative to costly and bloody counterinsurgency strategies such as those the U.S. has pursued in Iraq and Afghanistan.[49] Furthermore, the precision capabilities of the technology—and the Administration's references to its internal

[47] In ongoing Freedom of Information Act litigation, the U.S. government's position is that it can neither confirm nor deny whether it has records responsive to the request because the fact of CIA involvement in drone strikes is not officially acknowledged and remains classified. *See* Brief for Appellee, ACLU v. CIA, No. 11-5320 (D.C. Cir. May 21, 2012). See also Philip Alston, "The CIA and Targeted Killings Beyond Borders," Public Law & Legal Theory Research Paper Series, Working Paper No. 11-64, at 78-86 (September 2011) (describing barriers to judicial review of drone strikes and the CIA's actions generally).

[48] See Columbia Human Rights Clinic & Center for Civilians in Conflict, The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions 44-45 (2012).

[49] See Columbia Human Rights Clinic & Center for Civilians in Conflict, The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions 67-71 (2012); David E. Sanger, "Charting Obama's Journey to a Shift on Afghanistan," N.Y. Times, May 19, 2012 (describing President Obama's "'light footprint strategy,' in which the United States strikes from a distance but does not engage in ears-long, enervating occupations"); Jim Michaels & Tom Vanden Brook, "Precision strikes are new weapon of choice," USA Today, Oct. 1, 2011 (quoting former CIA official Bruce Reidel: "This administration has made a very conscious decision that it wants to get out of large conventional-warfare solutions and wants to emphasize counterterrorism and a lighter footprint on the ground").

deliberations and processes for deciding who may be killed—provide seeming assurance that as the U.S. expands drone strikes to occur more frequently and in more regions, the strikes are nevertheless carefully limited.[50] Indeed, Administration officials have repeatedly emphasized that drone strikes against multiple Al Qaeda affiliates are surgically calibrated to remove the "cancer" of Al Qaeda without affecting the surrounding "tissue" of civilians in the area.[51] Yet these pronouncements about the efficacy of drone warfare are unproven, as we described in *Civilian Impact of Drone*s.

As the U.S. government contemplates continued and expanded drone strikes, it has a responsibility to provide answers on the question of civilian casualties. These answers should go beyond general assertions of extremely low civilian casualties. Instead, the U.S. government should, to the extent practicable, provide the public its estimate of the number of individuals killed outside Afghanistan.

To ensure informed debate on *who* is being killed, the U.S. government should disclose the legal standards and definitions it uses when deciding who it may be directly targeted in a drone strike versus who it believes is protected from direct targeting. The complex legal issues raised by drone strikes cannot be resolved solely by reference to the laws of war; other bodies of law place significant limits on targeting operations, and there are important debates about, for instance, the applicability of international human rights law and the laws of war. We do not address them here; instead, our emphasis is that the U.S. government should describe its standards.[52]

Moreover, the U.S. government should engage with reports by journalists and human rights groups that put forward evidence of civilian casualties. Unfortunately, in the past the U.S. government's approach has for the most part been to decline comment or, in some cases, assert through anonymous leaks that individuals documenting civilian harm are complicit in an effort to "help Al Qaeda succeed" or that they "unwittingly draw on false propaganda claims by militants."[53]

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[50] Advanced technology can provide policymakers "erroneous feelings of control and understanding, leading to misjudgments that may increase their willingness to become involved" in conflicts. See Jack M. Beard, "Law and War in the Virtual Era, " 103 Am. J. Int'l L. 409, n. 167 (2009) (citing Thomas X. Hammes, *The Sling and the Sone: On War in the 21st Century* 194 (2006).

[51] See John Brennan, "The Ethics and Efficacy of the President's Counterterrorism Strategy," April 30, 2012 (remarks) ("It's this surgical precision—the ability, with laser-like focus, to eliminate the cancerous tumor called an al-Qa'ida terrorist while limiting damage to the tissue around it—that makes this counterterrorism tool so essential").

[52] If the U.S. government is using international humanitarian law, it should describe its standards and definitions regarding who may be subject to direct attack as a civilian directly participating in hostilities, and for how long; and whether there other categories or circumstances for which the U.S. believes it may directly target individuals. The government should also clarify the number of individuals it believes have been killed in drone strikes who may not be subject to direct attack under the laws of war.

[53] In February 2012, unnamed officials responded to a report of CIA strikes targeting funeral-goers and other civilians by stating: "One must wonder why an effort that has so carefully gone after terrorists who plot to kill civilians has been subjected to so much misinformation. Let's be under no illusions — there are a number of elements who would like nothing more than to malign these efforts and help Al Qaeda succeed." Scott Shane, "U.S. Said to Target Rescuers at Drone Strikes Sites," N.Y. Times, Feb. 5,

Instead of this approach, the U.S. government should recognize and investigate reports by journalists and human rights groups regarding civilian casualties. This would be in accordance with U.S. policy in Afghanistan, where military personnel must immediately investigate any potential incident of civilian harm. [54]

Investigations conducted with a degree of transparency can send a meaningful signal to foreign publics that the U.S. is committed to human dignity and human life. They offer an opportunity to address allegations that the U.S. is deliberately targeting civilians and civilian objects such as mosques and schools. [55] Investigations—and an overall accounting for civilian deaths and other harm caused by drone strikes—are a crucial step to dignifying the concerns of local communities and families impacted by U.S. drone strikes. For the U.S. public and policymakers, they are necessary to help inform debate over whether and how U.S. drone strikes continue.

2012. More explicitly, in May 2012, the New York Times reported an unnamed senior official as stating that reports of civilian deaths "unwittingly draw on false propaganda claims by militants." Jo Becker & Scott Shane, "Secret 'Kill List' Proves a Test of Obama's Principles and Will," N.Y. Times, May 29, 2012.

[54] NATO/ISAF Tactical Directive, 30 Dec. 2008, para. 6 ("Whenever we believe we may have caused civilian casualties or civilian property damage we will immediately investigate the incident").

[55] Columbia Human Rights Clinic & Center for Civilians in Conflict, The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions 46 (2012).