

Summary & Recommendations

Since 2008, the US has dramatically increased its lethal targeting of alleged militants through the use of weaponized drones—formally called unmanned aerial vehicles (UAV) or remotely piloted aircraft (RPA). Novel technologies always raise new ethical, legal, and practical challenges, but concerns about drone strikes have been heightened by their role in what might colloquially be termed “covert drone strikes” outside the established combat theater of Afghanistan. Airstrike campaigns in Pakistan, Yemen, and Somalia are conducted with a degree of government secrecy enabled by the fact that there are few supporting US ground troops and/or CIA agents in these countries.

Political and public debate has fed on a growing catalogue of news reports and books, which themselves are based primarily on leaks by unnamed government officials. Accounts are sometimes conflicting and leave basic details unclear. US drone operations have been acknowledged by the Obama Administration in Pakistan, Yemen, and Somalia. However, the government has declined to clarify the division of responsibilities between the CIA and the military’s Joint Special Operations Command (JSOC), and the various policies and protocols governing civilian protection in the strikes. This report does not focus on possible drone operations elsewhere in Africa or in the Philippines, as public information is not corroborated, and the extent of US involvement is disputed.

This report details two strains of concern stemming from US covert drone operations. The first and most often cited is secrecy, which has implications for accountability in the use of force; second, the inherent limits of using drone platforms outside of full-scale military operations, which has implications for civilian protection and harm response.

The Obama Administration has recently attempted to respond to concerns about the legality and ethics of covert drone strikes through a series of public addresses by senior Administration officials. While encouraged by the Administration’s assurances about the seriousness with which it takes these issues, we are nonetheless concerned that there are consequences to covert drone strikes that policymakers and the public may underestimate or fail to recognize.

In this report, we describe how, as covert drone strikes by the United States become increasingly frequent and widespread, reliance on the precision capabilities and touted effectiveness of drone technology threatens to obscure the impact on civilians. Even if drone operations outside of traditional conflict zones are found to be legal and to result in relatively few civilian casualties, the authors of this report would nevertheless be concerned with the long-term impact of such operations on the civilian population, the precedent-setting nature of these operations, accountability for the CIA and JSOC's actions, and the inherent limitations these operations to properly address civilian harm.

Rather than presenting evidence of particular abuses or violations, or distilling the catalogue of news reports and books about drone strikes, we identify problems that have gone relatively unnoticed and policies that appear to have gone unchallenged—all in relation to the issue of civilian harm. While our analysis is circumscribed by our limited information about US covert drone operations, what we know suggests there are potential short- and long-term impacts that policymakers have not considered, and which negatively impact civilians.

Throughout the report, we are careful not to draw hard and fast conclusions about covert drone operations. Rather, our role is to question the assumptions being made about civilian protection, harm, and impact by US policymakers, as well as call attention to issues that are ignored or overlooked.

In the **Background** chapter, we describe the basic attributes of US drone strikes—including their frequency, locations, and targets. The scope of our report is limited to what we colloquially term “covert drone strikes,” meaning drone strikes conducted with varying degrees of secrecy by the CIA and JSOC in Pakistan, Yemen, and Somalia. Drone strikes involve targeting individuals whose identities are both known and unknown, and with varying degrees of pre-planning. Both the CIA and US military forces are involved in drone strikes. While the CIA's role is more notorious, JSOC's is also extensive. JSOC and the CIA cooperate in drone strikes, but the secrecy of both organizations obscures basic details about their chain of command and the operational rules they apply to civilian protection.

In **The Civilian Toll**, we describe the far-reaching impact of these operations on civilians and their communities. While headlines focus on putting a hard number to militant versus civilian deaths, covert drone strikes cause other kinds of harm to civilians and local communities, and may fuel anger toward the US in the aggregate. Moreover, US government estimates of extremely low or no civilian harm, while not empirically disproven, may be based on deeply problematic assumptions, including those regarding the identity of individuals present in an area or drone strike zone.

In **Civilian Protection Limitations of Drone Technology in Covert Operations**, we describe how the US government's claims about the “precise” quality of strikes elide operational realities. Whether drone strikes are indeed precise depends in large part on the sufficiency of intelligence sources and analysis. There may be systematic flaws in the intelligence upon which targeting decisions are based, among them limits in drone video surveillance, signals interception, cultural understanding, and “human intelligence” provided by local informants and cooperating governments. These are concerns in any combat mission, but they are compounded when operating outside a fully supported military operation. With obvious hindrances to available information about covert drone procedures, we compare what is known with the civilian protection procedures of traditional armed forces'—highlighting ways in which covert operations may practically differ from those of full-scale military operations.

In **CIA and JSOC Roles, Accountability, and Civilian Harm** we consider the civilian protection implications of CIA and JSOC involvement in drone strikes in light of these organizations' problematic relationships to legal and public transparency. Conventional military forces are a useful baseline for judging the CIA and JSOC, as conventional military structures and processes reflect an interest in public accountability, engagement with complex legal and ethical issues, respect for human rights and legal norms, and efforts to go beyond legal requirements during recent engagements in order to reduce and respond to civilian harm. By contrast, while much about the CIA and JSOC's rules and practices is unknown—indeed, these organizations may apply rules and procedures similar to the conventional military's—their secrecy vis-à-vis the public diminishes their incentive to comply with underlying norms and go beyond legal requirements to mitigate civilian harm. With limited information, we cannot conclude that either the CIA or JSOC is inherently unsuitable to conduct drone strikes, although we have concerns based on their past practices. It is incumbent upon policymakers with access to more information—particularly members of Congress—to scrutinize and inform public debate on the appropriateness of the CIA and JSOC in conducting these operations.

In **Ethical and Legal Implications**, we warn that proliferation of drone strikes outside of traditional armed conflict theaters may undermine US commitment to civilian protection measures and create a normative standard for drone use that risks civilian harm into the future. Drone strikes enjoy wide political and public support in the United States because they spare US forces and are viewed as highly effective against al-Qaeda. Secrecy, framed as preservation of national security, further diminishes the public's interest in exerting pressure on the government to justify lethal operations. However, as drone strikes become increasingly prominent and viewed as a successful tactic, they risk becoming “the norm” and possibly displacing alternatives that could be more respectful of civilian life, in both the short- and long-term.

Methodology

This report is based principally on publicly available materials, and builds on previous studies by Center for Civilians in Conflict and the Human Rights Clinic at Columbia Law School (“Columbia Human Rights Clinic”), as well as numerous reports by journalists and human rights organizations. It is also based on extensive interviews, consultations, and written requests for information. In winter and spring 2012, the Columbia Human Rights Clinic made 133 written requests for information to members of Congress and their staff, as well as agencies including the Department of Defense, the CIA, and the Director of National Intelligence. From October 2010 to July 2012, the Columbia Human Rights Clinic conducted interviews and consultations with 35 current and former government officials and military officers; the majority spoke off the record because of the sensitivity of information. During this period, the Columbia Human Rights Clinic also interviewed or consulted with 38 experts, researchers, and journalists focused on the issues or affected regions. Center for Civilians in Conflict supplemented this research with staff expertise on military operations and previous analyses of civilian harm caused by drone strikes, particularly in Pakistan.

Recommendations

Our ability to make recommendations is significantly limited by the secrecy of US drone operations. In this report we raise concerns about US standards and practices, though we cannot assess their sufficiency without more information. Below, we make recommendations for greater government disclosure to inform public debate. This is only a first step; policymakers armed with more information should, based on the questions we have raised, assess the value and impact of covert drone strikes, including the sufficiency of civilian protection measures and the suitability of the CIA and JSOC to conduct covert drone strikes.

To the Obama Administration

- » Establish a special interagency task force to evaluate covert drone operations, and make recommendations to the President with regard to the following issues:
 - The extent of civilian casualties from drone strikes and the larger impact on civilian communities, including destruction of homes and displacement, and retaliatory violence by local groups;
 - The sufficiency of civilian protection mechanisms employed by the CIA and JSOC, including civilian casualty mitigation processes;
 - The adequacy of civilian protection standards for the identification of targets, including the reliability of “signatures,” and the sufficiency of intelligence sources and analysis where there is limited US ground presence;
 - The capabilities and limitations of drone technology for reducing and accurately assessing civilian harm, and the adequacy of current technology testing and personnel training;
 - The existence and sufficiency of post-strike assessments and investigations of who is killed, including assessing the appropriateness of the behaviors associated with signature strikes;
 - The existence and sufficiency of processes for recognizing harm and making amends to civilian victims of drone strikes, their families, and communities;
 - The strategic value and humanitarian impact of covert drone strikes compared to other counterterrorism approaches;
 - For joint CIA-JSOC operations, the adequacy of oversight mechanisms, the delineation of responsibilities between the organizations, and the adequacy of agency accountability for civilian protection and harm response.

The task force should be composed of representatives from relevant agencies and departments including the Director of National Intelligence, the State Department, the Department of Justice, the National Security Agency, the Department of Defense, and the Central Intelligence Agency. A declassified version of the task force’s findings should be made publicly available.

- » Continue to engage with civil society regarding legal standards for targeting operations.
- » Identify the international law-related justifications and standards that apply to covert drone strike operations in different countries, including the legal standards for who may be targeted.
- » Encourage the Department of Defense and the CIA to establish or implement processes for declassifying information about targeting operations once they are completed.

To the CIA

- » Acknowledge that the CIA has a role in drone strikes outside of Afghanistan; establish a process for declassifying information about CIA targeting operations once they are completed, and officially provide information on the impact of the program on civilians, including to the relevant US Congress committees and members.
- » Publicly describe the agency’s civilian protection mechanisms, including its civilian casualty mitigation processes and post-strike investigatory procedures.
- » Engage with civil society regarding legal standards for targeting operations; confirm whether the agency regards itself as bound by international law, including under which specific legal framework it is operating the drones program (human rights law, international humanitarian law, etc.), and publicly describe the agency’s legal standards for who may be targeted.
- » Disclose steps the agency takes to train personnel involved in drone operations, including lawyers, on applicable laws and related civilian protection and harm response tactics and procedures.

To the Department of Defense, SOCOM and Joint Special Operations Command (JSOC)

- » Acknowledge that JSOC has a role in drone strikes outside of Afghanistan; in accordance with existing Department of Defense processes for declassifying information on operations, declassify information on drone targeting operations once they are completed; and officially provide information on the impact of operations on civilians, as is done by the military in traditional combat theaters.
- » Publicly describe the agency's civilian protection mechanisms, including its civilian casualty mitigation processes and post-strike investigatory procedures.
- » Clarify whether directives, rules, and manuals in relation to civilian protection and use of force compliance that are a matter of Department of Defense-wide policy also apply to JSOC operations, including operations conducted under the CIA statutory authority.

To Congress

- » Exercise oversight powers to the fullest extent possible in reviewing and evaluating the following issues:
 - The extent of civilian casualties from covert drone strikes and the larger impact on civilian communities, including destruction of homes and displacement, and retaliatory violence by local groups;
 - The sufficiency of civilian protection mechanisms employed by the CIA and JSOC, including civilian casualty mitigation processes;
 - The adequacy of standards for the identification of targets, including the reliability of "signatures," and the sufficiency of intelligence sources and analysis where there is limited US ground presence;
 - The capabilities and limitations of drone technology for reducing civilian harm, and the adequacy of current technology testing and personnel training;
 - The existence and sufficiency of post-strike assessments and investigations that determine who is killed, including the characterization of military-age males as presumptively non-civilian;
 - The existence and sufficiency of processes for recognizing harm and making amends to civilian victims of covert drone strikes, their families, and communities;
 - The strategic value and humanitarian impact of covert drone strikes compared to alternative approaches to counterterrorism;
 - For joint CIA-JSOC operations, the adequacy of oversight mechanisms; the delineation of responsibilities between the organizations, and the adequacy of agency accountability for civilian protection and harm response.
- » Seek information about the impact of covert drone strikes from sources outside of government, including journalists, regional experts, and civil society.
- » Exercise effective oversight of joint CIA-JSOC operations, e.g., by formally requiring that joint operations be reported to both intelligence oversight committees, and the Senate and House Armed Services Committees.
- » Inform public debate about the involvement of the CIA and JSOC in drone strikes, effectiveness of the strikes in counterterrorism operations (including in the long-term), and civilian impact, e.g., through an open congressional hearing.