

COMPLAINT AGAINST THE UNITED STATES OF AMERICA
FOR THE KILLING OF INNOCENT CITIZENS
OF THE ISLAMIC REPUBLIC OF PAKISTAN

I. Information on the Complainants

The complainant in this matter is Reprieve. Reprieve is a non-governmental organization based in London, United Kingdom. Reprieve investigates human rights abuses worldwide, and provides legal support to victims unable to represent themselves. Reprieve can be contacted at:

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Mr Stafford Smith is a citizen of both the United Kingdom and the United States and is a lawyer licensed to practice in the United States.

This complaint is brought on behalf of the following eighteen claimants. They can be contacted through their legal representative in Pakistan, the Foundation for Fundamental Rights:

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Mr Akbar is a citizen of Pakistan, and an advocate licensed to appear in the High Court there.

Mohammad Yusuf
Nationality: Pakistan
Place of Birth: Pakistan
Current Location: Ghundi Kala, Miranshah, North Waziristan, Pakistan

Ejaz Ahmad

Nationality: Pakistan

Date and Place of Birth: 1 January 1992, Pakistan

Current Location: Zeraki, Mir Ali, North Waziristan, Pakistan

Faheem Qureshi

Nationality: Pakistan

Date and Place of Birth: 15 March 1998, Pakistan

Current Location: Zeraki, Mir Ali, North Waziristan, Pakistan

Maezol Khan

Nationality: Pakistan

Place of Birth: Pakistan

Current Location: Makeen, Makeen, South Waziristan, Pakistan

Adil ur Rehman

Nationality: Pakistan

Date and Place of Birth: 1 January 1992, Pakistan

Current Location: Norak, Mir Ali, North Waziristan, Pakistan

Gul Rehman

Nationality: Pakistan

Date and Place of Birth: 1981, Pakistan

Current Location: Aziz Khel, Miranshah, North Waziristan, Pakistan

Samiullah

Nationality: Pakistan

Date and Place of Birth: 1987, Pakistan

Current Location: Norak, Mir Ali, North Waziristan, Pakistan

Kareem Khan

Nationality: Pakistan

Place of Birth: Pakistan

Current Location: Machi Khel, Mir Ali, North Waziristan, Pakistan

Sadaullah

Nationality: Pakistan

Place of Birth: Pakistan

Current Location: Machi Khel, Mir Ali, North Waziristan, Pakistan

Janatullah

Nationality: Pakistan

Date and Place of Birth: 1980, Pakistan

Current Location: Bora Khel, Miranshah, North Waziristan, Pakistan

Akhtar Zaman

Nationality: Pakistan

Date and Place of Birth: 25 March 1970, Pakistan

Current Location: Tappi, Miranshah, North Waziristan, Pakistan

Mohsin

Nationality: Pakistan

Date and Place of Birth: 23 February 1987, Pakistan

Current Location: Marci Khel, Miranshah, North Waziristan, Pakistan

Khairullah Jan

Nationality: Pakistan

Date and Place of Birth: 1986, Pakistan

Current Location: Marci Khel, Miranshah, North Waziristan, Pakistan

Noor Khan

Nationality: Pakistan

Date and Place of Birth: 10 December 1984, Pakistan

Current Location: Datta Khel, Datta Khel, North Waziristan, Pakistan

Ibrahim Shah

Nationality: Pakistan

Date and Place of Birth: 29 March 1972, Pakistan

Current Location: Seer Kot, Bora Khel, Miranshah, North Waziristan, Pakistan

Manan Khan

Nationality: Pakistan

Place of Birth: Pakistan

Current Location: Miranshah, North Waziristan, Pakistan

Abdul Qayyum Khan

Nationality: Pakistan

Date and Place of Birth: 1953, Pakistan

Current Location: Seer Kot, Bora Khel, Miranshah, North Waziristan, Pakistan

Muzzafar Khan

Nationality: Pakistan

Date and Place of Birth: 1948, Pakistan

Current Location: Seer Kot, Bora Khel, Miranshah, North Waziristan, Pakistan

II. State concerned/articles violated

This complaint is brought pursuant to the individual complaints procedure established by Resolution 5/1, adopted on 18 June 2007 by the Human Rights Council in compliance with United Nations General Assembly Resolution 60/251 of 15 March 2006.

The State concerned in this matter is the United States of America, which has signed and ratified the International Covenant on Civil and Political Rights (ICCPR). Pursuant to the First Optional Protocol to the ICCPR, the complainants allege violations of Articles 6.1,¹ 7,² 9.1,³ 17,⁴ 21,⁵ 22.⁶

¹ “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” ICCPR Part III, Art. 6.1.

² “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” ICCPR Part III, Art. 7.

³ “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR Part III, Art. 9.1.

⁴ “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” ICCPR Part III, Art. 17.

⁵ “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” ICCPR Part III, Art. 21.

⁶ “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful

III. Facts of the Complaint

Since at least 2002 the United States has used unmanned aerial vehicles, or drones, in pursuit of its “war on terror.” In weaponized form, these aircraft fire missiles at targets on the ground. Drones have been used in a number of countries, including Afghanistan, Iraq, and Somalia. Since 2004 drone attacks have been especially pervasive in the areas of Pakistan that border Afghanistan, particularly in North and South Waziristan in the Federally Administered Tribal Areas of Pakistan (FATA).⁷ The complainants in this action are all from this region in Pakistan.

The United States Department of Defense describes a drone as “a powered aerial vehicle that does not carry a human operator, . . . can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or non-lethal payload.”⁸ In Pakistan, two types of drones have been used: the Predator MQ-1B and the Reaper MQ-9.⁹ Manufactured by Lockheed Martin,¹⁰ the Hellfire AGM-114 is an air-to-ground missile that is stored and launched from under the wings of drones, is “designed to inflict greater damage in multi-room structures, compared to the Hellfire’s standard or blast-fragmentation warheads”¹¹ and is “capable of defeating any known tank in the world today.”¹² Though “[a]ctual penetration performance is classified,”¹³ meaning that information on the precise blast radius or kill zone is unknown, a single strike in Pakistan has the ability of killing up to 70 people and injuring many more.¹⁴ Drone aircraft may circle a target for many hours, and the missiles they release are supersonic, so they give no meaningful warning of attack.

restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.” ICCPR Part III, Art. 22.

⁷ See generally Jane Mayer, *The New Yorker*, *The Predator War* (Oct. 26, 2009), http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer.

⁸ The Department of Defense Dictionary of Military and Associated Terms 579, Joint Publication 1-02, April 12, 2001 (amended Oct. 17, 2008).

⁹ Bobby Ghosh and Mark Thompson, *TIME Magazine*, *The CIA's Silent War in Pakistan* (June 1, 2009), <http://www.time.com/time/printout/0,8816,1900248,00.html>. Currently, the U.S. Air Force is phasing out Predator drones for the more advanced Reaper drones. See Spencer Ackerman, *Wired Magazine*, *Air Force is Through with Predator Drones* (Dec. 14, 2010), <http://www.wired.com/dangerroom/2010/12/air-force-is-through-with-predator-drones/>; see also Mike Freeman, *San Diego Union-Tribune*, *Air Force receives the final MQ-1 Predator drone* (Mar. 22, 2011), <http://www.signonsandiego.com/news/2011/mar/22/air-force-receives-final-mq-1-predator-drone/> (reporting that the last Predator drone was purchased by the U.S. Air Force in March 2011).

¹⁰ Lockheed Martin Official Website, *Hellfire II Missile* (last accessed Feb. 22, 2012), <http://www.lockheedmartin.com/us/products/HellfireII.html>.

¹¹ International Online Defense Magazine, *Hellfire II Missile System* (last accessed Feb. 22, 2012), <http://defense-update.com/products/h/hellfire.htm>.

¹² U.S. Navy Fact File, *AGM-114B/K/M Hellfire Missile* (last accessed Feb. 22, 2012), http://www.navy.mil/navydata/fact_display.asp?cid=2200&tid=400&ct=2.

¹³ Global Security, *AGM-114 Hellfire Modular Missile System (HMMS)* (last accessed Feb. 22, 2012), <http://www.globalsecurity.org/military/systems/munitions/agm-114.htm>.

¹⁴ Nathan Hodge, *Wired Magazine*, *Deadliest Strike Yet in Pakistan Drone War* (June 24, 2009), <http://www.wired.com/dangerroom/2009/06/deadliest-strike-yet-in-pakistan-drone-war/>.

1. Mohammad Yusuf

Mohammad Yusuf is a resident of Dawar Tapi, Miranshah, North Waziristan, Pakistan.¹⁵ On Wednesday, October 9, 2008, he was in Ghundi Kala, at the house of his uncle Sultan Jan for a family gathering. In addition to Sultan Jan, others present at the house included: his cousin and son of Sultan Jan,¹⁶ Bukhtoor Gul;¹⁷ his uncle Aman Ullah Jan,¹⁸ and his cousin, and son of Aman Ullah Jan, Imran Khan. Imran was aged 14 and half years of age. No members of his family were involved with any terrorist organizations or activities, and there were no foreign nationals living at the house.

At approximately 10 PM that evening Mohammad Yusuf left the compound surrounding the house to defecate in a nearby field. From the field he saw a missile strike his uncle's house, destroying part of the house and killing his two uncles and his two cousins. The missile was launched from a drone, which had been flying around the area.¹⁹

The indiscriminate killing of Mohammad Yusuf's innocent family members was unjustified, and constitutes an arbitrary deprivation of their lives, in violation of Article 6.1 of the ICCPR, and constitutes cruel and inhuman treatment, in violation of Article 7 of the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

2. Ejaz Ahmad

Ejaz Ahmad is a resident of Hasu Khel, North Wazir Ali, North Waziristan, Pakistan.²⁰ On Friday, January 23, 2009, he was in the village of Hasu Khel. 3-4 kilometers away, in the village of Zeraki, his cousin, Faheem Qureshi,²¹ and a number of his other relatives were gathered at the house of Mohammad Khaleel,²² a retired school teacher. Also present were Khaleel's son and Qureshi's 8th grade classmate Azaz-ur-Rehman;²³ Mansoor-ur-Rehman, a teacher at the boys' school in Zeraki; and Kushdil Khan,²⁴ Ahmad's maternal uncle who owned a hardware store in Meer Ali. In addition, Ubaid Ullah, Rafiq Ullah, and Safat Ullah were also present.

At around 5 PM that day, a missile struck the house, reducing it to rubble and killing everyone inside except Faheem Qureshi. Qureshi suffered the loss of an eye, and was struck in the stomach by shrapnel, requiring a major operation. He also suffered a skull fracture and damage to his ear drum, resulting in the loss of hearing in one ear. Upon hearing the blast

¹⁵ See Mohammad Yusuf, NIC Card.

¹⁶ See Sultan Jan, NIC Card.

¹⁷ See Bakhtoor Gul, NIC Card.

¹⁸ See Aman Ullah Jan, NIC Card.

¹⁹ Mohammad Yusuf, Affidavit. Also see Reuters report of October 9, 2008, in which a journalist claims seeing a drone fire the missile. *U.S. missile attack kills at least 6 in Pakistan*, Reuters (Oct. 9, 2008), <http://www.reuters.com/article/2008/10/09/us-pakistan-missile-idUSTRE4986NO20081009>.

²⁰ See Ejaz Ahmad, NIC Card.

²¹ See Faheem Qureshi, Tribal Domicile Certificate and School ID.

²² See Mohammad Khaleel, NIC Card.

²³ See Aziz-ur-Rehman Qureshi, Tribal Domicile Certificate.

²⁴ See Kushdil Khan, NIC Card.

from his nearby village Hasu Khel, Ahmad immediately went to the scene of the strike. He found only the bodies of those listed above.²⁵

There were no foreign nationals at the house and none of his relatives had any connection to terrorism or terrorist activity; they were innocent villagers. The indiscriminate attack on those present in Khaleel's home at the time of the strike was a violation of their Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

3. Maezol Khan

Maezol Khan is a resident of Makeen in South Waziristan, Pakistan. In the early morning of February 14, 2009, he and his son were sleeping in the courtyard of their home when a missile from a drone struck a nearby car. As a result of the explosion, a missile part flew into the courtyard, killing Maezol's eight-year-old son. In addition, there were approximately 30 people killed or injured in the attack.

None of the victims were involved in any terrorist activity or with any terrorist organizations; they were innocent villagers. The indiscriminate attack near Maezol Khan's home, which killed his young son, was a violation of his child's Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

4. Adil ur Rehman

Adil ur Rehman is a resident of Norak, Mir Ali, in North Waziristan.²⁶ On June 14, 2009 an armed drone fired a missile at his house. No one was in the home at the time of the strike, but two rooms and his car were destroyed.²⁷

Adil ur Rehman was not involved in any terrorist activity or with any terrorist organizations. The destruction of his home and property was a violation of his Article 17 right to freedom from arbitrary or unlawful interference with his privacy, family, and home.

5. Gul Rehman and Samiullah

²⁵ Ejaz Ahmad, Affidavit. See also BBC report from Jan 23, 2009. *Deadly missiles strike Pakistan*, BBC (Jan. 23, 2009), <http://news.bbc.co.uk/1/hi/7847423.stm>.

²⁶ See Adil Ur Rehman, NIC Card.

²⁷ Adil Ur Rehman, Affidavit.

On November 20, 2009, Razm Khan;²⁸ Sakeenullah, a grade ten student and cousin of Samiullah²⁹; and Shafiq, were gathered in Aziz Khel, Miranshah, North Waziristan. At 8:30 AM a missile struck the building, killing everyone inside.³⁰

None of the victims were involved in any terrorist activity or with any terrorist organizations; they were innocent villagers. The indiscriminate attack on the building and its inhabitants was a violation of the inhabitants' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

6. Kareem Khan

Kareem Khan resides in Islamabad and is a permanent resident of the Federally Administered Tribal Area. His family lives in the village of Machikhel, Mir Ali, North Waziristan, Pakistan, in his ancestral house. On December 31, 2009, at approximately 9 PM, his family house was attacked with missiles fired from a drone. Three people inside the house were killed, and severely damaged Khan's house.

The three killed were Asif Iqbal, the complainant's brother and a secondary school teacher at a local public school; Zahin Ullah Khan, the complainant's son, a government employee working at the Government Girls Public School Mira Khan Kot; and Khaliq Dad, a mason who was working on construction of the village mosque, and was staying with Khan's family in the house. None of the victims were involved in any terrorist activity or with any terrorist organizations.³¹

The indiscriminate attack on Kareem Khan's home at the time of the strike was a violation of the inhabitants' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

7. Sadaullah

Sadaullah, 15, is a student in the village of Machi Khel, Mir Ali, North Waziristan, Pakistan. On September 7, 2009, the villagers of Machi Khel observed two drones hovering overhead throughout the day. This prompted fear and anger amongst the villagers, who viewed the drones' presence as a threat, and interference with their religious observations of the holy month of Ramadan.

In the evening, Sadaullah and his family, including grandfathers, uncles, and cousins, gathered at his grandfather's house to celebrate the breaking of their fast. Upon the ritual

²⁸ See Razm Khan, NIC Card.

²⁹ See Samiullah, NIC Card.

³⁰ See Gul Rehman, Affidavit; Gul Rehman NIC Card; Samiullah, Affidavit.

³¹ Kareem Khan, First Information Report.

breaking of the fast, the family stepped outside into the courtyard to offer Maghrib, or evening, prayer. Sadaullah joined the prayer late, as he had been serving the guests. As the family members finished their prayers, they returned into the main room of the house. Sadaullah and his elder cousin Ajman Ullah were the last to finish their prayers. As they were about to re-enter the house from the courtyard, the two drones fired their missiles at the building. Sadaullah was hit by debris falling from the roof and knocked unconscious.

He awoke in a hospital in Peshawar. Both his legs had been amputated, and had lost the use of one eye due to flying shrapnel. A number of his family members had been killed in the blasts: Mautullah Jan, uncle, had been in a wheelchair for the last decade; Kadaanullah Jan, cousin; Sabir-ud-Din, cousin. Ajman Ullah had also been hospitalized and severely injured, though not fatally.³²

None of the victims were involved in any terrorist activity or with any terrorist organizations; they were innocent villagers. The indiscriminate attack on Sadaullah's home was a violation of the inhabitants' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

8. Janatullah and Akhtar Zaman

Janatullah is a resident of Bora Khel, Miranshah, North Waziristan, Pakistan.³³ His brother is Mir Qalam, 19 years of age. Akhtar Zaman is a resident of Tapi Ghundi Kala.³⁴ His brother is Akbar Zaman,³⁵ a high school teacher in Government High School Supghala. Neither Mir Qalam, Akbar Zaman, nor any other members of their families have participated in terrorist activities, nor have they been affiliated with terrorist organizations or people.

On Friday, January 8, 2010, Mir Qalam was driving to the nearby village of Tappi on a dinner invitation. He stopped outside a shop in market in Tappi, to talk to some acquaintances, namely: Akbar Zaman; Saad Wali Khan, a local tribesman; and Muhammad Fayyaz, another local tribesman. At that moment, a drone fired a missile near where they were standing, killing all four of them.³⁶ Mir Qalam left behind a widow and a baby daughter. Akbar Zaman left behind three daughters and four sons, the eldest of which is 9 years old.

The indiscriminate attack was a violation of these individuals' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

9. Mohsin

³² Sadaullah, First Information Report.

³³ See Janatullah, NIC Card.

³⁴ See Akhtar Zaman, NIC Card.

³⁵ See Akbar Zaman, NIC Card.

³⁶ Janatullah, Affidavit; Akhtar Zaman, Affidavit.

Mohsin is a resident of Sara Alunah, Miranshah, North Waziristan, Pakistan.³⁷ On Thursday, June 10, 2010, he was at his house with his brother, Syed Kamal, his neighbors Syed Amanullah, Sahib Rehman, and Sakhi Rehman. At 7 PM a drone aircraft fired a missile at his house, destroying part of the building and a nearby car.³⁸ His brothers and his neighbors were all killed. None of Mohsin's family or any of the other victims have any connection to terrorist activity or organizations.

The indiscriminate attack on Mohsin's home was a violation of the inhabitants' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

10. Khairullah Jan

Khairullah Jan is a resident of Mursi Khel, Mir Ali, North Waziristan, a first-year student at Government Degree College, Mir Ali. His brother is Sanaullah, a grade 11 student studying pre-engineering, also at Government Degree College Mir Ali. On Friday, November 26, 2010, Sanaullah was going to Miranshah from Mir Ali in a car with two friends. En route a drone aircraft fired at their vehicle, completely destroying it and killing everyone inside. The bodies were burnt so badly so as to be unrecognizable; Khairullah Jan identified his brother's body only through his identity card.³⁹ Neither Khairullah Jan nor his brother (or his brother's friends) had any connection to terrorist activity or organizations.⁴⁰

The indiscriminate attack on the vehicle carrying Sanaullah and his two friends was a violation of their Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

11. Noor Khan

On March 17, 2011, residents of Datta Khel, North Waziristan, Pakistan participated in a loya jirga—Pashtun for “grand council.” The purpose of such mass meetings is to provide a forum for the tribal elders to resolve dispute and arrive at collective decisions. The loya jirga in this instance was for the resolution of a chromite mine dispute. At least 50 citizens were in attendance. As the meeting was underway a drone fired a missile at the group, killing approximately 50 people. Among those killed was Malik Daud Khan, father of Noor Khan.⁴¹ At least 20 tribal elders were also killed.

Malik Daud Khan had no connection to terrorist activity or organizations. The indiscriminate attack was a violation of the individuals' Article 6.1 right to life and the Article

³⁷ See Mohsin, NIC Card.

³⁸ See Mohsin, Affidavit; Photographs [9-1] and [9-2].

³⁹ See Sanaullah Jan, School ID.

⁴⁰ Khairullah Jan, Affidavit.

⁴¹ See Noor Khan, NIC Card.

7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

12. Ibrahim Shah, Manan Khan, Abdul Qayyum Khan, Muzzafar Khan.

On June 15, 2011 a car containing four people stopped at Esha check point, in Miranshah, North Waziristan, Pakistan. In the car were: Akram Shah, an employee of the Water Resources & Power Development Authority and relative of Ibrahim Shah;⁴² Atiq ur Rehman, a local pharmacist and relative of Abdul Qayyum Khan;⁴³ Irshad Khan, an employee of Mr. Rehman and relative of Manan Khan; and Amar Khan, a student at Miranshah college and relative of Muzzafar Khan.⁴⁴ A drone fired a missile at the car, killing everyone inside.

None of the victims were involved in any terrorist activity or with any terrorist organizations. The indiscriminate attack was a violation of the individuals' Article 6.1 right to life and the Article 7 prohibition of cruel, inhuman and degrading treatment under the ICCPR. The missile strike was also a violation of their Article 9.1 right to liberty and security of person; their Article 17 right to freedom from arbitrary or unlawful interference with their privacy, family, and home; their Article 21 right to peaceful assembly; and their Article 22 right to freedom of association with others.

IV. Drone Strikes as Pattern of Gross and Reliably Attested Violations of Human Rights

Based on the above information, Reprieve requests that the Human Rights Council address the issue of drone strikes by the United States in Pakistan.

There is no plausible legal basis for the attacks. There is no declared war between the United States and Pakistan. Pakistan has not – and, indeed, could not – given legally effective “consent” for the killing of its own innocent civilians by American drones. The US has taken no steps to claim self-defense, and the facts would anyway not fit such an argument. See *War on terrorism: self defense, operation enduring freedom, and the legality of U.S. drone attacks in Pakistan*, 9 Wash. Univ. Global Studies L. Rev. 77 (Jan. 2010) (TK_001187) (“Under the U.N. Charter, without a decision of the S.C. to use force under article 42, the only way the United States can unilaterally conduct armed operations on Pakistani soil, without the latter's consent, is if it is legitimately acting in self defense. However, the United States has not reported its carrying out of drone attacks on Pakistani territory to the S.C. as an exercise of this right of self defense as mandated by article 51.”) (footnotes omitted).

The attacks listed in this complaint are not isolated incidents, but are part of a consistent pattern of strikes by the United States. The US policy of conducting drone strikes in FATA is a result of the US view that it is engaged in an armed conflict with al-Qaeda, and “their

⁴² See Ibrahim Shah, NIC Card.

⁴³ See Abdul Qayyum Khan, NIC Card.

⁴⁴ See Muzzafar Khan, NIC Card.

affiliates” based in Pakistan. This view has been outlined by Harold Koh, Legal Advisor to the Department of State and John Brennan, US Government Adviser on Counterterrorism.⁴⁵

While the United States has been reluctant publically to acknowledge its use of drones in Pakistan, various high ranking personnel within the US administration have commented on the US use of drones. Leon Panetta, former Director of the Central Intelligence Agency and current Secretary of Defense has referred to drone strikes as “the only game in town” in the context of the “war on terror.”⁴⁶ John Brennan has also publically commented on the use of drone strikes in Pakistan,⁴⁷ and President Obama himself has recently publically referred to drone strikes for the first time, although both John Brennan and President Obama have denied that there have been civilian casualties.⁴⁸

US government officials regularly brief the media in relation to its drones program, although it is more usual for them to do so anonymously as the CIA’s actions were deemed secret for a long time – even though people were obviously dying from the attacks. From the reports resulting from these media briefings it is clear that the US has shifted from a policy of detaining suspected terrorists (in facilities such as Guantánamo Bay) to simply eliminating them through the use of drones. The US currently employs two methods for selecting targets for drone strikes: 1) “kill” or “hit” lists (the CIA keeps a list of 20 top targets, whose inclusions on the CIA kill list are White House approved) and 2) “pattern of life” or “signature” analysis (which involves selecting targets on the basis of evidence collected by surveillance cameras on the unmanned aerial aircraft, and from other intelligence sources including human and communications intelligence from allies in the war on terror”).⁴⁹

Despite claims from US officials that no innocent people have been killed through drone attacks, these strikes have resulted in heavy civilian casualties documented by a number of reliable sources, including those listed in this complaint.⁵⁰ Fatalities, injuries and destruction of homes will continue to occur unless the United States ceases its policy of using drones in

⁴⁵ Harold Hongju Koh Legal Adviser, U.S. Department of State, The Obama Administration and International Law, *Annual Meeting of the American Society of International Law Washington*, DC (Mar. 25, 2010), <http://www.state.gov/s/l/releases/remarks/139119.htm>.

⁴⁶ Noah Shachtman, *US Military Joins CIA’s Drone War in Pakistan* (Dec. 10, 2010), <http://www.wired.com/dangerroom/2009/12/us-military-joins-cias-drone-war-in-pakistan/>

⁴⁷ Charlie Savage, *Obama Adviser Discusses Using Military on Terrorists*, New York Times (Sept. 12, 2011), <http://www.nytimes.com/2011/09/17/us/john-o-brennan-on-use-of-military-force-against-al-qaeda.html>.

⁴⁸ *Video Statement of President Barack Obama*, The Guardian (Jan. 31, 2012), <http://www.guardian.co.uk/world/video/2012/jan/31/obama-us-drones-video>

⁴⁹ David S. Cloud, *CIA drones have broader list of targets*, Los Angeles Times (May 5, 2003), <http://articles.latimes.com/2010/may/05/world/la-fg-drone-targets-20100506>; Ken Dilanian, *U.S. put new restrictions on CIA drone strikes in Pakistan*, Los Angeles Times (Dec. 7, 2007), <http://articles.latimes.com/2011/nov/07/world/la-fg-cia-drones-20111108>; Adam Entous, *CIA drones hit wider range of targets in Pakistan*, Reuters (May 5, 2010), <http://www.reuters.com/article/2010/05/06/idUSN05194477>.

⁵⁰ The Bureau of Investigative Journalism, *Drone Data* (Jan. 11, 2012), <http://www.thebureauinvestigates.com/category/projects/drone-data/>; New America Foundation, *The year of the Drone* (Nov. 16, 2011), <http://counterterrorism.newamerica.net/drones#2012chart>; Pakistan Body Count http://pakistanbodycount.org/drone_attack; Bill Roggio & Alexander Mayer, *Charting the data for US airstrikes in Pakistan, 2004 - 2012*, Long War Journal (Jan. 19, 2012), <http://www.longwarjournal.org/pakistan-strikes.php>; Daniel Byman, Brookings Institute, *Do Targeted Killings Work?* (July 14, 2009), http://www.brookings.edu/opinions/2009/0714_targeted_killings_byman.aspx.

Pakistan. Every indication is that the US will continue to use such strikes, regarding them as an effective means of eliminating suspected terrorists

V. Exhaustion of Domestic Remedies

The complainants in this action have not brought suit in the United States, because domestic remedies are unavailable. The American legal doctrine of sovereign immunity holds that the United States government is immune from lawsuits unless the government—i.e. Congress—gives explicit consent.⁵¹ Only two federal statutes offer the claimants in this action any potential for damages: the Alien Tort Statute,⁵² and the Federal Tort Claims Act (FTCA).⁵³ In addition, federal courts have created an implied right of action for monetary damages to enforce constitutional provisions against federal officers, known as *Bivens* actions. In lieu of monetary relief, another option would be for the claimants to sue for declaratory or injunctive relief. However, previously litigated cases brought by other claimants have shown that success in US courts is highly unlikely.

With respect to the United States' current drone program, one lawsuit has already been filed and summarily dismissed by the US District Court for the District of Columbia.⁵⁴ That case was brought on behalf of Anwar Al-Aulaqi by his father Nasser Al-Aulaqi. The United States had allegedly placed Al-Aulaqi, a dual US-Yemeni citizen residing in Yemen, on a “kill list.”⁵⁵ The lawsuit sought an injunction under the US Constitution against the government prohibiting it from intentionally killing Al-Aulaqi. The plaintiff also sought damages under the Alien Tort Statute. The court dismissed the case not on the merits, but for lack of jurisdiction, in particular on the political question and standing doctrines.⁵⁶

The political question doctrine is used by US federal courts to deny jurisdiction where the subject matter is of a sensitive political nature, and one best handled by a different branch of government.⁵⁷ In *Al-Aulaqi*, the court held that the claim for damages was not justiciable because it would have required the court to determine whether an attack on Al-Aulaqi would have been justifiable. According to the court, such determinations were best left to either Congress or the Executive branches.⁵⁸ In 2010 the D.C. Circuit rejected a similar claim for

⁵¹ See *United States v. Mitchell*, 463 US 206, 212 (1983) (“It is axiomatic that the United States may not be sued without its consent and that the existence for consent is a prerequisite for jurisdiction.”). This has been a fundamental tenet of American law since the earliest days of the nation. See, e.g., Federalist 81 (Hamilton): “it is inherent in the nature of sovereignty not to be amenable to suit of an individual without its consent.”

⁵² 28 U.S.C. §1350, also called the Alien Tort Claims Act.

⁵³ 28 U.S.C. 1346(b).

⁵⁴ *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010).

⁵⁵ *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 11 (D.D.C. 2010).

⁵⁶ *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 11 (D.D.C. 2010).

⁵⁷ See *Baker v. Carr*, 369 U.S. 186, 217 (1962) (listing six factors said to characterize cases that raise non-justiciable political questions: “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”).

⁵⁸ *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 48 (D.D.C. 2010) (quoting Article I Section 8 of the US Constitution as delegating certain foreign policy and national security issues to Congress, and Article II of the US Constitution as allocating certain foreign relations and national security issues to the President).

damages in *El-Shifa Pharmaceutical Industries v. United States*.⁵⁹ That case involved victims of a 1998 cruise missile bombing in the Sudan, when the United States fired a missile at a pharmaceutical plant, mistakenly believing it had connections to Osama bin Laden and his Al-Qaeda network. The D.C. Circuit dismissed the case based on the political question doctrine, holding that: “[i]f the political question doctrine means anything in the arena of national security and foreign relations, it means the courts cannot assess the merits of the President’s decision to launch an attack on a foreign target.”⁶⁰

This case similarly involves assessing the merits of the President’s decision to attack foreign targets, and will ostensibly be treated as a matter of national security, issues which are within the purview of the Executive or Legislative branches.⁶¹ Under prevailing US law, then, it seems clear that a lawsuit for damages under the Alien Tort Statute would thus fail to be addressed on the merits.

The Federal Tort Claims Act fails to provide adequate relief for various reasons. First, one of the stated exceptions to the FTCA is that it does not apply to any “claim arising in a foreign country.”⁶² Even if it can be argued that the government’s tortious actions occurred in the United States,⁶³ the injuries complained of occurred in Pakistan, and the US Supreme Court has held that “claim arising” refers to the *injury*.⁶⁴ Second, the FTCA also does not apply to “any claim arising out of the combatant activities of the military or naval forces . . . during time of war.”⁶⁵ Finally, the federal courts have also adopted an exception for actions undertaken by the executive that are discretionary, as opposed to actions taken by individual negligent officers.⁶⁶

Bivens actions allow individuals whose rights have been violated by federal officers to sue in federal court for damages.⁶⁷ Only a limited set of rights violations are actionable—the Supreme Court has not recognized a new cause of action in many years.⁶⁸ Even if there is a

⁵⁹ 607 F.3d 836 (D.C. Cir. 2010).

⁶⁰ 607 F.3d 844 (D.C. Cir. 2010).

⁶¹ There are many other cases involving foreign victims of human rights abuses that have been dismissed from American courts on political question grounds. *See, e.g., Harbury v. Hayden*, 522 F.3d 413 (D.C. Cir. 2008) (dismissing as non-justiciable claims where the claimant’s husband, a Guatemalan rebel fighter, had been allegedly tortured and killed by Guatemalan army officers working alongside the CIA); *Schneider v. Kissinger*, 412 F.3d 190 (D.C. Cir. 2005) (holding non-justiciable a case brought by the decedents of a Chilean general, claiming that the US government had caused his kidnapping, torture, and murder in the process of overthrowing Salvador Allende); *Gonzalez-Vera v. Kissinger*, 449 F.3d 1260 (D.C. Cir. 2006) (finding non-justiciable the claims that the US Government had been complicit in the atrocities of Augusto Pinochet’s regime in Chile); *Bancoult v. McNamara*, 445 F.3d 427 (D.C. Cir. 2006) (dismissing case brought by former residents of the Chagos Archipelago who claimed that the United States had committed atrocities when establishing its military base on the island in the 1960s).

⁶² 28 U.S.C. 1346(k).

⁶³ The decision to target certain individuals and the command to fire are likely made in the United States. *See, e.g.,* Jane Mayer, *The New Yorker*, *The Predator War* (Oct. 26, 2009), http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer; Philip Alston, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, UN Human Rights Council, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf>.

⁶⁴ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 700-701 (2004).

⁶⁵ 28 U.S.C. 1346(j).

⁶⁶ *See Dalebite v. United States*, 346 U.S. 15 (1953); *Berkovitz by Berkovitz v. United States*, 486 U.S. 531 (1988).

⁶⁷ *See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

⁶⁸ *Ashcroft v. Iqbal*, 556 U.S. 662, 673 (2009).

cause of action, such as under the Fourth Amendment or Fifth Amendment,⁶⁹ the doctrine of official immunity still applies. Furthermore, it is highly unlikely that US constitutional rights would apply to a Pakistani citizen suffering injury in Pakistan; certainly the US has vigorously and successfully argued to the contrary. See *Maqaleh v. Gates*, 605 F.3d 84 (D.C. Cir. 2010) (non-US citizens who are prisoners in Bagram Air Force base in Afghanistan have no claim to US constitutional rights).

A subset of executive officials are granted absolute immunity from suits for damages. This group includes the President,⁷⁰ judges,⁷¹ as well as those with a “national security function.”⁷² Given that the claims in this case relate closely to the United States’ “war on terror,” American courts could very well invoke absolute immunity on behalf of the offending officials. Moreover, even in the absence of absolute immunity, the parallel doctrine of *qualified* immunity may well apply. Officials who violate an individual’s constitutional rights acting in their official capacity are protected from monetary damages by qualified immunity unless clearly established law in place at the time of the action would have made it clear to a reasonable officer that the activity was unlawful.⁷³ Moreover, while claimants submit that the US government’s actions were clearly unlawful, US courts have demanded an extreme level of specificity for what activity constitutes “unlawful”;⁷⁴ since there have been no US cases that have been litigated on the merits as to whether drone strikes are lawful, a federal court will likely argue that the defendants’ actions do not violate “clearly established law.”

The American federal courts have recently used the political question doctrine to dismiss numerous cases involving the US government’s “war on terror,” including a recent case involving this very subject, namely drone strikes in countries with which the United States is not at war. The political question doctrine has been used to dismiss all manner of claims, either for monetary damages or injunctive or declaratory relief. Even if the political question doctrine were not to apply, a host of other obstacles remain, notably the doctrines of sovereign and official immunity. It is notable that since 9/11, there have been extremely few cases in American courts that have been adjudicated on the merits, and even these have focused almost exclusively on writs of habeas corpus, challenging prisoners’ detention.

VI. The Urgent nature of the application

Because innocent citizens of Pakistan continue to be killed in the illegal CIA drone war in Pakistan, it is respectfully suggested that this application be considered with the utmost urgency.

⁶⁹ The Fourth Amendment protects against “unreasonable search or seizure,” and the Fifth Amendment protects against deprivation of “life, liberty or property, without due process of law.” Federal Courts have recognized causes of actions based on these rights. See, e.g., *Bivens* (recognizing cause of action under 4th Amendment); *Davis v. Passman*, 442 U.S. 228 (1979) (recognizing cause of action under 5th Amendment).

⁷⁰ See *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

⁷¹ See *Stump v. Sparkman*, 435 U.S. 349 (1978).

⁷² See *Harlow v. Fitzgerald*, 457 U.S. 800, 812 (1982) (“for [officers] entrusted with discretionary authority in such sensitive areas as national security or foreign policy, absolute immunity might well be justified to protect the unhesitating performance of functions vital to the national interest.”).

⁷³ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

⁷⁴ See *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074, 2084-85 (2011).

VII. Checklist of Supporting Documentation

Appendix A: Written Authorization to Act

1. Mohammad Yusuf, Power of Attorney
2. Ejaz Ahmad, Power of Attorney
3. Adil ur Rehman, Power of Attorney
4. Gul Rehman, Power of Attorney
5. Samiullah, Power of Attorney
6. Janatullah, Power of Attorney
7. Akhtar Zaman, Power of Attorney
8. Mohsin, Power of Attorney
9. Khairullah Jan, Power of Attorney
10. Noor Khan, Power of Attorney
11. Ibrahim Shah, Power of Attorney
12. Abdul Qayyum Khan, Power of Attorney
13. Muzzaffar Khan, Power of Attorney

Appendix B: Decisions of Domestic Courts

1. *United States v. Mitchell*, 463 U.S. 206 (1983).
2. Federalist 81 (Hamilton).
3. 28 U.S.C. §1350 (Alien Tort Statute).
4. 28 U.S.C. 1346 (Federal Tort Claims Act).
5. *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1 (D.D.C. 2010).
6. *Baker v. Carr*, 369 U.S. 186 (1962).
7. *El-Shifa Pharmaceutical Industries v. United States*, 607 F.3d 836 (D.C. Cir. 2010).
8. *Harbury v. Hayden*, 522 F.3d 413 (D.C. Cir. 2008).
9. *Schneider v. Kissinger*, 412 F.3d 190 (D.C. Cir. 2005).
10. *Gonzalez-Vera v. Kissinger*, 449 F.3d 1260 (D.C. Cir. 2006).
11. *Bancoult v. McNamara*, 445 F.3d 427 (D.C. Cir. 2006).
12. Jane Mayer, *The New Yorker*, *The Predator War* (Oct. 26, 2009).
13. Philip Alston, Report of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, UN Human Rights Council.
14. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).
15. *Dalehite v. United States*, 346 U.S. 15 (1953).
16. *Berkovitz by Berkovitz v. United States*, 486 U.S. 531 (1988).
17. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).
18. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).
19. *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).
20. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).
21. *Ashcroft v. Al-Kidd*, 131 S. Ct. 2074 (2011).

Appendix C: Documentation and Corroborative Evidence Substantiating Part III

1. Jane Mayer, *The New Yorker*, *The Predator War* (Oct. 26, 2009).
2. The Department of Defense Dictionary of Military and Associated Terms 579, Joint Publication 1-02, April 12, 2001 (amended Oct. 17, 2008).

3. Bobby Ghosh and Mark Thompson, TIME Magazine, *The CIA's Silent War in Pakistan* (June 1, 2009).
4. Spencer Ackerman, Wired Magazine, *Air Force is Through with Predator Drones* (Dec. 14, 2010).
5. Mike Freeman, San Diego Union-Tribune, *Air Force receives the final MQ-1 Predator drone* (Mar. 22, 2011).
6. Lockheed Martin Official Website, *Hellfire II Missile*.
7. International Online Defense Magazine, *Hellfire II Missile System*.
8. U.S. Navy Fact File, *AGM-114B/K/M Hellfire Missile*.
9. Global Security, *AGM-114 Hellfire Modular Missile System (HMMS)*.
10. Nathan Hodge, Wired Magazine, *Deadliest Strike Yet in Pakistan Drone War* (June 24, 2009).
11. Mohammad Yusuf, NIC Card.
12. Sultan Jan, NIC Card.
13. Bakhtoor Gul, NIC Card.
14. Aman Ullah Jan, NIC Card.
15. Mohammad Yusuf, Affidavit.
16. *U.S. missile attack kills at least 6 in Pakistan*, Reuters (Oct. 9, 2008), <http://www.reuters.com/article/2008/10/09/us-pakistan-missile-idUSTRE4986NO20081009>.
17. Ejaz Ahmad, NIC Card.
18. Faheem Qureshi, Tribal Domicile Certificate.
19. Faheem Qureshi, Government School ID.
20. Mohammad Khaleel, NIC Card.
21. Aziz-ur-Rehman Qureshi, Tribal Domicile Certificate
22. Kushdil Khan, NIC Card.
23. Ejaz Ahmad, Affidavit.
24. *Deadly missiles strike Pakistan*, BBC (Jan. 23, 2009), <http://news.bbc.co.uk/1/hi/7847423.stm>.
25. Adil Ur Rehman, NIC Card.
26. Adil Ur Rehman, Affidavit.
27. Razm Khan, NIC Card.
28. Samiullah, NIC Card.
29. Gul Rehman, Affidavit.
30. Gul Rehman, NIC Card.
31. Samiullah, Affidavit
32. Kareem Khan, First Information Report.
33. Sadaulah, First Information Report.
34. Janatullah, NIC Card.
35. Akhtar Zaman, NIC Card.
36. Akbar Zaman, NIC Card.
37. Janatullah, Affidavit.
38. Akhtar Zaman, Affidavit.
39. Mohsin NIC Card.
40. Mohsin Affidavit.
41. Photograph 9-1 and Photograph 9-2.
42. Sanaullah Jan, Government School ID.
43. Khairullah Jan, Affidavit.
44. Noor Khan, NIC Card.
45. Ibrahim Shah, NIC Card.

46. Abdul Qayyum Khan, NIC Card.
47. Muzzafar Khan, NIC Card.