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“Between a Drone and Al-Qaeda”

The Civilian Cost of US Targeted Killings in Yemen





“Between a Drone and Al-Qaeda”

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Map of Strikes

Locations of the six US targeted killings in Yemen documented in this report



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Summary

On the evening of August 29, 2012, five men gathered in a grove of date palms behind the local mosque in Khashamir, a village in southeast Yemen. Moments later, US remotely piloted aircraft, commonly known as drones, launched three Hellfire missiles at the group.

The strike killed four of the men instantly, hurling their body parts across the grounds. The blast of a fourth missile hit the fifth man as he crawled away, pinning him lifeless to a wall.

Yemen's Defense Ministry described three of the men as members of Al-Qaeda in the Arabian Peninsula (AQAP), the Yemen-based armed group that has been fighting the Yemeni government, and which the United States calls the most active affiliate of Al-Qaeda. The men were killed, it said, while "meeting their fellows."

But the two "fellows" they were meeting had no known links to AQAP. Rather, they were respected members of their community. Salim bin Ali Jaber, a cleric and father of seven, had long preached against AQAP's violent methods. The other was the cleric's cousin Walid bin Ali Jaber, one of the village's few police officers. Relatives said the three alleged AQAP members demanded a meeting with the cleric because the previous Friday he had made a particularly strong denunciation of AQAP at the local mosque. Walid Jaber had joined the meeting as a security measure.

The strike in Khashamir is one of six unacknowledged US military attacks against alleged AQAP members in Yemen that this report examines. Each of the airstrikes bears the hallmarks of a so-called targeted killing, the deliberate killing by a government of a known individual under color of law.

Two of these attacks were in clear violation of international humanitarian law—the laws of war—because they struck only civilians or used indiscriminate weapons. The other four cases may have violated the laws of war because the individual attacked was not a lawful military target or the attack caused disproportionate civilian harm, determinations that require further investigation. In several of these cases the US also did not take all feasible precautions to minimize harm to civilians, as the laws of war require.

Some of those targeted by US forces as terrorist suspects may not in fact have been valid military targets. Where the laws of war apply, combatants may lawfully be attacked. Persons who accompany or support an organized armed group, but whose activities are not directly related to military operations, such as engaging in recruiting or propaganda, are not lawful military targets.

Where the United States acts as a party to the armed conflict between the Yemeni government and AQAP, US military actions fall within the laws of war. Should the fighting between the US and AQAP not meet the threshold for an armed conflict, any attacks carried out independently of the Yemen-AQAP conflict, including some or all of the attacks detailed here, would fall under international human rights law. Human rights law only permits the use of lethal force where there is an imminent threat to human life.

Beyond international legal considerations, the evidence strongly suggests that the strikes did not adhere to policies for targeted killings that US President Barack Obama disclosed in a speech in May 2013.

These policies, which more closely reflect a law-enforcement model than a war model, provide that the United States will conduct strikes only against individuals who pose an “imminent threat to the American people”; when there is a “near-certainty that no civilians will be killed or injured” and when the target is present. President Obama also said the United States “does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute.” While the attacks detailed in this report predate Obama’s speech, the White House said on the day he disclosed the policies that they were “either already in place or will be transitioned into place over time.”

The Yemeni government has conceded that two of the six attacks described in this report resulted in deaths and injuries to civilians. It has made payments to families of some of the civilians killed but has failed to adequately compensate many others. The US government has not publicly acknowledged involvement in any of the six attacks, and while US officials say they work with local authorities to provide “condolence payments” to civilian victims, we are not aware of any evidence that it has done so in Yemen. Regardless of the lawfulness of specific attacks, the deaths of numerous civilians and the lack of

compensation to most families has fueled public anger and frustration in Yemen against the United States, doubtless to the benefit of AQAP.

“We Yemenis are the ones who pay the price of the ‘war on terror,’” said Faisal bin Ali Jaber, a relative of the cleric and policeman killed in Khashamir. “We are caught between a drone on one side and Al-Qaeda on the other.”

Targeted Killings

The US Joint Special Operations Command (JSOC), which is a semi-covert arm of the military, and the Central Intelligence Agency (CIA) are estimated by research groups to have carried out 81 targeted killing operations in Yemen: one in 2002 and the rest since 2009. The strikes by drones, warplanes or cruise missiles by various counts have killed at least 473 combatants and civilians. The United States has also carried out hundreds of targeted killing operations, primarily by drones, in Pakistan and a small number of such strikes in Somalia.

After many years of neither confirming nor denying such strikes, President Obama and other top US officials began publicly acknowledging the targeted killings program in 2010. However, citing national security concerns, the administration has provided only the barest information about individual strikes. For example, US authorities have not revealed the number of strikes, the number of civilians and alleged combatants killed or wounded, or, with a few exceptions, the target of the strikes. Moreover, the administration’s legal rationale for such killings, outlined in various speeches and “fact sheets” by the government in the past two years, has been inadequate.

Yemeni President Abdu Rabu Mansour Hadi has publicly praised the US drone campaign in Yemen, but his government has been almost as silent as the United States on details.

Case Studies

Human Rights Watch investigated the six strikes during two trips to Yemen in 2012 and 2013. These attacks, one from 2009 and the rest from 2012-13, killed 82 people, at least 57 of them civilians. At least four of the strikes were carried out by drones, a fifth strike by either drones or warplanes, and a sixth one by cruise missiles releasing cluster munitions, indiscriminate weapons that pose unacceptable dangers to civilians.

This report assesses whether these attacks comply with the laws of war. It also considers them with respect to the guidelines that President Obama disclosed in May 2013 for targeted killings. Those guidelines seem reflective of international human rights law, which prohibits the use of lethal force in law enforcement situations except when absolutely necessary to protect human life.

In addition to the attack in Khashamir, this report details the following strikes:

- **Wessab, April 17, 2013:** Two drones launched at least three Hellfire missiles at a car in Wessab, a township in Dhamar province in central Yemen. The missiles killed a suspected local AQAP leader, Hamid al-Radmi, as well as his driver and two bodyguards. The strike appears not to have complied with the Obama administration guidelines because it appears that al-Radmi could have been captured rather than killed. Al-Radmi was one of the most visible figures in Wessab, traveling openly to mediate disputes among residents, and meeting regularly with security and political officials. While linked to AQAP, it is not evident that he played a role in military operations that would have made him a valid military target.
- **Al-Masnaah, January 23, 2013:** One or more Hellfire missiles launched from a drone killed all four people in a truck in the village of al-Masnaah as they traveled to nearby Sanhan, a town about 20 kilometers southeast of Sanaa, the capital. Two passengers were suspected AQAP members. The two others, the driver and his cousin, were civilians hired by the AQAP suspects to drive them to Sanhan. Depending on the military importance of the two targeted AQAP members, under the laws of war the strike may have caused disproportionate harm to civilians. Yemen's Minister of Interior exonerated the two cousins of any ties to the targets in a letter to the families, but relatives said neither the Yemeni nor the US government provided the families any compensation.
- **Beit al-Ahmar, November 7, 2012:** A drone strike killed Lt. Col. Adnan al-Qadhi, an officer in an elite Yemeni army unit who was a suspected local AQAP leader, in Beit al-Ahmar, a military town 15 kilometers from Sanaa. The strike also killed one of his bodyguards. Inconsistent with the Obama administration guidelines, the evidence suggests that Al-Qadhi could have been captured rather than killed. Nor is it clear that he played a military operational role for AQAP. In April 2013, AQAP issued a

video in which an 8-year-old boy, held with his father, a soldier, “confessed” that military officers instructed him to plant a tracking device on al-Qadhi.

- **Sarar, September 2, 2012:** As two drones flew overhead, two warplanes or drones attacked a vehicle heading north from the city of Radaa in central Yemen. The strike in the hamet of Sarar killed 12 passengers, including 3 children and a pregnant woman, in violation of the laws-of-war prohibition against attacks that do not discriminate between civilians and combatants. The driver and a 13th passenger survived. The strike’s apparent target, tribal leader Abd al-Raouf al-Dahab, was not in the vehicle, and it is not clear that he was even a member of AQAP. The Yemeni government admitted the attack was a mistake but for months provided the victims’ families only limited compensation: 100 Kalashnikov assault rifles and cash for burial costs. Only in June 2013, after Human Rights Watch and other groups raised the case with the United States, did the Yemeni authorities compensate the families for the deaths.
- **Al-Majalah, December 17, 2009:** As many as five US Navy Tomahawk cruise missiles armed with cluster munitions struck the hamlet of al-Majalah in southern Abyan province. Yemeni government officials described the attack as a Yemeni airstrike that killed 34 “terrorists” at a training camp. According to a Yemeni government inquiry, the strike actually killed 14 suspected AQAP fighters, including the apparent primary target, Muhammad al-Kazami, but also at least 41 local civilians living in a Bedouin camp, including 9 women and 21 children. Subsequently, cluster munition remnants killed at least 4 additional civilians and wounded 13 others. This attack may more properly be viewed as a violation of international human rights law. However, even within a laws-of-war analysis, the attack used indiscriminate cluster munitions, and caused indiscriminate and possibly disproportionate civilian casualties. The families have not received any compensation for the deaths or injuries.

US and Yemeni officials did not respond to written questions from Human Rights Watch on the six cases and on targeted killings policies. A Yemeni government official with knowledge of the strikes, who spoke to Human Rights Watch on condition of anonymity, acknowledged that in some cases, the targets’ status with AQAP fall into a gray area:

It is not clear in some cases whether they are actually military commanders or operators of attacks. But they recruit openly, openly. . . Striking is not the most ethical position [in some of these cases]. But if you don't strike them, will they recruit more? That is the debate.

The official said that the Yemeni government has virtually no control over much of Yemen, and therefore is "too weak" to capture many suspects: "Our security apparatus is in shambles. . . . So what do you do? The easiest option is, you take them out."

International Law and US Policy

The legality of a "targeted killing" under international law may depend on whether the attack was conducted during an armed conflict or during law enforcement operations. International humanitarian law, the laws of war, apply during armed conflicts between states or between a state and a non-state armed group. International human rights law applies at all times, except where superseded by specific laws of war.

The laws of war permit attacks only on enemy combatants and other military objectives. Combatants include members of armed groups taking a direct part in hostilities, but not those who play a purely non-military role. Civilians and civilian objects are protected from attack. Not all attacks that cause civilian deaths or injuries violate the laws of war—only those that target civilians, do not discriminate between civilians and combatants, or cause civilian loss that is excessive compared to the anticipated military gain. Parties to a conflict must take all feasible steps to minimize civilian harm, including by not deploying in densely populated areas. States have an obligation to investigate serious violations of the laws of war and prosecute those found responsible.

During situations of law enforcement, in which international human rights law applies, lethal force may only be used as a last resort where there is an imminent risk to human life. The standards set out by the Obama administration for targeted attacks appear to reflect this law enforcement approach, requiring that the target pose an imminent risk to the United States, cannot reasonably be captured, and can be attacked without putting civilians at risk. However, the administration has not said that it was adopting an approach consistent with human rights law.

The use of drones does not directly affect the legal analysis of a particular attack. These remotely piloted vehicles and the missiles and laser-guided bombs they carry are not illegal. When used appropriately, drones' enhanced surveillance capabilities can help minimize civilian casualties in combat operations. But as with other aerial attacks, drone operations may be hampered by poor intelligence or a failure to minimize the risk of civilian harm.

Even if some of the attacks described in this report do not violate the laws of war, they appear to fall short of the thresholds set by the Obama administration for carrying out targeted killings. Attacks that do not meet the US policy guidelines would contravene law enforcement standards under international human rights law.

The applicability of a war model to US operations against Al-Qaeda has increasingly been called into question. Hostilities between a state and a non-state armed group are considered to be an armed conflict when violence reaches a significant threshold and the armed group has the capacity and organization to abide by the laws of war. Hostilities between AQAP and the Yemeni government have risen to the level of an armed conflict in recent years. That is less clear with respect to hostilities between AQAP and the US government. This distinction is legally important because the United States asserts it is carrying out operations against Al-Qaeda and "associated forces" to protect US interests and not because it is a party to the Yemen-AQAP conflict.

Under that rationale, the US government should be applying a war model to its counterterrorism operations in Yemen only if there is a genuine armed conflict between the US and AQAP. Otherwise the United States needs to be acting in accordance with the higher threshold for the use of force under applicable law enforcement standards found in international human rights law.

Al-Qaeda and other non-state armed groups that the United States considers to be "associated" forces, such as AQAP, continue to threaten US interests, but President Obama has long disavowed the paradigm of a "global war on terror." The sporadic nature and smaller scale of any successful operations against US targets by these groups in the 12 years since the attacks of September 11, 2001, further diminishes the relevance of this model.

Should the United States continue targeted killings in Yemen without addressing the consequences of killing civilians and taking responsibility for unlawful deaths, it risks further angering many Yemenis and handing another recruiting card to AQAP. In response to these killings, AQAP has issued statements accusing the United States of fighting a war not just against Al-Qaeda but against all Muslims. Residents have set up roadblocks and held demonstrations in which they chant anti-US slogans. Yemen's National Dialogue Conference, tasked with drafting the country's new political and constitutional roadmap, has called for criminal penalties under domestic law for any targeted killings that violate international law.

In Khashamir, every man, woman, and child has seen the photos of Salim and Walid Jaber, the cleric and policeman, after they were struck by drone-launched missiles. The images show the men's bodies charred and in pieces—relatives said they identified Salim Jaber by his cheekbone, and Walid Jaber by the remains of his handgun and his ornate belt.

“Now when villagers see these images,” said a relative, Faisal Jaber, “they think of America.”

Key Recommendations

The governments of the United States and Yemen should immediately take measures to reduce civilian casualties from targeted killings in Yemen and to ensure these strikes comply with international law.

To the Obama Administration

- Explain the full legal basis on which the US carries out targeted killings, including the attacks detailed in this report. Publicly clarify all policy guidelines for targeted killings and disclose when each standard went into effect.

To the Governments of the United States and Yemen

- Ensure that all targeted killings conducted during armed conflict situations accord with the laws of war, including by taking all feasible precautions to minimize harm to civilians. Outside of armed conflict situations, use lethal force only when absolutely necessary to protect human life in accordance with international human rights law.
- Implement a system of prompt and meaningful compensation for civilian loss of life, injury, and property damage from unlawful attacks. To address the backlash from civilian deaths, institute a system of condolence payments for losses in which there is no assumption of liability.
- Conduct prompt, thorough, and impartial investigations into the cases in this report and other cases where targeted strikes may have resulted in unlawful killings. Make public the findings and seek disciplinary measures or criminal prosecutions as appropriate.

Methodology

This report is based on six weeks of field research carried out by Human Rights Watch in Yemen between September 2012 and June 2013. The report details six US airstrikes in Yemen that killed 82 people, at least 57 of them civilians. One strike was in 2009 and the rest were in 2012-13.

A Human Rights Watch researcher and two consultants interviewed more than 90 people for this report, most in the Yemeni cities of Sanaa, Aden, and Radaa, and the town of Wessab, as well as in person in the United States, electronically, and by phone. Interviewees included witnesses to airstrikes, relatives of those killed, lawyers, human rights defenders, journalists, political and security analysts, diplomats, and Yemeni government and security officials.

Human Rights Watch contacted Yemenis through local and international nongovernmental organizations, and lawyers for victims or suspects. We carried out interviews in English or in Arabic, often using interpreters. Most people were interviewed individually. We informed the interviewees of the purpose of our research and did not pay them or offer them other incentives to speak with us. In some cases, we have withheld the name, location, date of interview, or other identifying information to protect the interviewee from possible retaliation.

We reviewed dozens of videos and photos taken in the immediate aftermath of the strikes in question, many of which showed remnants that helped identify the types of weapons used. In some cases we also examined remnants taken from the scene. We also read scores of international and Yemeni media reports and, in the few instances available, Yemeni government documents on the killings.

Human Rights Watch was not able to visit most of the strike areas for security reasons. Yemeni consultants visited two attack sites, Sarar and Wessab.

Human Rights Watch sent written requests for comment on these strikes to the US Central Intelligence Agency, the White House, and the Department of Defense, as well as to Yemen's Ministry of Foreign Affairs. The only agency to formally respond was the CIA, which declined comment. Future responses will be posted on the Counterterrorism page of the Human Rights Watch website: www.hrw.org.

I. Background

Yemen and Al-Qaeda

Yemen is a country of 25 million people on the southwest tip of the Arabian Peninsula. It was fertile ground for Islamist fighters well before the formation of Al-Qaeda in the Arabian Peninsula (AQAP) in 2009. Much of Yemen's rugged terrain is largely outside the central government's control.¹ One of the poorest countries in the Middle East, it has a soaring population of unemployed young people. It is running out of oil—the government's main revenue source—and water.²

AQAP and its antecedents gained strength during the 33-year presidency of Ali Abdullah Saleh, whose government devoted more attention to fighting rebels known as Huthis in the north, quashing a secessionist movement in the south, and juggling tribal interests than to countering armed Islamist militants.³

During the security vacuum created during the 2011 uprising in Yemen, AQAP created a domestic offshoot, Ansar al-Sharia ("Partisans of Islamic Law"), that occupied several towns in the south. Saleh ceded the presidency in February 2012 to his longtime vice president, Abdu Rabu Mansour Hadi, who pledged to lead the country to general elections in 2014.

Origins of Yemen's Islamist Armed Groups

In the 1980s many Yemeni youth considered it a rite of passage to fight in Afghanistan with US-backed *mujahideen* against occupying Soviet forces. Yemenis continued to train in

¹ For a comprehensive account of Al-Qaeda's history in Yemen, see Gregory D. Johnsen, *The Last Refuge: Yemen, al-Qaeda, and America's War in Arabia* (Norton, November 2012); and "Chapter 1: Al-Qa'ida in the Arabian Peninsula: Predecessors, Objectives and Strategy," in *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, (Gabriel Koehler-Derrick, ed.), Combating Terrorism Center at West Point, October 2011, pp. 18-63, <http://www.ctc.usma.edu/posts/a-false-foundation-aqap-tribes-and-ungoverned-spaces-in-yemen> (accessed July 30, 2013).

² United Nations Development Program, "Republic of Yemen" country page, <http://www.undp.org/ye/> (accessed June 10, 2013). See also UN Office for the Coordination of Humanitarian Affairs, "Humanitarian Bulletin Yemen," Issue 15, June 2013 (accessed June 10, 2013).

³ Huthis are revivalists of the Zaidi strand of Shiism. An army coup in 1962 ended centuries of rule by a Zaidi imamate and established the former republic of North Yemen. Clashes between Huthis and government forces included six rounds of civil war from 2004 to 2010.

Afghanistan under Taliban rule through the 1990s, with the acquiescence of both the Yemeni government and influential tribes and clerics.⁴

Osama bin Laden, whose father was Yemeni, saw the country as an ideal operating base. Fighters who had trained with bin Laden in Afghanistan formed an armed militant group called Islamic Jihad in Yemen in 1990, which was succeeded by the Islamic Army of Aden- Abyan in 1994 and Al-Qaeda in Yemen (AQY) in 1998.⁵

President Saleh incorporated many of the returning Afghan war veterans into his security forces, using them to fight Huthi rebels in the north as well as separatists in the south.⁶

This marriage of convenience began to fray in October 2000, when AQY attacked the Navy destroyer USS *Cole* off the coast of Aden, Yemen's southern port city, killing 17 US sailors. Under pressure from the United States and its allies, Saleh pledged to rein in the group. In response, a new generation of Yemeni armed militants began viewing the Yemeni authorities as an additional target. Many of these militants had honed their fighting abilities in Iraq, where they had joined the fight against the US-led invasion in 2003 with little interference from the Yemen government.⁷

That next generation coalesced after a breakout of 23 Al-Qaeda-linked suspects in 2006 from a Political Security Organization prison in the Yemeni capital, Sanaa, apparently

⁴ Johnsen, *The Last Refuge*, pp. 3-18. Many of the Yemenis incarcerated at Guantanamo Bay—the largest bloc of detainees at the US military prison there— were apprehended in Afghanistan or Pakistan. Yemenis number about 90 of the total of 164 Guantanamo detainees at the time of writing. Fifty-six Yemenis at Guantanamo have been cleared for transfer for nearly four years. Only two Yemeni detainees face formal charges. The conviction of a third Yemeni detainee was vacated by a federal court and the US government was appealing that decision. For more on Guantanamo Yemenis, see Human Rights Watch's Guantanamo web page, <http://www.hrw.org/topic/counterterrorism/guantanamo> and Human Rights Watch, *No Direction Home: Returns from Guantanamo to Yemen*, 2009, <http://www.hrw.org/reports/2009/03/28/no-direction-home-o>.

⁵ *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen*, (Koehler-Derrick, ed.), pp. 18-35, <http://www.ctc.usma.edu/posts/a-false-foundation-aqap-tribes-and-ungoverned-spaces-in-yemen>. See also Council on Foreign Relations, *Al-Qaeda in the Arabian Peninsula (AQAP)*, Backgrounder, May 24, 2012, <http://www.cfr.org/yemen/al-qaeda-arabian-peninsula-aqap/p9369> (accessed July 30, 2013).

⁶ Johnsen, *The Last Refuge*, pp. 35-47; Christopher Boucek, Shazadi Beg, and John Horgan, "Opening up the Jihadi Debate: Yemen's Committee for Dialogue," in *Leaving Terrorism Behind: Disengagement from Political Violence*, Tore Bjørgo and John Horgan, eds. (New York: Routledge, September 2008), pp. 182-89.

⁷ Former president Saleh supported Iraq during the first Gulf War of 1990-91 and initially tolerated the travel of scores if not hundreds of Yemenis to fight in Iraq after the US invasion in 2003. See, e.g., Johnsen, *The Last Refuge*, p. 143, and W. Andrew Terrill, *The Conflicts in Yemen and US National Security*, US Army War College, Strategic Studies Institute, January 2011, p. 54, <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?PubID=1040> (accessed June 13, 2013).

with inside help.⁸ In 2007, AQY killed eight Spaniards and two Yemenis at a tourist site in eastern Shabwa province. In 2008, the group shot dead two Belgian tourists and their drivers in Hadramawt, in the southeast. That same year suicide bombers struck the US Embassy in Sanaa, killing 17 Yemenis and one Yemeni-American. AQY also in 2008 launched its own magazine, *Sada al-Malahim* (The Echo of Battles). The following year, an AQY suicide bomber killed four South Korean tourists and their Yemeni driver in Hadramawt.⁹

Al-Qaeda in the Arabian Peninsula

In January 2009, Al-Qaeda's Yemeni and Saudi organizations merged into Yemen-based Al-Qaeda in the Arabian Peninsula (AQAP). The Yemen-based group quickly set its sights on international and regional as well as domestic targets. That December the United States designated AQAP as Al-Qaeda's most active branch.¹⁰

Estimates of AQAP's size range from several hundred to a few thousand members, many of whom participate in military operations. The group's inner circle is believed to have anywhere from 50 to 100 members, of whom 10 to 24 are considered key figures.¹¹ The top tier includes the group's commander, Nasir al-Wuhayshi. In August 2013 Ayman al-Zawahiri,

⁸ For a detailed account of the improbable breakout, see Johnsen, *The Last Refuge*, Chapter 14, "The Great Escape."

⁹ Yemen Profile: Timeline/Al Qaeda in Action, BBC News, <http://www.bbc.co.uk/news/world-middle-east-14704951> (accessed July 29, 2013), and *A False Foundation? AQAP, Tribes and Ungoverned Spaces in Yemen* (Koehler-Derrick), "Significant Events," p. 5, <http://www.ctc.usma.edu/posts/a-false-foundation-aqap-tribes-and-ungoverned-spaces-in-yemen> (accessed July 30, 2013).

¹⁰ "Designations of Al-Qa'ida in the Arabian Peninsula (AQAP) and Senior Leaders," Press Statement, US State Department, January 19, 2010, [/www.state.gov/r/pa/prs/ps/2010/01/135364.htm](http://www.state.gov/r/pa/prs/ps/2010/01/135364.htm) (accessed October 12, 2013). President Obama reiterated that claim in his keynote speech on counterterrorism policy in May 2013. See The White House, "Remarks by the President at the National Defense University," Washington, DC, May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (accessed May 23, 2013).

¹¹ Human Rights Watch interviews with AQAP experts including Gregory Johnsen, New York, June 13, 2013; journalist Abdul Razzaq Ahmad al-Jamal, Sanaa, April 24 and May 8, 2013; Nabil al-Bokairi, president, Arab Studies Center, Sanaa, April 25, 2013; and Abdul Salam Muhammad, president, Abaad Studies and Research Center, Sanaa, April 24, 2013.

In 2011 John Brennan, then President Obama's chief counterterrorism advisor and at this writing CIA director, said that the number of AQAP members that the United States was actively targeting totaled "a couple of dozen, maybe." See Brennan, "Remarks at Harvard Law School Program on Law and Security: Strengthening Our Security by Adhering to Our Values and Laws," Q&A, September 16, 2011, <http://www.lawfareblog.com/2011/09/video-of-john-brennans-speech/> (accessed August 22, 2013).

In April 2012 Brennan estimated AQAP's overall membership at more than 1,000. See "Brennan on bin Laden raid, and 'dangerous' Yemen," CNN.com, April 20, 2012, <http://security.blogs.cnn.com/2012/04/20/brennan-on-bin-laden-raid-and-dangerous-yemen/> (accessed June 13, 2013).

A year later the US State Department estimated the number of AQAP members at "close to" 1,000. See US State Department, *Country Reports on Terrorism 2012*: Chapter 6, Foreign Terrorist Organizations, May 30, 2013, <http://www.state.gov/j/ct/rls/crt/2012/209982.htm> (accessed May 31, 2013). Other sources estimate the group has hundreds of fighters and thousands of followers. See, e.g., "Al Qaeda in the Arabian Peninsula," Associated Press, August 7, 2013 (accessed August 7, 2013).

the head of Al-Qaeda central, reportedly named al-Wuhayshi his “Ma’sul al-Amm,” an Arabic phrase that translates to “general manager.”¹²

Many AQAP fighters have deployed exclusively for an insurgency against the Yemeni government, including those fighting with Ansar al-Sharia, the domestic offshoot that the group created in 2011.¹³ AQAP has described Ansar Al-Sharia as a vehicle to spread the group’s strict interpretation of Sharia (Islamic law) in areas under its control.¹⁴

In Saudi Arabia in August 2009, an AQAP suicide bomber attempted to kill Muhammad bin Nayef, who headed the kingdom’s counterterrorism efforts. AQAP also claimed responsibility for the attempted bombing of a US airliner en route to Detroit on Christmas Day 2009 by a Nigerian man who unsuccessfully tried to detonate explosives in his underwear. That year, AQAP claimed responsibility for another failed plot in which it placed explosive-laden ink cartridges aboard two US-bound cargo planes.¹⁵

In July 2010, AQAP launched an English-language magazine, *Inspire*, aimed both at recruiting English-speaking members and justifying the group’s actions among the general non-Arab Muslim population. *Inspire*’s contributors included the American cleric Anwar al-Awlaki, who was killed in a US drone strike in Yemen in 2011. Its first issue drew attention worldwide for its pressure-cooker recipe, “Make a Bomb in the Kitchen of Your Mom.”¹⁶

¹² Human Rights Watch interview with Johnsen, June 13, 2013. See also Eli Lake, “Meet al Qaeda’s New General Manager: Nasser al-Wuhayshi,” *Daily Beast*, August 9, 2013, <http://www.thedailybeast.com/articles/2013/08/09/meet-al-qaeda-s-new-general-manager-nasser-al-wuhayshi.html>; and Daniel Klaidman, “Meet the Terrorist Who Most Terrifies America’s Terrorist Hunters,” *Daily Beast*, August 8, 2013, <http://www.thedailybeast.com/articles/2013/08/08/meet-the-terrorist-who-most-terrifies-america-s-terrorist-hunters.html> (both accessed August 9, 2013).

¹³ Human Rights Watch interviews in Yemen and New York with 12 security analysts, journalists, diplomats and Yemeni security officials who track AQAP, September 2012 and April-September 2013. The US-based Council on Foreign Relations describes AQAP’s primary goals as “consistent with the principles of militant jihad, which aims to purge Muslim countries of Western influence and replace secular ‘apostate’ governments with fundamentalist Islamic regimes observant of sharia law.” Other declared AQAP objectives include “overthrowing the regime in Sanaa; assassinating Western nationals and their allies, including members of the Saudi royal family; striking at related interests in the region, such as embassies and energy concerns; and attacking the U.S. homeland.” See Council on Foreign Relations, *Al-Qaeda in the Arabian Peninsula (AQAP)*, Backgrounder, May 24, 2012, <http://www.cfr.org/yemen/al-qaeda-arabian-peninsula-aqap/p9369> (accessed August 9, 2013).

¹⁴ See International Centre for the Study of Radicalisation, “Online Question and Answer Session with Abu Zubayr Adel al-Abab,” April 18, 2011, http://www.islamopediaonline.org/sites/default/files/abdu_zubayr_english.pdf (accessed June 10, 2013).

¹⁵ “Yemen Profile: Timeline/Al Qaeda in Action,” BBC News, <http://www.bbc.co.uk/news/world-middle-east-14704951> (accessed July 29, 2013).

¹⁶ *Inspire*, September 2010, <http://whitehouse.gov1.info/cyber-warfare/inspire-magazine.html> (accessed July 29, 2013).

In 2012, the CIA thwarted a plot by AQAP to blow up a US passenger jet with an “upgrade” of the “underwear bomb” that had failed to properly detonate in 2009.¹⁷ At his confirmation hearing as CIA director in February 2013, John Brennan, then President Obama’s chief counterterrorism advisor, confirmed he had told news analysts that the plot was never a serious threat because the United States had “inside control” over it.¹⁸

Inside Yemen, AQAP’s primary targets are Yemeni government security and foreigners. The group’s attacks have killed hundreds of government military and intelligence personnel. Generally AQAP has not targeted Yemeni civilians, but the group has killed several Yemenis it labeled “apostates,” “homosexuals,” or “spies” for the Yemeni and US governments.¹⁹ In October 2013 AQAP killed a German bodyguard to Germany’s ambassador to Yemen.²⁰ At the time of writing AQAP was holding several foreigners for ransom, including a Saudi diplomat.²¹

In 2011, AQAP’s offshoot Ansar Al-Sharia seized two main towns and nearby villages in southern Abyan province during the political vacuum created by Yemen’s 2011 uprising. Yemeni government forces fled their posts as Ansar fighters descended on Abyan.²²

¹⁷ The Associated Press broke the story, See “CIA ‘foiled al-Qaida bomb plot’ around anniversary of Bin Laden death,” Associated Press, May 7, 2012, <http://www.guardian.co.uk/world/2012/may/07/cia-al-qaida-bomb-plot> (accessed June 11, 2013). The US Justice Department responded by seizing the call records for more than 20 telephone lines assigned to The Associated Press. See “Gov’t Obtains Wide Phone Records in Probe,” Associated Press, May 13, 2013, <http://bigstory.ap.org/article/govt-obtains-wide-ap-phone-records-probe> (accessed June 11, 2013).

¹⁸ “Nominee for CIA chief says casualties from drone strikes should be public,” Reuters, February 15, 2013, <http://www.reuters.com/article/2013/02/15/us-obama-nominations-brennan-drones-idUSBRE91E18N20130215> (accessed June 11, 2013).

¹⁹ See American Enterprise Institute, Online Critical Threats Project, “AQAP and Suspected AQAP Attacks in Yemen Tracker 2010, 2011, and 2012,” <http://www.criticalthreats.org/yemen/aqap-and-suspected-aqap-attacks-yemen-tracker-2010>, and Gulf of Aden Security Review reports for 2013, <http://www.criticalthreats.org/yemen/gulf-aden-security-review> (accessed June 11, 2013).

²⁰ The ambassador was not present, according to Germany’s Foreign Ministry. See “Yemen gunmen kill German guard, as U.N. worker kidnapped,” Al Arabiya, October 6, 2013, <http://english.alarabiya.net/en/News/middle-east/2013/10/06/German-envoy-escapes-kidnap-attempt-in-Yemen.html> (accessed October 12, 2013).

²¹ Ibid.

²² Mohammed Jamjoom and Hakim Almasmari, “Islamic militants fight Yemen troops for control of city, locals say,” CNN.com, May 30, 2011, <http://www.cnn.com/2011/WORLD/meast/05/29/yemen.unrest/index.html?hpt=T2> (accessed June 11, 2013). See also Ahmed al-Haj, “Yemeni Leaders Accused of Allowing Islamist Takeover,” Associated Press, May 29, 2011, http://www.huffingtonpost.com/2011/05/29/ali-abdullah-saleh-abdullah-ali-elewa-_n_868633.html (accessed June 11 2013).

Several political observers argue that President Saleh in 2011 allowed Ansar al-Sharia to take over the towns in Abyan to provoke widespread panic and prompt foreign governments and Yemeni citizens to retain support for him during the uprising. Others believe the president was simply too preoccupied with his own political survival at the peak of the Yemen uprising to stop the takeover, which would have required transferring forces to Abyan that were protecting the presidential palace in Sanaa.

Ansar al-Sharia declared the areas it controlled to be a caliphate and imposed its interpretation of Islamic law on local populations. At the same time, the group won over some residents by providing water and basic services.²³ AQAP recruited hundreds if not thousands of fighters from the ranks of Yemen's unemployed youth, many of whom defected to pro-government forces after Ansar al-Sharia's retreat from Abyan.²⁴

A combination of Yemeni troops, pro-government militias, and US and allegedly Saudi airstrikes routed Ansar al-Sharia from Abyan in June 2012 after months of fighting in which both Yemeni and Ansar forces appeared to violate the laws of war.²⁵ Ansar fighters dispersed into more remote parts of Abyan as well as other provinces largely outside the government's reach.

In December 2012, AQAP offered a bounty for killing the US ambassador to Yemen or any US soldier in the country.²⁶ At the time of writing AQAP continued to clash regularly with Yemeni government forces and kill ranking intelligence and security officials in bombings and drive-by shootings including in Sanaa and the southern port city of Aden.²⁷ In August 2013, al-Wuhayshi, the commander of AQAP, was reportedly intercepted while electronically plotting attacks on US targets with al-Zawahiri, the head of Al-Qaeda central, prompting the Obama administration to temporarily shutter 22 US diplomatic missions worldwide.²⁸

²³ See, e.g., "Profile: Yemen's Ansar al-Sharia," BBC News, March 17, 2012, <http://www.bbc.co.uk/news/world-middle-east-17402856>, and Rukmini Callimachi, "Yemen Terror Boss Left Blueprint for Waging Jihad," Associated Press, August 9, 2013 (both accessed August 10, 2013.)

²⁴ Human Rights Watch interviews with Yemeni political analysts, Western diplomats, and journalists, Sanaa, September 2012 and April-May 2013.

²⁵ Human Rights Watch, "Yemen: Dozens of Civilians Killed in Southern Fighting," news release, July 9, 2011 (<http://www.hrw.org/news/2011/07/09/yemen-dozens-civilians-killed-southern-fighting>). See also Amnesty International, *Conflict in Yemen: Abyan's Darkest Hour*, December 2012 <http://www.amnesty.org/en/library/asset/MDE31/010/2012/en/5c85d728-a9ab-4693-afe9-edec2b8670e/mde310102012en.pdf>, (accessed June 10, 2013).

²⁶ "Qaeda in Yemen offers bounty for U.S. ambassador," Reuters, December 12, 2012, <http://www.reuters.com/article/2012/12/31/us-yemen-us-qaeda-idUSBRE8BU02l20121231>, (accessed June 11, 2013).

²⁷ "Yemen Raids Al Qaeda Headquarters, At Least 10 People Killed As Army Retakes Building," AP, October 3, 2013, http://www.huffingtonpost.com/2013/10/03/yemen-al-qaeda-raid_n_4035746.html (accessed October 4, 2013).

²⁸ Lake, "Meet al Qaeda's New General Manager: Nasser al-Wuhayshi," *Daily Beast*, August 9, 2013, <http://www.thedailybeast.com/articles/2013/08/09/meet-al-qaeda-s-new-general-manager-nasser-al-wuhayshi.html> (accessed August 9, 2013).

Targeted Killings and US Counterterrorism Activities in Yemen

*The use of force must be seen as part of a larger discussion we need to have about a comprehensive counterterrorism strategy, because for all the focus on the use of force, force alone cannot make us safe.*²⁹

– US President Barack Obama in May 2013 speech on counterterrorism policy

The US government is the largest western donor to Yemen, since 2007 providing more than US\$1 billion to the country, most of it for counterterrorism programs. Since 2009, targeted killings, the deliberate killing by a government of a known individual under color of law, have played an increasingly prominent role in US counterterrorism efforts in the country. Yemen also receives security and development support from the Friends of Yemen, a group of 39 countries and international organizations.³⁰

Training Yemeni Counterterrorism Units

More than half of the \$1 billion in US assistance was earmarked for training and equipping two counterterrorism units headed until 2013 by former president Saleh's close relatives, according to a US General Accounting Office report. The report found that "decision makers lack the information necessary to adequately assess" the results of that assistance.³¹

The two Yemeni units—the military Special Operations Forces and the paramilitary Counter-Terrorism Unit—rarely engaged in counterterrorism operations outside the capital, and during the 2011 uprising were deployed to guard then-president Saleh.³² The Special Operations Forces were commanded by Saleh's son, Ahmed Ali Saleh, who also headed the Republican Guard. The Counter-Terrorism Unit was run by Saleh's nephew, Yayha Saleh,

²⁹ "Remarks by the President at the National Defense University," May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (accessed October 10, 2013).

³⁰ The Friends of Yemen include Saudi Arabia and other Gulf neighbors; the United States, European countries including the UK, France, and Germany; the United Nations, the League of Arab States, the International Monetary Fund, and the World Bank. For a comprehensive review of US assistance to Yemen, see Jeremy M. Sharp, *Yemen: Background and U.S. Relations*, Congressional Research Service, November 1, 2012, <http://www.fas.org/sgp/crs/mideast/RL34170.pdf> (accessed August 9, 2013).

³¹ US General Accounting Office, "U.S. Assistance to Yemen: Actions Needed to Improve Oversight of Emergency Food Aid and Assess Security Assistance," GAO-13-310, March 20, 2013, p. 24, <http://www.gao.gov/products/GAO-13-310>, (accessed June 11, 2013).

³² Ibid., p. 19. See also US State Department, *Country Reports on Terrorism 2012*: Chapter 2, Middle East and North Africa Overview, May 30, 2013, <http://www.state.gov/j/ct/rls/crt/2012/209982.htm> (accessed May 31, 2013).

as part of the Central Security Forces. Both the Republican Guard and Central Security Forces committed serious human rights violations during Yemen's 2011 uprising.³³ All of these forces were being reorganized in 2013 as part of a broader Yemeni security-sector restructuring overseen by the United States and the European Union.

First Targeted Killing in 2002, Resumption in 2009

In 2002, Yemen became the site of the first known US targeted killing by a remotely piloted aircraft, or drone. A US Predator launched an attack that killed Abu Ali al-Harithi, the head of AQY. The strike also killed five other alleged AQY members including Abu Ahmad al-Hijazi, a US citizen.³⁴

For seven years the United States conducted no further known targeted killings in Yemen, while the number of such strikes skyrocketed in Pakistan. The United States resumed targeted killings in Yemen in 2009 within days of designating AQAP a terrorist organization. Since then, research groups estimate that the United States has carried out an estimated 81 targeted strikes in Yemen with manned aircraft, drones, or sea-launched cruise missiles. The number of people killed in these strikes has not been reported by the United States or Yemen. Research groups report that at least 473 people have been killed in these strikes, the majority of them combatants but many of them civilians.³⁵

The United States had viewed Saleh as a fickle counterterrorism partner.³⁶ But President Obama has praised his successor, President Hadi, as a staunch ally in US efforts to

³³ See, e.g., Human Rights Watch, *No Safe Places: Yemen's Crackdown on Protests in Taizz*, February 2012, <http://www.hrw.org/reports/2012/02/06/no-safe-places-o>, and *Unpunished Massacre: Yemen's Failed Response to the "Friday of Dignity" Killings*, February 2013, <http://www.hrw.org/reports/2013/02/12/unpunished-massacre-o>.

³⁴ Al-Hijazi also was known as also known as Kamal Darwish. See, e.g., The Bureau of Investigative Journalism, "Yemen: Reported US Covert Actions 2001-2011," <http://www.thebureauinvestigates.com/2012/03/29/yemen-reported-us-covert-actions-since-2001/> (accessed July 6, 2013).

³⁵ These groups include The Bureau of Investigative Journalism, a London-based non-profit research organization, "Yemen Covert Actions, 2002-2013," <http://www.thebureauinvestigates.com/2013/01/03/yemen-reported-us-covert-actions-2013/>; *The Long War Journal*, an investigative website of the neo-conservative Foundation for Defense of Democracies; "Charting the data for US air strikes in Yemen, 2002 – 2013," <http://www.longwarjournal.org/multimedia/Yemen/code/Yemen-strike.php>; and the New America Foundation, a centrist US policy institute in Washington, DC, "About Drone Wars, Yemen," <http://natsec.newamerica.net/about>.

³⁶ Human Rights Watch interviews with 12 US government officials and Western diplomats, 2008-2013. US concerns about Saleh have been widely reported in international media. See, e.g., Scott Shane, "Yemen's Leader President Hadi Praises US Drone Strikes," *New York Times*, <http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html?ref=abdurabbumansourhadi> (accessed June 10, 2013).

counter AQAP.³⁷ Under Hadi, the number of targeted killings quadrupled in 2012 from the previous year. Although the pace slowed in 2013, at this writing US forces reportedly carried out 22 drone strikes in Yemen during the first nine months of the year, for the first time exceeding the number of strikes in Pakistan.³⁸

US airstrikes have killed at least nine alleged “high-value” targets, a Yemeni government official with knowledge of the strikes told Human Rights Watch.³⁹ These include four suspected AQAP leaders, most notably American cleric Anwar al-Awlaki, whom the Obama administration called the head of the group’s foreign operations, and Said al-Shihri, its deputy commander, who had survived at least two previous US strikes.⁴⁰ Several other AQAP leaders are believed to remain at large including at least three of the group’s four founders: AQAP commander al-Wuhayshi; military commander Qasim al-Raymi; and bomb-maker Ibrahim al-Asiri.⁴¹

Secrecy of Targeted Killings

President Obama and other top US officials have officially acknowledged the targeted killings program in general terms since 2010 and the use of armed drones in the program since 2012.⁴² But the United States with few exceptions refuses to officially confirm or deny its role in specific strikes, whether in Yemen or elsewhere. Nor will it disclose other basic details such as casualty figures for combatants or civilians, who or how many individuals

³⁷ “Obama praises Yemeni leader, makes no mention of Guantanamo,” Reuters, August 1, 2013, <http://www.reuters.com/article/2013/08/01/us-yemen-usa-idUSBRE9701H420130801> (accessed October 8, 2013).

³⁸ There were 21 strikes reported in Pakistan during the first nine months of 2013. See New America Foundation, Drones-Pakistan Analysis, <http://natsec.newamerica.net/drones/pakistan/analysis>; and LWJ, Charting the data for US air strikes in Yemen, 2002 – 2013, <http://www.longwarjournal.org/multimedia/Yemen/code/Yemen-strike.php> (both accessed October 10, 2013).

³⁹ Human Rights Watch interview with a Yemeni government official, who spoke on condition of anonymity, September 2013. Details of interview withheld at interviewee’s request.

⁴⁰ Ahmed al-Haj, “Al-Qaida branch confirms No 2 Killed in Yemen,” Associated Press, July 17, 2013, <http://news.yahoo.com/al-qaida-branch-confirms-no-2-killed-yemen-102604944.html> (accessed July 17, 2013).

⁴¹ Human Rights Watch interview with Johnsen, June 13, 2013, and Johnsen, “How We Lost Yemen,” *Foreign Policy.com*, August 6, 2013, http://www.foreignpolicy.com/articles/2013/08/06/how_we_lost_yemen_al_qaeda?page=0,1.

⁴² See then-US Department of State Legal Advisor Harold Koh’s speech “The Obama Administration and International Law,” March 25, 2010, <http://www.cfr.org/international-law/legal-adviser-kohs-speech-obama-administration-international-law-march-2010/p22300> and Greg Miller, “Brennan speech is first Obama acknowledgment of use of armed drones,” Washington Post, April 4, 2012, <http://www.washingtonpost.com/world/national-security/brennan-speech-is-first-obama-acknowledgement-of-use-of-armed-drones/2012/04/30/gIQAq7B> (accessed October 11, 2013).

are on its kill list, or the extent or findings of any post-strike investigations. It also will not release its videos of drone strikes.⁴³

Most targeted killings in Yemen are carried out by the US Defense Department's Joint Special Operations Command (JSOC) in coordination with the CIA. The CIA reportedly has authority over virtually all targeted killings in Pakistan and maintains an information blackout on its strikes, despite mounting pressure to reveal basic details.⁴⁴ JSOC is almost as secretive. Media reports in the first half of 2013 predicted President Obama would announce a transfer of strike authority from the CIA to the US military but at the time of writing he had not done so.⁴⁵

Yemeni government officials at times have falsely stated that US airstrikes in Yemen were the work of the Yemeni Air Force.⁴⁶

Lack of access to the attack areas, most of which are too dangerous for international media and investigators to visit, makes it extremely difficult to verify casualty figures, conclusively determine how many of those killed were civilians, and learn the full circumstances of a strike.⁴⁷

⁴³ Drones are equipped with video recording devices that record everything viewed by the drone operator. For more information on the value of drone video cameras to post-strike investigations see Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles*, June 2009, <http://www.hrw.org/reports/2009/06/30/precisely-wrong-o>.

⁴⁴ At John Brennan's Senate confirmation hearing as CIA director, members of the Senate Intelligence Committee including its chairwoman, Sen. Dianne Feinstein of California, repeatedly complained that there was too little transparency about the targeted killing program, sometimes producing misleading information in the news media. See, e.g., Mike Mazzetti and Scott Shane, "Drones are Focus as CIA Nominee Goes Before Senators," *New York Times*, February 7, 2013, http://www.nytimes.com/2013/02/08/us/politics/senate-panel-will-question-brennan-on-targeted-killings.html?pagewanted=all&_r=0 (accessed August 24, 2013).

In March 2013, a US federal appeals court ruled that the CIA could no longer refuse to respond to Freedom of Information Act requests from the American Civil Liberties Union (ACLU) about its targeted killings on secrecy grounds, since US officials had publicly discussed the targeted killings program's existence. The following August, the CIA filed another legal brief arguing that even the disclosure of how many documents it possessed on targeted killings would "damage the Government's counterterrorism efforts." See "Drones FOIA - Defendant CIA's Motion for Summary Judgment," ACLU, August 9, 2013, <http://www.aclu.org/national-security/drones-foia-defendant-cias-motion-summary-judgment> (accessed August 12, 2013).

⁴⁵ Peter Baker, "In Terror Shift, Obama Took a Long Path," *New York Times*, May 27, 2013, <http://www.nytimes.com/2013/05/28/us/politics/in-terror-shift-obama-took-a-long-path.html?pagewanted=all> (accessed May 27, 2013).

⁴⁶ In 2009, for example, the Saleh government claimed it had carried out a deadly strike in southern Abyan province that killed at least 41 civilians, although it was later proven to be the work of US-launched cruise missiles. The cable and the strike are detailed in the "Al-Majalah" chapter in this report. See also "General Petraeus' Meeting With Saleh On Security Assistance, Aqap Strikes," US Embassy Cable, Wikileaks.org, January 4, 2010, <http://wikileaks.org/cable/2010/01/10SANAA4.html>.

⁴⁷ The same difficulty exists for verifying casualties from US targeted killings in Pakistan and Somalia.

In a major speech on counterterrorism on May 23, 2013, President Obama said there is a “wide gap” between the casualty assessments of his government and nongovernmental organizations but did not elaborate.⁴⁸ Brennan in February 2013 told the US Senate Intelligence Committee that civilian casualties during targeted killings are “exceedingly rare.”⁴⁹ Human Rights Watch is skeptical of these claims in light of the numerous credible reports of civilian casualties in Yemen and Pakistan.

Brennan also said the administration should “make public the overall numbers of civilian deaths resulting from US strikes targeting Al-Qaeda.”⁵⁰ When the United States kills civilians during targeted killing operations, he said, “the United States government should acknowledge it.”⁵¹

Yet the United States has publicly confirmed only two targeted killing operations in Yemen since 2009—those that killed three US citizens.⁵² Only one is known to have been the intended target: the cleric al-Awlaki, whom the US alleges was an AQAP leader, although it has refused to disclose all but one source for the evidence against him. The other two US citizens included Awlaki’s teenage son, Abd al-Rahman Anwar al-Awlaki, and Samir Khan, the editor of *Inspire*.⁵³

The United States did not publicly acknowledge a direct military role in Yemen until mid-2012, when it assisted Yemeni forces in carrying out air strikes against AQAP and Ansar al-Sharia in Abyan province. President Obama said at the time that the United States was

⁴⁸ “Remarks by the President at the National Defense University,” May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

⁴⁹ US Select Committee on Intelligence, Nomination of John O. Brennan to be the Director of the Central Intelligence Agency, Responses to Pre-Hearing Questions, February 7, 2013, intelligence.senate.gov/130207/prehearing.pdf.

⁵⁰ US Senate Select Committee on Intelligence, Nomination of John O. Brennan to be the Director of the Central Intelligence Agency, Responses to Post-Hearing Questions, February 16, 2013, <http://www.intelligence.senate.gov/130207/posthearing.pdf> (accessed June 11, 2013).

⁵¹ “Nominee for CIA chief says casualties from drone strikes should be public,” Reuters, February 15, 2013, <http://www.reuters.com/article/2013/02/15/us-obama-nominations-brennan-drones-idUSBRE91E18N20130215> (accessed June 11, 2013).

⁵² The 81 reported strikes are detailed by The Bureau of Investigative Journalism, “Yemen Covert Actions, 2002-2013,” <http://www.thebureauinvestigates.com/2013/01/03/yemen-reported-us-covert-actions-2013/>; *The Long War Journal*, “Charting the data for US air strikes in Yemen, 2002–2013,” <http://www.longwarjournal.org/multimedia/Yemen/code/Yemen-strike.php>; and New America Foundation, “About Drone Wars, Yemen,” <http://natsec.newamerica.net/about> (accessed October 10, 2013).

⁵³ US Attorney General Eric C. Holder, Letter to Congress on US Counterterrorism Operations, May 22, 2013, <http://www.justice.gov/ag/AG-letter-5-22-13.pdf> (accessed June 12, 2013). Khan was killed with Anwar al-Awlaki on September 30, 2011. Awlaki’s son was killed in a separate strike in Yemen two weeks later.

not killing persons who did not pose a direct terrorist threat to the United States and its interests.⁵⁴ However, the United States continued to withhold all details of its strikes.

Around the same time, the Obama administration reportedly authorized the CIA and JSOC to carry out so-called “signature strikes,” which target individuals based on a pattern of behavior rather than specific information about their activities, in Yemen.⁵⁵

“Pain Now, or Pain Later”

As discussed below, President Obama in May 2013 disclosed a higher threshold for targeted killings, saying members of Al-Qaeda and undefined “associated forces” would be targeted only if they were part of a “continuous and imminent threat” to the United States, and that they would be killed only if capture was not feasible.⁵⁶

Two months later, following reports in July 2013 of a plot against the United States by AQAP commander al-Wuhaysi and Ayman al-Zawahiri, the Obama administration temporarily shuttered 22 diplomatic missions worldwide,⁵⁷ and launched nine drone strikes in Yemen over a two-week period, killing about three dozen alleged AQAP members.⁵⁸

President Obama denied any backtracking on his targeted killing policy.⁵⁹ But a senior US official was quoted that month in the *New York Times* as saying that the United States had “expanded the scope of people we could go after” in Yemen in response to the alleged plot.

⁵⁴ President Obama’s 2012 War Powers Resolution 6-Month Report, June 15, 2012, <http://www.whitehouse.gov/the-press-office/2012/06/15/presidential-letter-2012-war-powers-resolution-6-month-report> (accessed June 15, 2012). See also the speech of John Brennan, then Obama’s counterterrorism advisor and now the chief of the CIA, Council on Foreign Relations, Washington, DC, August 09, 2012, <http://www.lawfareblog.com/2012/08/transcript-of-john-brennans-speech-at-the-council-on-foreign-relations/> (accessed June 10, 2013).

⁵⁵ Eric Schmitt, “U.S. to Step Up Drone Strikes Inside Yemen,” *New York Times*, April 26, 2012, http://www.nytimes.com/2012/04/26/world/middleeast/us-to-step-up-drone-strikes-inside-yemen.html?_r=0 (accessed June 10, 2013). The US already was reportedly carrying out signature strikes in Pakistan.

⁵⁶ “Remarks by the President at the National Defense University,” May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (accessed May 23, 2013).

⁵⁷ Lake, “Meet al Qaeda’s New General Manager: Nasser al-Wuhayshi,” *Daily Beast*, August 9, 2013, <http://www.thedailybeast.com/articles/2013/08/09/meet-al-qaeda-s-new-general-manager-nasser-al-wuhayshi.html> (accessed August 9, 2013).

⁵⁸ “Why the White House blessed the recent Yemen drone strikes,” NBC News, August 16, 2013, http://investigations.nbcnews.com/_news/2013/08/16/19948299-why-the-white-house-blessed-the-recent-yemen-drone-strikes (accessed August 16, 2013).

⁵⁹ Eric Schmitt, “Embassies Open, but Yemen Stays on Terror Watch,” *New York Times*, August 11, 2013, http://www.nytimes.com/2013/08/12/world/embassies-open-but-yemen-stays-on-terror-watch.html?_r=0 (accessed August 12, 2013).

“Before, we couldn’t necessarily go after a driver for the organization; it’d have to be an operations director,” said the official, who spoke on the condition of anonymity. “Now that driver becomes fair game because he’s providing direct support to the plot.”⁶⁰

Two of those killed were on Yemen’s list of “most-wanted terrorists,” a Yemeni government official told Human Rights Watch.⁶¹ But NBC News reported that most of those killed in the strikes in July and August of 2013 were not high-ranking AQAP members and none of the three alleged AQAP members identified in one strike had “operational significance,” raising further questions about administration’s application of its stated policy:

The military’s roster was delivered to the White House, said [one US] official, along with a message that eliminating the targets—most of whom were lower level militants—was a question of “pain now, or pain later.” The White House could choose between criticism for alleged excessive use of drones or deal with the consequences of sparing the militants.⁶²

Target Approvals

President Obama reportedly reserves the final say over every targeted killing.⁶³ In Yemen, President Hadi has said he personally approves each strike as well.⁶⁴

President Hadi said counterterrorism missions are monitored from a joint operations center in Yemen staffed by military and intelligence personnel from the United States, Saudi Arabia and Oman.

⁶⁰ Ibid.

⁶¹ Human Rights Watch interview with Yemeni government official who spoke on condition of anonymity, September 2013. Further details withheld at interviewee’s request.

⁶² “Why the White House blessed the recent Yemen drone strikes,” NBC News, August 16, 2013, http://investigations.nbcnews.com/_news/2013/08/16/19948299-why-the-white-house-blessed-the-recent-yemen-drone-strikes. A senior US official is quoted making similar comments in Schmitt, “Embassies Open, but Yemen Stays on Terror Watch,” *New York Times*, August 11, 2013, http://www.nytimes.com/2013/08/12/world/embassies-open-but-yemen-stays-on-terror-watch.html?_r=0.

⁶³ Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” *New York Times*, May 29, 2012, <http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all> (accessed October 8, 2013).

⁶⁴ Greg Miller, “In interview, Yemeni president acknowledges approving U.S. drone strikes,” *Washington Post*, September 29, 2012, http://articles.washingtonpost.com/2012-09-29/world/35497110_1_drone-strikes-drone-attacks-aqap (accessed June 10, 2013).

A career military officer, President Hadi has publicly praised drone strikes, describing the remotely piloted vehicles as “more advanced than the human brain.” He acknowledged errant strikes early in the targeted killings campaign, but said that both Yemen and the United States have taken “multiple measures to avoid mistakes of the past.”⁶⁵

“As a military guy, Hadi is terribly impressed with the technology,” one foreign diplomat told Human Rights Watch. But, he added, even if the Yemeni president reviews every strike, “he gives the United States carte blanche” on the final decision.⁶⁶

AQAP Surge and Backlash

Popular discontent with the US airstrikes—evidenced by demonstrations, roadblocks, and confirmed in interviews with scores of Yemeni citizens as well as security analysts, diplomats, and journalists—has generated hostility toward the United States and undermined public confidence in the Yemeni government. Security analysts believe this significantly bolsters the ranks of AQAP.⁶⁷

Gregory Johnsen, a Yemen scholar and AQAP expert, estimates that the number of rank-and-file may have tripled since the United States resumed targeted killings in 2009, from 300 to more than 1,000.⁶⁸

AQAP analysts say the growth may stem from several factors that include a security vacuum in Yemen during the 2011 uprising. And US officials contend that the numbers would be higher if the United States was not actively carrying out attacks. But the backlash against US killings beyond AQAP’s inner circle is most frequently cited as the primary cause of opposition to the strikes.

⁶⁵ Ibid.

⁶⁶ Human Rights Watch interview, New York, May 2013. Details withheld at interviewee’s request.

⁶⁷ Human Rights Watch interviews with AQAP experts including Gregory Johnsen, New York, June 13, 2013; journalist Abdul Razzaq Ahmad al-Jamal, Sanaa, April 24 and May 8, 2013; al-Bokairi, April 24, 2013; and Abdul Salam Muhammad, president, Abaad Studies and Research Center, Sanaa, April 24, 2013, as well as with a Yemeni government official who spoke on background, September 2013.

⁶⁸ Human Rights Watch interview with Johnsen, June 13, 2013. See also Johnsen, “How We Lost Yemen,” Foreign Policy.com, August 6, 2013, http://www.foreignpolicy.com/articles/2013/08/06/how_we_lost_yemen_al_qaeda (accessed October 10, 2013).

The *New York Times* reported in 2012 that the United States was focused on killing or capturing about “two dozen” AQAP operative leaders in Yemen, not an entire domestic insurgency.⁶⁹ Johnsen said that the number of primary US targets may now be down to 10 or 15. On August 5, 2013, the Yemeni authorities released a list of its “most wanted terrorists” that contained 25 names.⁷⁰ A Yemen official said that of those, three had since been detained and two had been killed in drone strikes, reducing the number to 20. According to Johnsen:

A lot of people are dying in those strikes. Yet the head of AQAP is still alive, his military commander is still alive, and its top bomb-maker is still alive. The fallout from all of these deaths is something the US doesn’t seem to quite take into account.⁷¹

Some if not many of those killed by the United States outside AQAP’s core membership may have been fighters in the domestic insurgency against the Yemeni government.⁷² But as a policy matter, such killings risk doing the United States more harm than good by alienating large segments of the Yemeni population.⁷³

Any backlash in Yemen is compounded because even when strikes hit AQAP fighters who may be lawfully targeted in an armed conflict situation, they are usually killing members of tightly knit families and tribes, not fighters from outside their communities. “The United States can target and kill someone as a terrorist, only to have Yemenis take up arms to defend him as a tribesman,” Johnsen said.⁷⁴

⁶⁹ Eric Schmitt, U.S. Teaming With New Yemen Government on Strategy to Combat Al Qaeda,” *New York Times*, February 26, 2012, http://www.nytimes.com/2012/02/27/world/middleeast/us-teaming-with-yemens-new-government-to-combat-al-qaeda.html?_r=0 (accessed June 16, 2013). As previously noted, John Brennan, then President Obama’s chief counterterrorism advisor, said in 2011 that the number of AQAP members the US was targeting “a couple of dozen, maybe.” See Brennan Q&A, <http://www.lawfareblog.com/2011/09/video-of-john-brennans-speech>.

⁷⁰ Government of Yemen press release, August 5, 2013. Copy on file with Human Rights Watch.

⁷¹ Human Rights Watch interview with Johnsen, June 13, 2013.

⁷² For example, some airstrikes launched by the United States apparently killed combatants as they wore suicide vests and were preparing to attack Yemeni military forces. See Scott Shane, “Election Spurred a Move to Codify U.S. Drone Policy,” *New York Times*, November 25, 2012, http://www.nytimes.com/2012/11/25/world/white-house-presses-for-drone-rule-book.html?pagewanted=all&_r=0 (accessed July 20, 2013).

⁷³ Ibid. See also interview with Council on Foreign Relations fellow Micah Zenko, “Have U.S. Drones Become a ‘Counterinsurgency Air Force’ for Our Allies?” *ProPublica*, November 27, 2012, <http://www.propublica.org/article/have-u.s.-drones-become-a-counterinsurgency-air-force-for-our-allies> (accessed August 19, 2013).

⁷⁴ Johnsen, “How We Lost Yemen,” *Foreign Policy.com*, August 6, 2013.

Despite President Hadi's embrace of the strikes, many Yemenis consider them a violation of national sovereignty and note that the Yemeni parliament has never authorized US armed intervention in Yemen.⁷⁵

In July 2013 Yemen's National Dialogue Conference, tasked with drafting the country's new political and constitutional roadmap, called for "criminalizing" under Yemeni law any drone strikes and other killings during counterterrorism operations that violate international law.⁷⁶ That language is multiple steps from being translated into action and would in any case duplicate legal standards already in effect on the international level. Nevertheless, its approval by the conference, which represents a broad spectrum of Yemeni society, suggests the extent of domestic opposition to targeted killings.

AQAP has also been quick to capitalize on that anger. In a 2013 issue of *Inspire* magazine the group wrote that the "real" target of US drones is not terrorism but Islam:

In Yemen, they roam over Muslim houses, terrorizing children, women and the weak. Moreover they bombard "suspected" targets in villages, towns and cities ... without the need to identify the real identity of the target, whether Al-Qaeda or not. ... Obama is declaring a crusade! These missiles have no eyes and their launchers are more blind [sic]. They kill civilians more than *mujahideen*.⁷⁷

Another factor contributing to backlash is that many Yemenis seem to fear the US airstrikes and Yemeni military and police forces more than they fear AQAP.⁷⁸ During the country's 2011 uprising, Yemen's military and police forces killed numerous protesters or otherwise used excessive lethal force against largely peaceful protests. This does not discount the many serious abuses committed against civilians by AQAP and Ansar

⁷⁵ Human Rights Watch interviews with dozens of Yemenis during six visits to Yemen, 2012-13, as well as media reports and interviews with political analysts.

⁷⁶ National Dialogue Conference, "Report on the Results and Recommendations of Phase I" (Arabic), July 8, 2013, p. 31, section 3. Copy on file with Human Rights Watch.

⁷⁷ *Inspire* magazine, Winter 2013, <http://info.publicintelligence.net/InspireWinter2013.pdf> (accessed July 23, 2013).

⁷⁸ Human Rights Watch interviews with dozens of Yemeni citizens during six visits to Yemen, as well as 12 Yemeni and foreign security and policy experts, diplomats, and journalists who track AQAP, Sanaa and Aden, February 2012-May 2013.

al-Sharia. But the available evidence suggests that the vast majority of the hundreds of people killed by AQAP since its inception are members of the Yemeni security forces.⁷⁹

US Long-term Counterterrorism Strategy for Yemen

If the United States considers Yemeni popular support to be important in its operations against AQAP, reducing civilian casualties should be a top priority, regardless of whether the civilian deaths were the result of violations of international law.⁸⁰ The United States learned this lesson after US and NATO airstrikes against Taliban forces killed hundreds of civilians in Afghanistan. As the senior US military commander in that country acknowledged in 2010: “If we kill civilians or damage their property in the course of our operations, we will create more enemies than our operations eliminate.”⁸¹

In his May 2013 speech on counterterrorism policy, President Obama said the next phase of countering violent militancy “involves addressing the underlying grievances and conflicts that feed extremism.”⁸²

Several Yemeni and Western political analysts and civil society activists who spoke to Human Rights Watch concur, arguing that any counterterrorism strategy in Yemen also requires a sustained commitment to addressing the factors that make the country fertile ground for violent militancy. That means fostering democracy and a more accountable government, and increasing access to basics such as water, health, education, and jobs.⁸³

“The United States doesn’t need drones to fight AQAP,” said Nashwan al-Othmani, an Aden-based journalist and political activist. “Just bread and cheese.”⁸⁴

⁷⁹ See, e.g., Critical Security Threats, “AQAP and Suspected AQAP Attacks in Yemen Tracker,” May 12, 2012, <http://www.criticalthreats.org/yemen/aqap-and-suspected-aqap-attacks-yemen-tracker-2010>.

⁸⁰ See “International Law and US Policy” chapter of this report for details on US international legal obligations for targeted killings.

⁸¹ Commander of International Security Assistance Force (ISAF), Refined Counterinsurgency (COIN) Guidance, August 1, 2010, <http://natolibguides.info/counterinsurgency/documents> (accessed August 19, 2013).

⁸² “Remarks by the President at the National Defense University,” May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (accessed May 23, 2013).

⁸³ See, e.g., Letter to President Obama on Yemen, coordinated by the Hariri Center for the Middle East at the Atlantic Council and the Project on Middle East Democracy signed by 30 foreign policy experts, March 26, 2013, <http://pomed.org/wordpress/wp-content/uploads/2012/06/Yemen-Policy-Initiative-Letter-to-Obama-6-25-12.pdf>

⁸⁴ Human Rights Watch interview with Nashwan al-Othmani, Aden, May 3, 2013.

But social and economic issues are only part of the equation if they ignore the political grievances and government repression that also fuel support for militancy. The United States and other concerned governments should press the Yemeni government to adopt measures to end human rights violations by all government and allied forces and hold perpetrators to account.

In 2012, the US government for the first time provided more development assistance than overt security assistance to Yemen—\$198 million US for economic and humanitarian aid compared to \$158 million for counterterrorism and other security assistance.⁸⁵ At the same time, the United States continued to support a blanket amnesty for former president Saleh and all his aides for any political crimes they may have committed during Saleh’s 33-year presidency—part of a deal to usher Saleh out of power, while continuing targeted killings in Yemen. In mid-2013, the United States also predicted that the war on terrorism would continue for years.⁸⁶

⁸⁵ US State Department, “Fact Sheet: U.S. Assistance to Yemen,” March 7, 2013, <http://www.state.gov/r/pa/prs/ps/2013/03/205816.htm>.

⁸⁶ Karen DeYoung, “Policy on drone strike authorization doesn’t need to change, Defense official says,” *Washington Post*, May 16, 2013, http://articles.washingtonpost.com/2013-05-16/world/39310141_1_drone-strikes-sheehan-aumf (accessed July 29, 2013).

II. Case Studies

1. Wessab: Strike on Alleged Local AQAP Leader

On April 17, 2013, two US drones flying over Wessab, a remote district perched on some of Yemen's highest mountains, fired at least three Hellfire missiles at a car carrying an alleged local AQAP leader, Hamid al-Radmi, also known as Hamid al-Manea or Hamid Meftah.⁸⁷ The attack killed al-Radmi, his driver and two bodyguards.⁸⁸

Government officials described al-Radmi as a local AQAP leader and recruiter. He spent a decade in prison—four years starting in 1995 for killing his cousin, and six years starting in 2004 on a terrorism-related conviction.⁸⁹ One friend said al-Radmi was among the many Yemenis who traveled to Iraq to



Zainab Yahya Nasser al-Salf holds a photo of her son Hamid al-Radmi, an AQAP suspect and former military officer who was killed in a drone strike in Wessab on April 17, 2013. © 2013 Farea al-Muslimi for Human Rights Watch

⁸⁷ A consultant for Human Rights Watch visited the site of the attack in Wessab on June 11 and 12, 2013, and interviewed 25 residents about the incident. The consultant, Farea al-Muslimi, is from Wessab and testified in April 2013 about the attack during a hearing on targeted killings before the US Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights. See Farea Al-Muslimi, Written Testimony to the Senate Judiciary Committee, April 23, 2013, www.judiciary.senate.gov/pdf/04-23-13Al-MuslimiTestimony.pdf, and (Oral) Testimony of Farea al-Muslimi, YouTube, www.youtube.com/watch?v=JlbowMfOFhw (accessed July 23, 2013).

Those interviewed included two local security officials and relatives of three of those killed. Human Rights Watch also examined the wreckage of the strike, reviewed numerous media articles and video clips, and spoke with 10 political analysts, security experts, journalists and diplomats in Sanaa between April 20 and May 8 about al-Radmi's killing.

⁸⁸ Yemeni and international media mistakenly reported five deaths at the time of the strike but subsequently revised the toll to four, which local residents confirmed.

⁸⁹ Human Rights Watch interviews with 25 residents of Wessab including two of al-Radmi's relatives and two local security officers, Wessab, June 11-12, 2013. Relatives and friends said al-Radmi thought his cousin was an intruder and accidentally shot him in the dark.

support domestic insurgents following the US-led invasion of that country in 2003.⁹⁰

At the same time, he was one of Wessab's most influential figures, moving openly throughout the area. Al-Radmi met regularly with security officials at government offices just a few minutes' walk from his house and was returning with a local official from a meeting an hour's drive from his home when he was killed.⁹¹

The nature of al-Radmi's alleged involvement with AQAP, possibly not involving any operational military role, raises questions about the lawfulness of the attack under the laws of war. Participating in recruiting would not in itself make an individual subject to attack.

Killed Near Government Building

Al-Radmi was killed as his vehicle approached the outskirts of his village, Mathab, after mediating local disputes in the community of Bani Hafs. Around 8:30 p.m., at least two missiles struck al-Radmi's four-wheel drive vehicle, instantly killing al-Radmi, 35; his driver Akram Ahmed Hamoud Daer, 20; and a bodyguard, Ismail al-Magdishi, 28. A second bodyguard, Ghazi al-Emad, 28, died later that night from his injuries.⁹²

Residents said they saw two drones overhead at the time of the strike and that a third drone flew in immediately after the attack.⁹³ Human Rights Watch found the damage to al-Radmi's four-by-four consistent with a drone strike and identified the remnants of the weapons launched as Hellfire missiles.⁹⁴

The website of Yemen's newspaper *26 September*, a mouthpiece for the Ministry of Defense, confirmed an "airstrike" against al-Radmi but did not say what weapons or forces

⁹⁰ Human Rights Watch interview with Qaed al-Farimi, Bani al-Hadad, Wessab, June 11, 2013.

⁹¹ Human Rights Watch interviews with 25 residents of Wessab including two of al-Radmi's relatives and two local security officers June 11-12, 2013. See also Nasser Arrabyee, " 'Democracy' in spite of the people," Al-Ahram Weekly, May 1, 2013, <http://weekly.ahram.org.eg/News/2435/19/%E2%80%98Democracy%E2%80%99-in-spite-of-the-people.aspx> (accessed July 20, 2013).

⁹² Human Rights Watch confirmed the identities of those killed during interviews with Wessab residents, June 11-12, 2013.

⁹³ Human Rights Watch interviews with Wessab residents, June 11-12, 2013.

⁹⁴ Human Rights Watch analysis of photos and videos taken at the scene in the immediate aftermath of the attack. Copies of the photos and videos on file with Human Rights Watch. Human Rights Watch confirmed the accuracy of the location and the damage shown on the video during its visit to Wessab. One of the videos, titled "رحمه الخونه ايدي علي الرديمي حميد الشيخ الشهيد البطل مقتل" ("Murdered Sheikh Hamud al-Radman at the hands of traitors, God's mercy," with the name and company of the person who posted the video, shows the attack site and the damage to the vehicle: <http://www.youtube.com/watch?v=Xti4RZXiRKQ> (accessed July 24, 2-13).

were involved.⁹⁵ An official with Yemen's Minister of Interior, whose name was not published, told China's Xinhua news agency that the strike involved two missiles launched from an "unmanned warplane" and that it was "a joint military operation" involving "Yemeni, US and Saudi intelligence services."⁹⁶

Drones had been sporadically hovering over Wessab since al-Radmi's return to his village in 2011. Still, some residents initially thought they were hearing an explosion related to construction of the area's first paved road. Running outside after the first blast, villagers saw at least one more missile fly toward the area of the strike.⁹⁷

At that point, scores of villagers began rushing down a winding dirt road toward the flaming vehicle. As they approached, they saw al-Radmi's charred body half ejected from the vehicle, two other charred corpses inside, and a fourth man outside the car. Ahmad Hamoud Qaed Daer, the father of al-Radmi's driver, was among those first at the scene. He told Human Rights Watch:

The fire was high; no one dared get close and the planes [drones] were hovering above. I also heard someone saying, "I'm Ghazi al-Emad, please help me." I couldn't do anything.... It was dark and there was a lot of smoke. There was no moon and I didn't even have a flashlight. I saw my son, charred, in the front seat. ... I didn't even know that he was driving for Hamid that day.⁹⁸

A third drone appeared, residents said, increasing the panic. Some villagers tried to brave the fire to rescue Emad, including Shafiq Muhammad al-Magdishi, the brother of the other bodyguard killed in the strike:

⁹⁵ "Al-Qaeda Leader (al-Radmi) Killed in Upper Wessab", *26 September*, April 17, 2013, http://26sep.net/news_details.php?lng=arabic&sid=90813 (accessed July 21, 2013).

⁹⁶ "US drone strike kills 5 al-Qaida militants in central Yemen," Xinhua, April 18, 2013, <http://www.globaltimes.cn/content/775802.shtml#.UevhNYVugZq> (accessed July 21, 2013).

⁹⁷ Twenty-five residents told Human Rights Watch in interviews on June 11-12, 2013, that they heard or saw and heard three drones the night of the attack, with the third drone arriving after the strike. Eight witnesses told Human Rights Watch that they heard the first explosion and upon running outside saw at least one missile launched, and the third drone enter the area.

⁹⁸ Human Rights Watch interview with Ahmad Hamoud Qaed Daer, Maghrbat Doma, Wessab, June 12, 2013.

His [Emad's] legs were cut off from the knee down and there was a lot of blood coming from his mouth. We saw later that his stomach was bleeding as well and his eyes were burned. He couldn't open them and was blinded. He was screaming and then his voice slowly dropped. It became lower, lower, and lower until he couldn't talk.⁹⁹

Qaed al-Farimi, a prominent resident of Wessab and friend of al-Radmi's, said the blast "terrorized the people," stoking anger:

People were going to their roofs and screaming ... and cursing, "Who is this bombing at night? [Expletive] his father!" They [the blasts] terrified even children and women. Some ran out of their houses and some ran to the basements to hide where their cows live because of the fear.¹⁰⁰

Even the second day, the planes [drones] were there until we buried them. I swear by Allah if we had had weapons, not a single plane would leave. We would take them down because they terrified the village.¹⁰¹

"I Could Have Arrested Him"

Al-Radmi reportedly commanded the loyalty of many armed men and lived in a fortress-like house atop a steep cliff. Even so, residents and security officials said he could have been arrested at any time after he returned to Wessab in 2011 upon his release from prison.¹⁰²

"He was in my office all the time and I could even have gone to his house to arrest him," said one ranking security officer in Wessab who knew al-Radmi. The official, who spoke on condition of anonymity, said he had never received any order for al-Radmi's arrest. A second local security official echoed those comments.¹⁰³

⁹⁹ Human Rights Watch interview with Shafiq Muhammad al-Magdishi, al-Dan, Wessab, June 11, 2013.

¹⁰⁰ Human Rights Watch interview with al-Farimi, June 11, 2013. The use of expletives is not common in Yemen, underscoring the high level of anger and fear following the attack.

¹⁰¹ Ibid. Al-Farimi and other Wessab residents referred to the aircraft used in the strike as "planes." When asked what kind of planes they were referring to, all said "drones." Al-Farimi said he recognized drones because he had seen videos of them on television and because they had been hovering over Wessab for months.

¹⁰² See also Arrabyee, "'Democracy' in spite of the people," *Al-Ahram Weekly*, May 1, 2013.

¹⁰³ Human Rights Watch interviews with two security officials, al-Dan, Wessab, June 11, 2013. The officials spoke on condition of anonymity.

Al-Radmi traveled only with a driver when he went to local government offices, less than one kilometer from his house, and even went to the local courthouse to intercede on behalf of residents, a friend said.¹⁰⁴ Al-Radmi's mother also said that local government offices were "next to us and he used to go there all the time."¹⁰⁵

So open were al-Radmi's movements that on the day he was attacked he had attended a qat chew with Mojahed al-Mosanif, the secretary-general of the Wessab government council, at a village an hour's drive away where he was helping solve local disputes, residents said.¹⁰⁶ Al-Radmi and al-Mosanif also performed the *Maghrib* prayer together immediately after sunset, they said. When al-Radmi's four-by-four was struck, al-Mosanif's car was directly behind him. In addition, al-Radmi had been scheduled to meet three days after his death with the governor of Dhamar, the province that includes Wessab, to discuss local grievances.¹⁰⁷

A Yemeni government official with knowledge of the strike, speaking on condition of anonymity, denied that al-Radmi could readily have been captured. Speaking of both al-Radmi and Adnan al-Qadhi, another alleged AQAP chief who was killed in a drone strike, the official said that in cases where the government has moved in armed forces to rout AQAP, they often are defeated:

They [al-Radmi and al-Qadhi] had strong tribal ties and the government is in no position to capture them or physically hold them for a while. The state is too weak right now. So what do you do? The easiest option is, you take them out. Because they are actively recruiting.¹⁰⁸

Some residents suggested al-Radmi may have been killed because of his prominence or because he challenged local authorities. A week before the deadly strike, al-Radmi called

¹⁰⁴ Human Rights Watch interview with al-Farimi, June 11, 2013.

¹⁰⁵ Human Rights Watch interviews with al-Radmi's brother Muhammad Ali Radman al-Radmi and mother Zainab Yahya Nasser al-Salf, Mathlab, June 12, 2013.

¹⁰⁶ Qat is a mild stimulant. Qat chewing is legal and one of the main social activities in Yemen.

¹⁰⁷ Human Rights Watch interviews with Wessab residents, June 11-12, 2013.

¹⁰⁸ Human Rights Watch interview with Yemeni government official, September 2013. Adnan al-Qadhi's killing is the subject of the "Beit al-Ahmar" chapter of this report.

on local officials to spend more revenues on public works and services, according to one friend, and “argued with them.”¹⁰⁹

Relatives said that had authorities sought their help, they would have turned al-Radmi over to them. Relatives play an important role in administering justice in Yemen’s tightly knit family and tribal system.¹¹⁰

One cousin, an elderly farmer named Muhammad Ali Saleh, said the killing turned al-Radmi into a martyr:

They should have taken him to court, brother. Charge him and keep him in prison and even hang him there up and down every day but not kill him like that if he committed a crime. Now people are crying about him everywhere. What does that accomplish?¹¹¹

Al-Radmi and AQAP

There are conflicting accounts of al-Radmi’s relationship with AQAP. Yemeni government officials called him a local AQAP “leader” who started a cell for the group upon returning to his home village of Mathlab, in Wessab district, with his wife and young son in 2011.¹¹² “He was building an AQAP mini-militia on the mountain,” the Yemeni government official with knowledge of the strike told Human Rights Watch.¹¹³ Nasser Arrabyee, a Yemeni journalist from Wessab, reported that while in prison al-Radmi met Qasim al-Raymi, who went on to become the military commander of AQAP.¹¹⁴ Security officials said al-Radmi

¹⁰⁹ Human Rights Watch interview with friend of al-Radmi, Wassab, June 11, 2013. Human Rights Watch is withholding the name of the interviewee to protect him or her from retaliation.

¹¹⁰ See, e.g., Nadwa al-Dawsari, *Tribal Governance and Stability in Yemen*, Carnegie Endowment for International Peace, April 24, 2012, <http://carnegieendowment.org/2012/04/24/tribal-governance-and-stability-in-yemen/aghk#>, and “Al Qaida suspects surrender in south Yemen,” Agence France-Presse, October 27, 2010, <http://gulfnews.com/news/gulf/yemen/15-al-qaida-suspects-surrender-in-south-yemen-1.702098> (both accessed September 12, 2013).

¹¹¹ Video of Muhammad Ali Saleh, a cousin of al-Radmi, speaking on May 17, 2013 to a crowd in Bait al-Yahoodi, a hamlet in Wessab near the site of the strike, taken by Wadah al-Qadhi. Copy on file with Human Rights Watch.

¹¹² See “Yemen militants killed in U.S. drone strike: government official,” Reuters, April 17, 2013, <http://news.yahoo.com/yemen-militants-killed-u-drone-strike-government-official-215802781.html> and “Five Dead in Suspected Yemen Drone Strike,” Australian Associated Press, April 18, 2013, <http://www.heraldsun.com.au/news/breaking-news/five-dead-in-suspected-yemen-drone-strike/story-e6frf7k6-1226623174250> (both accessed July 16, 2013).

¹¹³ Human Rights Watch interview with Yemeni government official, September 2013. Human Rights Watch is withholding further details at the interviewee’s request.

¹¹⁴ The Yemeni authorities have repeatedly claimed Qasim al-Raymi was killed in a drone strike but local journalists said he is still alive and appeared at an AQAP ceremony attended by media in 2012.

helped hide wounded AQAP fighters in Wessab's rugged mountains when they fled southern Abyan in mid-2012.¹¹⁵

In 2012, local authorities searched al-Radmi's home after he was rumored to around his house," said al-Farimi, the prominent resident who was al-Radmi's friend. Al-Radmi was "cooperative," according to the ranking security officer. The authorities found no weapons apart from four Kalashnikov assault rifles, said the security officer and al-Farimi, who was part of the search committee.¹¹⁶ Possessing four assault rifles "is a normal thing here," the security official said.¹¹⁷ Indeed, a household arsenal of that kind is not unusual in Yemen, the world's second-most armed country after the United States.¹¹⁸

Several AQAP experts told Human Rights Watch they were not aware of al-Radmi being a military commander or otherwise playing a role in military operations for AQAP.¹¹⁹ One acquaintance said al-Radmi received 60,000 Yemeni rials (US\$280) per month from the group—a modest wage even in



A recent photo of Hamid al-Radmi. © 2013 Mareb Press

¹¹⁵ Nasser Arrabyee, "Yemen 'Tora Pora' [sic] under fire of US drones for first time," blog, April 4, 2013, <http://narrabyee-e.blogspot.com/2013/04/yemen-tora-pora-under-fire-of-us-drones.html> (accessed June 10, 2013), and " 'Democracy' in spite of the people," *Al-Ahram Weekly*, May 1, 2013.

¹¹⁶ Human Rights Watch interview with al-Farimi and a Wessab security official, June 11, 2013.

¹¹⁷ Human Rights Watch interview with Wessab security official, June 11, 2013.

¹¹⁸ In 2007, Yemen's 22 million citizens possessed approximately 11 million firearms, but the number could be as low as 6 million or as high as 17 million, according to Small Arms Survey, the Geneva-based independent arms monitoring group. Yemen's current population is 25 million. See Small Arms Survey, *Fault lines: Tracking armed violence in Yemen*, May 2010, p. 5 and footnote 64, <http://www.smallarmssurvey.org/focus-projects/yemen-armed-violence-assessment.html> (accessed July 20, 2013). Article 9 of Law No. 40 of 1992, On Regulating Carrying Firearms and Ammunitions and Their Trade, establishes the right to own firearms for self-defense.

¹¹⁹ Human Rights Watch interviews with five AQAP experts in Sanaa and New York, April-June 2013.

impoverished Yemen.¹²⁰ Being solely an AQAP recruiter without a direct military role would not make him subject to attack.

The Yemeni government official told Human Rights Watch that “it is not clear in some cases,” including those of al-Radmi and al-Qadhi, whether the targets of US strikes “are actually military commanders or operators of attacks. But they recruit openly, openly.”¹²¹ “Striking is not the most ethical position” in some of these cases, the official said. “But if you don’t strike them, will they recruit more? That is the debate.”

Whatever his role, al-Radmi did not advertise it, in contrast to top AQAP leadership who regularly pen articles or appear in videos. The majority of residents whom Human Rights Watch interviewed in Wessab said they had no idea that al-Radmi was a suspected AQAP member until he was killed.

Before he was imprisoned, al-Radmi had been an officer in Yemen’s Republican Guard, the now-disbanded military unit that had been commanded by former president Saleh’s son Ahmed Ali Saleh.¹²² He was reputed to be friendly with ranking members of the General People’s Congress, the party founded and still headed by the former president.¹²³

Most residents of Upper Wessab, the area of the township where al-Radmi lived, are subsistence wheat farmers and shepherds whose remote mountain villages have no electricity and few services. Residents describe the area as “forgotten” by central authorities: as noted above, Wessab’s road to the rest of the province was being paved for the first time at the time of al-Radmi’s death, and the last high-level visit was a campaign stop by a provincial official in 2003.¹²⁴

¹²⁰ Human Rights Watch interview with a friend of al-Radmi’s, Wessab, June 11, 2013.

¹²¹ Human Rights Watch interview with Yemeni government official, September 2013. Human Rights Watch is withholding further details at the interviewee’s request.

¹²² President Hadi ordered the Republican Guard disbanded in December 2012; the process was completed weeks before al-Radmi’s death.

¹²³ Human Rights Watch interviews with local residents, Wessab, June 11-12, 2013.

¹²⁴ Farea al-Muslimi, “My Village was Attacked by US Drones in Yemen,” *Al-Monitor*, April 18, 2013, <http://www.al-monitor.com/pulse/originals/2013/04/yemen-village-drone-attack-wessab.html> (accessed April 18, 2013).

Al-Radmi quickly filled the governance vacuum, gaining prominence as a mediator of disputes over issues such as property boundaries and water use.¹²⁵ Residents gathered “day and night” at al-Radmi’s house to seek his counsel and several were awaiting him there at the time he was killed, one friend said.¹²⁶

AQAP’s offshoot Ansar al-Sharia also sought to provide assistance to inhabitants of areas it controlled in Abyan in 2011-12, but al-Radmi did not reject government authority; instead he intervened openly and directly with local and provincial officials on residents’ behalf.

No Compensation

If al-Radmi were not a valid military target, the guards traveling with him would not have been valid military targets either: there is no evidence that they themselves were AQAP fighters.

Al-Magdishi said his brother, a father of three, had been accompanying al-Radmi for some quick cash while awaiting answers on jobs he’d applied for elsewhere in the Gulf.¹²⁷

Daer said his son, whose wife had just given birth to their first child, was driving for al-Radmi temporarily in the hope that in return al-Radmi would help him get into a military academy in Sanaa.¹²⁸

The relatives said they had not received any compensation from the US or Yemeni authorities after their deaths.¹²⁹

¹²⁵ Ibid.

¹²⁶ Human Rights Watch interview with al-Farimi, June 11, 2013.

¹²⁷ Human Rights Watch interview with al-Magdishi, June 11, 2013.

¹²⁸ Human Rights Watch interview with Daer, June 12, 2013.

¹²⁹ Human Rights Watch was not able to reach relatives of the second bodyguard, Ghazi al-Emad.

2. Al-Masnaah: Attack on Low-Level Militants



Hussain Jamil al-Qawli (left) holds a photo of his son Salim al-Qawli, 20; and Muhammad al-Qawli holds a photo of his brother Ali al-Qawli, 34. Salim and Ali al-Qawli were killed in a drone strike in al-Masnaah on January 23, 2013. © 2013 Letta Tayler/Human Rights Watch

On January 23, 2013, one or more missiles launched from a drone killed four people traveling in a sports utility vehicle (SUV) on a back road toward the town of Sanhan, about 20 kilometers southeast of Sanaa. Two of the passengers were alleged AQAP members. Neither was believed to be of high rank.¹³⁰ The other two men in the vehicle were cousins who by all accounts were civilians.

¹³⁰ Human Rights Watch interviewed four relatives of the two civilians killed, including two who were with the victims immediately before the strike. We also interviewed three Yemeni journalists and three political analysts about the attack, and reviewed photos of the ordnance and wreckage from the scene.

Depending on the military importance of the two targeted AQAP members, under the laws of war the strike on the vehicle may have caused disproportionate harm to civilians.

The missiles struck a Toyota Hilux SUV in the village of Masnaah, about five kilometers outside of Sanhan, at approximately 8:10 p.m., destroying the vehicle. The driver and all three passengers were killed. Multiple media reports identified two of the men as alleged AQAP members Rabee Hamoud Lahib and Naji Ali Saad. The other two men in the vehicle were Ali al-Qawli, 34, an elementary-school teacher and father of three, and his cousin Salim al-Qawli, 20, a college student who drove the borrowed Toyota as a car service to earn money for his family.¹³¹

A Human Rights Watch examination of photos of remnants of the ordnance and wreckage found the damage consistent with Hellfire missiles launched from a drone. Relatives of the killed civilians said they heard the whirr of drones—“like a big generator”—around the time of the attack.¹³² Yemeni officials, speaking anonymously to local and international media at the time, also identified the attack as a drone strike.¹³³

The al-Qawli cousins had traveled that afternoon with five friends and relatives from their hometown of Khawlan to Jihana, a nearby town that is a provincial transit hub, to chew qat. Around 7 p.m., they headed towards the parking lot of the central *souk* (market), which is also an area where drivers offer public transport. As they sat in the Toyota, the two cousins were approached by two strangers who offered them 10,000 rials (US\$47) to take them to Sanhan, another town about 10 kilometers and a 45-minute drive from Jihana, according to two other relatives who were with the cousins at the time.¹³⁴

Salim al-Qawli had been driving the Toyota, which belonged to an uncle, to earn money for his parents, seven siblings, and a grandfather who required costly medical care for a heart attack and dementia, said his uncle Muhammad al-Qawli.¹³⁵

¹³¹ Human Rights Watch interviews with Muhammad al-Qawli, brother of strike victim Salim al-Qawli, and Hussain Jamil al-Qawli, father of strike victim Ali al-Qawli, Sanaa, September 23, 2013.

¹³² Ibid.

¹³³ “U.S. drone strike kills four suspected militants, one civilian in Capital,” *Yemen Observer*, January 26, 2013, <http://www.yobserver.com/front-page/10022401.html> (accessed July 23, 2013). In early reports, many media erroneously reported at least five dead and described most as “militants.”

¹³⁴ Human Rights Watch interviews with Abdullah Ahmad Jamil, 26, and Abdullah Ahmad Muhammad Saleh Jamil al-Qawli, relatives of the two al-Qawli cousins killed in the strike, Sanaa, April 26, 2013.

¹³⁵ Human Rights Watch interview with Muhammad al-Qawli, April 23, 2013.

The two relatives who overheard the conversation with the strangers said Salim al-Qawli jumped at the offer of a generous fare. The two strangers were wearing civilian clothes. Each carried a Kalashnikov, “but that is normal for people in this area,” said Abdullah Jamil al-Qawli, one of the relatives. The two strangers did not want anyone else to join them in the car, saying they were picking up other passengers en route. Around 8:10 p.m., as the al-Qawlis’ friends and relatives waited in Jihana for the cousins to return to bring them home, they heard an explosion that sounded like an airstrike.

Muhammad al-Qawli, the father of Ali al-Qawli, learned that his nephew and son were killed in the strike after a relative called him from the site and told him the vehicle’s tags were from 1982:

He [the relative] said, “The bodies are so charred I can’t recognize them.” I called the relative who owned the vehicle and asked, “What year is your car?” He said, “It’s a 1982.” He told me, “Ali and Salim took a fare to Sanhan and I am waiting for them to return.” That’s when I went into shock.¹³⁶

Muhammad al-Qawli and other relatives drove to the site of the strike. There, he said, they found a horrific scene:

Many villagers were surrounding the car. The car was still burning. Body parts were spread across the area. Security forces came, the police and the Central Security Forces [which at the time operated a US-funded and trained Counter-Terrorism Unit]. All they did was remove the license plate of the car and take some photos and then they left. They did not even set up a roadblock. The bodies were burned like animals and none of them even attempted to help. I screamed, “Guys, be human!” and started throwing sand at the fire.¹³⁷

Muhammad al-Qawli and Hussain Jamil al-Qawli began crying as they told Human Rights Watch how relatives only recognized Ali al-Qawli by his teeth and Salim al-Qawli by a patch on his pants, which were still on one leg that was severed from his body.¹³⁸

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Human Rights Watch interview with Muhammad al-Qawli and Hussain Jamil al-Qawli, September 23, 2013.

The sports utility vehicle that was hit in a drone strike in al-Masnaah on January 24, 2013, killing two alleged AQAP members and two civilians. © 2013 al-Qawli family



Government Response

When the al-Qawlis' relatives returned the next day to try to retrieve the bodies, they found them gone—the authorities had taken them to Sanaa. Enraged, about 200 residents from the cousins' hometown and surrounding areas blocked roads for two days, refusing passage to all government vehicles.

The response of Abd al-Ghani Jamil, the governor of Sanaa province—which includes the site of the strike in al-Masnaah—was an offer and a threat, according to Muhammad al-Qawli:

Abd al-Ghani Jamil said, “Either you accept \$20,000 [US] for each body or we will call them al-Qaeda.” We got the bodies back in return for lifting the roadblock. We buried them and after that no one [from the government] asked us about them anymore. If they gave out the money it must have gone to tribal leaders as we did not receive a penny.¹³⁹

The brother and father showed Human Rights Watch a letter, dated February 9, 2013 from Yemen's Interior Ministry, saying the two al-Qawli cousins were innocent. Salim and Ali al-Qawli “did not have any knowledge of or contact with the individuals who asked for a ride, but they happened to die alongside [them],” the letter said.¹⁴⁰ The relatives said that was all they ever received from the government.

¹³⁹ Human Rights Watch interview with Muhammad al-Qawli, September 23, 2013.

¹⁴⁰ A copy of the Ministry of Interior letter is on file with Human Rights Watch.

The relatives said they later heard from well-placed sources that the two AQAP suspects were coming from Mareb, a province to the east, where they had attended a funeral for alleged AQAP members killed in a separate targeted killing.

Lahib reportedly had survived a drone strike the previous November that killed an AQAP suspect and his bodyguard in Beit al-Ahmar, a village about 10 kilometers from al-Masnaah. He was reportedly involved in detaining an 8-year-old boy and his father for AQAP, which subsequently released a video in which the two allegedly “confessed” to setting up the Beit-al-Ahmar strike.¹⁴¹ A Swedish journalist who investigated the attack wrote that Lahib lived in a village an hour’s drive from the capital and traveled every other day to Sanaa, passing military checkpoints en route. It is not clear why Yemeni forces did not capture him at a checkpoint on his frequent trips into Sanaa.¹⁴²

Asked if their views of the United States had changed as a result of the attack, Muhammad al-Qawli replied: “We respect the US people but we hate the US government very much. We want a US or international trial into what happened to Ali and Salim.”¹⁴³

¹⁴¹ See “Beit al-Ahmar” chapter for details on that strike.

¹⁴² Daniel Ohman and Lotten Collin, “Innocent people are killed in US drone attacks,” Sverigesradio, March 22, 2013, (<http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=5481640>) accessed July 23, 2013).
¹⁴³ Human Rights Watch interview with Muhammad al-Qawli, April 23, 2013.

3. Beit al-Ahmar: Strike on Local Leader, Child Detained

“Would the Americans accept it if a Yemeni warplane came and killed Americans without any judicial process?”

– Himyar al-Qadhi, brother of Adnan al-Qadhi, who was killed in a drone strike in November 2012

On November 7, 2012, a drone strike killed Adnan al-Qadhi, a 40-year-old tribal leader and a lieutenant colonel in an elite Yemeni military unit, as he was standing in front of his car in his hometown of Beit al-Ahmar. The strike also killed one of al-Qadhi’s bodyguards.

The attack raises concerns under the laws of war about whether al-Qadhi was a valid military target and whether Yemeni military officials unlawfully used a child to facilitate the attack.

There was little doubt of al-Qadhi’s sympathies: one side of his house in Beit al-Ahmar bore a giant black AQAP flag. Moreover, AQAP released a video in April 2013 depicting al-Qadhi as a “martyr.” At times al-Qadhi negotiated with AQAP on behalf of local tribes and the Yemeni government.

AQAP responded to the killing by capturing and detaining a Yemeni soldier and his 8-year-old son who AQAP claims were involved in the airstrike. The group issued a video in April 2013 in which the father and son “confessed” that three



Adnan al-Qadhi, a lieutenant colonel in Yemen’s First Armored Division and alleged AQAP member, was killed in a drone strike in Beit al-Ahmar on November 7, 2012. © Private

government military officers recruited the boy to plant an electronic tracking device on al-Qadhi. At the time of writing, neither father nor son had been released and there were grave concerns for their safety.

His Last Word was “Marhaba!” (“Hello!”)

A missile killed al-Qadhi at approximately 6:45 p.m. as he was standing outside his car on a hilltop, talking to his wife on his cellphone after eating dinner at a nearby farmhouse.

“His wife heard his last word, ‘*Marhaba!*’ [Hello!],” his brother Himyar al-Qadhi told Human Rights Watch. “He always said ‘*Marhaba*’ when he was surprised.”¹⁴⁴

Witnesses said one drone was circling overhead and a second drone arrived shortly before the attack. Photos of the remnants examined by Human Rights Watch were those of Hellfire missiles, consistent with a drone strike. Yemeni and international security media also described the attack as a drone strike.¹⁴⁵ The attack could not have been carried out by Yemeni forces because, as President Hadi confirmed in 2012, Yemeni air force jets cannot fly at night.¹⁴⁶

Al-Qadhi died instantly. His friend and bodyguard Radwan al-Hashidi, a local sheikh who was sitting in the front seat, was pronounced dead on arrival at a nearby hospital.¹⁴⁷ Rabee Hamoud Lahib, a suspected AQAP member, had been traveling in the car earlier but missed the attack.

Arafat Ali Maqsa, a resident of Beit al-Ahmar, was driving home from a wedding when he heard the explosion:

¹⁴⁴ Human Rights Watch interview with Himyar al-Qadhi, Sanaa, April 20, 2013. *Marhaba* literally means “God’s love” but in Arabic is used as to say “Hello” or “Welcome.”

¹⁴⁵ See, e.g., “MPs demand to issue explicit attitude towards US drones,” *Yemen Post*, November 13 2012 (accessed July 21, 2013). One Yemeni official described the attack as “a Yemeni-U.S. joint airstrike operation,” but another official said that “the raid was not carried out by any Yemeni warplane. See “US drone strike near Yemeni capital kills AQAP commander,” *The Long War Journal*, November 8, 2012,

http://www.longwarjournal.org/archives/2012/11/us_drone_strike_near.php#ixzz2ZnHQ5SCf.

¹⁴⁶ Scott Shane, “Yemen’s Leader Praises U.S. Drone Strikes,” *New York Times* September 29, 2012, http://www.nytimes.com/2012/09/29/world/middleeast/yemens-leader-president-hadi-praises-us-drone-strikes.html?_r=0 (accessed July 20, 2013).

¹⁴⁷ Human Rights Watch interviews with four relatives and one witness, Sanaa, April 20 and 24, 2013.

The force of the blast was so powerful that my car trunk shook even though I was still about 400 meters away. I saw smoke. I thought it was a gas explosion. What I saw next was unimaginable. Adnan was dead. His friend was hit by metal fragments in his mouth. He was still speaking when we arrived. As we took him out of the car he breathed his last.¹⁴⁸



Himyar al-Qadhi holds remnants of a Hellfire missile that killed his brother, Adnan al-Qadhi, in Beit al-Ahmar.
© 2013 Farooq al-Sharani

Lieutenant Colonel and AQAP Sympathizer

By all accounts, al-Qadhi moved freely within elite political and military circles even as he retained ties with AQAP.

¹⁴⁸ Human Rights Watch interview with Arafat Ali Maqsa, Sanaa, April 24, 2013.

Al-Qadhi served more than two decades in the First Armored Division, one of the country's elite military units until its disbandment in 2013. He held the rank of lieutenant colonel and was receiving 125,000 Yemeni rials (US\$583) a month in military pay at the time of his death, Himyar al-Qadhi said. The son of a prominent family, he knew former president Saleh, whose palace is in his Beit al-Ahmar neighborhood, and, like the president, was a member of the powerful Sanhan tribe. His cousin, Muhammad al-Qadhi, is a member of parliament. Before joining the First Armored Division, al-Qadhi was among hundreds of Yemenis who fought in Afghanistan during the 1980s alongside the CIA-backed *mujahideen*.¹⁴⁹

Even as he moved in high-level government circles, al-Qadhi was widely viewed as an AQAP sympathizer and possible recruiter. Abd-al-Razzaq Ahmad al-Jamal, a Yemeni journalist who is an expert on AQAP, interviewed al-Qadhi 20 days before his death:

Adnan invited many members of Ansar al-Sharia [an offshoot of AQAP] as guests to his house. When I asked him if he was a member of AQAP he said, "This is an honor I do not have." But I think he just wanted to be humble. AQAP in their video [about his death] recognized him as a member.¹⁵⁰

Al-Jamal said that he did not believe al-Qadhi played an operational military role with AQAP. Not only is there no evidence of al-Qadhi fighting on behalf of AQAP, in January 2012 he played a key role in negotiating AQAP's retreat from the central Yemeni city of Radaa, which AQAP fighters had seized days earlier. Al-Qadhi led a 20-member tribal delegation to persuade AQAP's Radaa leader, Tariq al-Dahab, to withdraw. Himyar al-Qadhi told Human Rights Watch:

Adnan told Tariq al-Dahab, "Listen, we know that the government is not being fair, we know that people here are being oppressed. But you have to get out of Radaa because if you don't the Americans will take control of our weak government."¹⁵¹

¹⁴⁹ See the "Yemen and Al-Qaeda" chapter of this report for more information on Afghanistan, as well as Johnsen, *The Last Refuge*, Norton, November 2012, pp. 3-18.

¹⁵⁰ Human Rights Watch interview with Abd al-Razzaq Ahmad al-Jamal, Sanaa, May 8, 2013.

¹⁵¹ Human Rights Watch interview with Himyar al-Qadhi, April 20, 2013.

As noted above, a Yemeni government official with knowledge of the attacks on both al-Qadhi and Hamid al-Radmi (whose case is discussed above) said that it was not certain that either were actual AQAP military commanders but that both had recruited for AQAP.

In 2008, the Yemeni authorities detained al-Qadhi for six months in connection with a suicide bombing at the US Embassy in Sanaa earlier that year, linking him to license plates on one of the attackers' cars. That attack killed 17 Yemenis and one Yemeni-American.¹⁵²

Al-Qadhi was released without charge; the reason for his release is not clear.

Yemenis who knew al-Qadhi or had followed his targeted killing case offered an array of theories about why he was killed; none involved his participation in military operations.

One Yemeni with close connections to Beit al-Ahmar and the surrounding township of Sanhan said that al-Qadhi and Lahib, the suspected AQAP member who escaped the strike, were part of a group who had tried to create a roadblock the previous Ramadan (July 20-August 18, 2012) to stop former president Saleh's son Ahmed Ali from stashing weapons in Beit al-Ahmar. At the time, Ahmed Ali was the commander of the elite Republican Guard but was being stripped of his powers by President Hadi; opposition media accused him and other Saleh relatives of looting weapons during the latter half of 2012.¹⁵³ A Yemeni analyst took the opposite view, saying al-Qadhi was killed "for working not in favor of extremist groups but against the current regime."¹⁵⁴

Other Yemenis considered the strike a warning to the former president and his loyalists, who have been accused by the UN Security Council of trying to thwart Yemen's transition, that Beit al-Ahmar was no longer a safe-haven for the Saleh family.¹⁵⁵

¹⁵² Yemen Profile: Timeline/Al Qaeda in Action, BBC News, <http://www.bbc.co.uk/news/world-middle-east-14704951> (accessed July 29, 2013).

¹⁵³ Human Rights Watch interview, Sanaa, April 2013. Human Rights Watch is withholding the interviewee's name and other details to protect against potential reprisal. See also "Army without Arsenal," *Yemen Fox*, April 20, 2013, <http://www.yemenfox.net/nprint.php?sid=6167> (accessed August 30, 2013).

¹⁵⁴ Human Rights Watch interview with Abd al-Salam Muhammad, President of the Abaad Studies and Research Center, Sanaa, April 24, 2013.

¹⁵⁵ Human Rights Watch interviews with 12 Yemeni political and security analysts, as well as 3 Yemeni security force members and 10 Yemeni and Western journalists who track AQAP, Sanaa, April-May 2013.

There is precedent for the US killing an enemy of an ally in exchange for killing its own perceived enemies in the ally's territory. The *New York Times* has reported that a CIA drone strike in Pakistan in 2004 killed Nek Muhammad, an ally of the Taliban who led a tribal rebellion against the state, in exchange for permission to enter Pakistani air space to carry out drone strikes against its own targets. See Mark Mazzetti, "A Secret Deal on Drones, Sealed in Blood," *New York Times*, April 6, 2013, <http://www.nytimes.com/2013/04/07/world/asia/origins-of-cias-not-so-secret-drone-war-in-pakistan.html?pagewanted=all> (accessed October 10, 2013).

Opportunity to Capture

Under the Obama administration's policy on targeted killings, strikes are only to be carried out if capture is not feasible.

Beit al-Ahmar, located 15 kilometers southeast of Sanaa, is home to one of the highest concentrations of political and military authority in Yemen. It is the hometown of three of Yemen's most powerful figures: former president Saleh, Saleh's son Gen. Ahmed Ali Saleh, and Gen. Ali Mohsen al-Ahmar. At the time of al-Qadhi's death General al-Ahmar commanded the First Armored Division, the unit to which al-Qadhi belonged.

"The concentration of police and military personnel in Sanhan [the town that includes Beit al-Ahmar] is one of the highest in the country," said Abdulghani al-Iryani, a Yemeni political analyst. "To say that the government could not reach that place and make a capture there is absurd."¹⁵⁶

Al-Qadhi moved freely in Beit al-Ahmar and surrounding areas. He was in Sanaa as recently as four or five days before he was killed and had to pass several checkpoints to get from the capital to Beit Al-Ahmar, relatives said.¹⁵⁷ The fact that al-Qadhi was on the military payroll gave the authorities any number of potential ruses to lure him in.

Yemeni officials said President Hadi approved the strike against al-Qadhi after determining that an attempt to arrest him in his village could have led to more deaths, according to the *Los Angeles Times*.¹⁵⁸ Certainly, Beit al-Ahmar is a potential political powder keg, packed with armaments and animosity: one of its native sons, General al-Ahmar, defected to the opposition with his First Armored Division during Yemen's 2011 uprising and is a bitter rival of the former president and his son Gen. Ahmed Ali Saleh, the then-commander of the Republican Guard.¹⁵⁹

¹⁵⁶ Human Rights Watch interview with Abdulghani al-Iryani. Al-Iryani serves on Human Rights Watch's Middle East and North Africa advisory board.

¹⁵⁷ Human Rights Watch interviews with four relatives of al-Qadhi, April 24, 2013.

¹⁵⁸ Jeffrey Fleishman and Ken Dilanian, "Us Drone Strategy is Fraught with Peril," *Los Angeles Times*, December 25, 2012, <http://articles.latimes.com/2012/dec/25/world/la-fg-yemen-drones-qaeda-20121225> (accessed July 22, 2013).

¹⁵⁹ At the time of writing, President Hadi had disbanded both the Republican Guard and the First Armored Division, appointing General al-Ahmar as his special military advisor, and General Ahmed Ali as the Yemen ambassador to the United Arab Emirates.

While capture may have been complicated, it should under the US policy have been seriously considered.¹⁶⁰ Beit al-Ahmar had weathered other political storms without bloodshed. As Yemen-based journalist Adam Barron wrote in 2012: “Even after many of the area’s most powerful sons broke ranks in the revolt against Saleh last year—a time marked by bloody clashes in the capital—the village had remained calm until the American drone strike.”¹⁶¹

Even if US and Yemeni authorities had ruled out capture because of potential revenge attacks, a negotiated surrender was still possible, many security and political observers said.¹⁶² Moreover there was precedent: relatives had previously surrendered al-Qadhi when he was sought in connection with the US Embassy bombing.

“When the security forces called me and said, ‘Adnan is a suspect,’ I handed him over with my own hands,” Himyar al-Qadhi said. “I swear to God if they had asked us to bring him in again we would never have said no.”

On February 5, 2013, Himyar al-Qadhi filed a complaint with the Yemen’s General Prosecution Office accusing President Hadi, President Obama, and other top Yemeni and US officials of murder for the strike on his brother. The following month, he said, his house was raided by Yemen’s Counter-Terrorism Unit, a force trained and funded by the United States. Now, he said, he fears for his own life.¹⁶³

Backlash and Detention of 8-Year-Old “Spy”

Al-Qadhi’s killing created widespread anger within the Sanhan tribe, one of the most influential in Yemen. AQAP expert and journalist al-Jamal said:

Relatives and members of his tribe are angry. In their songs and poems, the tribes have threatened to join al-Qaeda in revenge. Here when America is our

¹⁶⁰ Human Rights Watch interview with al-Bokairi, April 25, 2013.

¹⁶¹ Adam Barron, “Family, neighbors of Yemeni killed by U.S. drone wonder why he wasn’t taken alive,” McClatchy Newspapers, November 28, 2012, <http://www.mcclatchydc.com/2012/11/28/v-print/175794/family-neighbors-of-yemeni-killed.html> (accessed July 23, 2013).

¹⁶² Human Rights Watch interviews with 12 Yemeni political and security analysts, as well as 3 Yemeni security force members and 10 Yemeni and Western journalists who track AQAP, Sanaa, April-May 2013.

¹⁶³ Human Rights Watch interview with Himyar al-Qadhi, April 20, 2013. A copy of the complaint is on file with Human Rights Watch.

enemy you are a hero. It makes al-Qaeda look good and gains the sympathy of the people.¹⁶⁴

Himyar al-Qadhi said, “The US is planting the seeds of terrorism with such killings. If you believe you got rid of Adnan, well now you’ll have 1,000 Adnans. This is not hard to understand.”

AQAP released a video in April 2013 that depicted al-Qadhi as a “martyr,” indicating that they considered him a member of their group.

The video showed a captured Republican Guard soldier and his 8-year-old son “confessing” to setting up the killing at the behest of three Republican Guard officers. The son, Barq al-Kulaibi, who had been living at al-Qadhi’s house, says in the video that his father gave him electronic tracking chips and that the three Republican Guard officers “trained” him on how to activate them and told him the dates he should plant them on al-Qadhi.

The boy says he placed one of the chips in al-Qadhi’s pocket while al-Qadhi was using the bathroom. The father, Hafizallah al-Kulaibi, was filmed saying the military officers paid him 50,000 rials (\$233), and promised him a luxury car and home, in return for using his son to plant the chip.¹⁶⁵ The video’s unseen narrator declares:

This is the reality of America, which claims to be the most powerful country in the world, and which brags and professes to be the protector of human rights and the vanguard of protecting the rights of children.¹⁶⁶

In the video, AQAP says it would release the son but added: “Every filmed spy is killed after he is filmed!”

¹⁶⁴ Human Rights Watch interview with al-Jamal, Sanaa, May 8, 2013.

¹⁶⁵ A copy of the video with English-language subtitles is posted on Jihadology.net, a clearinghouse on Islamist militancy: <http://jihadology.net/2013/04/19/al-mala%E1%B8%A5im-media-presents-a-new-video-message-from-al-qaidah-in-the-arabian-peninsula-the-spider-web/> (accessed July 21, 2013).

¹⁶⁶ Ibid.

At the time of writing, neither son nor father had been released.¹⁶⁷ An investigative article on the case by Yemen expert Gregory Johnsen said the father was feared dead.¹⁶⁸ Human Rights Watch is gravely concerned for the safety of both.

Barq al-Kulaibi, 8, with his father, Hafizallah al-Kulaibi, “confesses” in an AQAP video from April 2013 to planting an electronic tracking device on AQAP suspect Adnan al-Qadhi, who was then killed in a US drone strike. AQAP was holding both father and son at the time and neither has been seen since. Source: Jihadlogy.net.



The father and son were abducted and taken into custody by alleged AQAP member Lahib, who narrowly escaped death in the strike that killed al-Qadhi, according to Johnsen’s article.¹⁶⁹ Lahib was killed in a separate drone attack two months later.¹⁷⁰

The “confessions” by the son and father could have been coerced and the story invented by their AQAP captors, or the account could be true; Human Rights Watch has no evidence either way. Two of the Republican Guard officers named by the father and son denied any involvement. Johnsen notes that publicizing a fabrication of that kind would be out of character for AQAP, which seeks credibility with the public.¹⁷¹

¹⁶⁷ Human Rights Watch email exchange with a source close to Yemeni intelligence services, July 22, 2013.

¹⁶⁸ Johnsen, “Did an 8-Year-Old Spy for America?” August 14, 2013, <http://www.theatlantic.com/magazine/archive/2013/09/did-an-8-year-old-spy-for-america/309429/4/> (accessed August 15, 2013).

¹⁶⁹ Ibid.

¹⁷⁰ See “Al-Masnaah” chapter in this report.

¹⁷¹ Johnsen, “Did an 8-Year-Old Spy for America?” *Atlantic Monthly*, August 14, 2013.

The treatment and videotaping of the detainees may have violated the laws-of-war requirement that detained persons be protected against acts of violence and public curiosity or condemnation.¹⁷²

If verified, the use of the boy by the Republican Guard would also violate international law prohibitions on the use of children as soldiers¹⁷³ and perfidious attacks, which are war crimes.¹⁷⁴ The Rome Statute for the International Criminal Court makes clear that individual criminal liability in such circumstances extends beyond the use of children as armed combatants. Under the ICC, the war crime of recruiting or using child soldiers “[c]over[s] both direct participation in combat and also active participation in military activities linked to combat such a scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints.”¹⁷⁵

The AQAP’s abduction of the father and son, unless they were directly participating in hostilities, would also be unlawful. Any mistreatment of them, for whatever reason, would violate the laws of war.¹⁷⁶

¹⁷² Common Article 3(1) to the four Geneva Conventions of 1949.

¹⁷³ International humanitarian law prohibits any recruitment of children under the age of 15 or their participation in hostilities by national armed forces and non-state armed groups. Protocol II, art. 4(3). See also the Convention on the Rights of the Child on the involvement of children in armed conflict, which prohibits any forced recruitment or conscription of children under 18 by government forces, and the participation of children under 18 in active hostilities by any party. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (CRC Optional Protocol), G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), entered into force February 12, 2002, arts. 1-4.

¹⁷⁴ Perfidy involves feigning civilian or other non-combatant status in order to carry out an attack, and amounts to a war crime. See ICRC, *Customary International Humanitarian Law*, Rule 65, citing Protocol I, art. 37(1).

¹⁷⁵ See Michael Cottier, in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Overservers’ Notes, Article by Article* (Baden-Baden: Nomos Verlagsgesellschaft), p. 261.

¹⁷⁶ Common Article 3 to the Geneva Conventions.

4. Sarar: Attack Kills 12 Civilians



The immediate aftermath of a US airstrike in Sarar on September 2, 2012, that killed 12 civilians returning home from a market. © 2012 Private

On September 2, 2012, a Toyota Land Cruiser carrying 14 people was attacked by a warplane or drone near the provincial city of Radaa in central Yemen.¹⁷⁷ The strike by a missile or a bomb killed 12 passengers, including three children and a pregnant woman. A thirteenth passenger and the driver were severely burned but survived.¹⁷⁸

The airstrike violated the laws-of-war prohibition on attacks that do not distinguish between civilians and combatants.

Quoting unnamed Yemeni officials, local and international media initially described the victims as AQAP “militants.”¹⁷⁹ But after relatives of the victims threatened to bring their loved ones’ burned bodies to President Hadi’s doorstep, the country’s official news agency, Saba, called the strike an “accident” and admitted the awful truth: the 12 people killed

¹⁷⁷ This account is based on Human Rights Watch interviews with eight relatives of the victims, many of them witnesses, as well as a review of videos of the two survivors, videos and photographs of the scene immediately after the strike, and interviews with 12 Yemeni journalists, political and security analysts and human rights activists. The interviews took place in Sanaa in October 2012 and April 2013. Human Rights Watch’s preliminary findings were published in December 2012; see Letta Tayler, “Anatomy of an Air Strike Gone Wrong,” *Foreignpolicy.com*, December 26, 2012, <http://www.hrw.org/news/2012/12/26/anatomy-air-attack-gone-wrong>.

¹⁷⁸ Eleven passengers died immediately and a 12th passenger died several days later from his injuries.

¹⁷⁹ See, e.g., “U.S. drone kills five suspected militants in Yemen,” Reuters, September 2, 2012, <http://uk.reuters.com/article/2012/09/02/uk-yemen-violence-idUKBRE88106O20120902> (accessed August 30, 2013).

were civilians.¹⁸⁰ All were from two adjacent villages. They included breadwinners for more than 50 people in one of the poorest areas of Yemen.

Unnamed Yemeni government officials were quoted in local and international media saying that the target of the attack had been traveling along the same road but in a separate vehicle that was not hit.¹⁸¹

“Noise like Thunder”

Radaa, a central Yemeni city about 160 kilometers southeast of Sanaa, lies on a strategic crossroad to Sanaa. The city and surrounding areas are tribal and largely outside the central government’s control. In January 2012, members of AQAP seized Radaa and held it for about a week until local sheikhs chased them out.¹⁸² Many of the AQAP combatants disappeared into nearby villages. After that brief takeover, drones and US or Yemeni warplanes carried out numerous strikes on alleged Islamist fighters in Radaa and surrounding hamlets, and surveillance drones circled the area daily.

The day of the September 2012 attack, residents heard drones overhead and farmers working in their fields noticed two drones loitering over Radaa and outlying villages.

Shortly before 4 p.m., witnesses said, two warplanes also swooped into the area.¹⁸³

“I heard a very loud noise, like thunder,” said Sami al-Ezzi, a farmer who was working in his fields in the village of Sabool, about 16 kilometers from Radaa and 2 kilometers from the attack site. “I looked up and saw two warplanes. One was firing missiles.”¹⁸⁴

Rushing to the scene, in the hamlet of Sarar about 7 kilometers north of Radaa, residents found a horrific sight: the battered Toyota Land Cruiser that had served as the daily shuttle service between Sabool and Radaa lay on its side in flames. Charred bodies had been flung from the vehicle and lay on the road, dusted with flour and sugar that the victims

¹⁸⁰ “President Hadi directs to investigate over Baidah incident,” Saba news, September 5, 2012, <http://www.sabanews.net/en/news279858.htm> (accessed August 30, 2013).

¹⁸¹ See, e.g., “U.S. drone strike kills 13 civilians in central Yemen: official,” Xinhua News, http://news.xinhuanet.com/english/world/2012-09/02/c_131823003.htm (accessed August 30, 2013).

¹⁸² See, e.g., Isabel Coles, “Islamist militants quit captured Yemeni town,” Reuters, January 25, 2012, <http://www.reuters.com/article/2012/01/25/us-yemen-militants-idUSTRE8oOoKo20120125> (accessed August 30, 2013).

¹⁸³ Human Rights Watch interviews with eight residents of Sabool and Humaydah who were witnesses or relatives of those killed, Sanaa, October 4 and 6, 2012, and April 23 and 27, 2013.

¹⁸⁴ Human Rights Watch interview with Sami al-Ezzi, Sanaa, October 4, 2012.

were bringing home from market. Everyone killed was a resident of Sabool or the neighboring hamlet of Humaydah.¹⁸⁵

“About four people were without heads. Many lost their hands and legs,” said Nawaf Massoud Awadh, a sheikh from Sabool. “These were our relatives and friends.”¹⁸⁶

Two victims were a woman and girl, clutched in a lifeless embrace. “The bodies were charred like coal. I could not recognize the faces,” said Ahmad al-Sabooli, a 23-year-old farmer. Moving in closer, al-Sabooli realized that the woman and girl were his mother and 10-year-old sister. He also saw his father among the dead. “That is when I put my head in my hands and I cried,” he said.

Videos provided to Human Rights Watch depicted chaos at the scene.¹⁸⁷ “Push! Push!” “Open the door!” residents are heard shouting in one video. Seeking to extinguish the flames, they urge, “Bring sand!”

Two men are heard exclaiming that a warplane with “two exhausts in the back”—presumably twin engines—launched or dropped munitions at the vehicle while other aircraft were circling.

Al-Sabooli's mother had gone to Radaa with her husband for a doctor's appointment; they had brought their daughter along for the ride. Most of the other passengers were farmers who went to Radaa to sell their crops. They included Mabruk al-Dobari, 14, who sold qat to support his family because his father was disabled.¹⁸⁸ Rescuers found Mabruk's body torn apart.

“We are just qat farmers,” the driver of the vehicle, Nasser Makhut, said in a video clip from a local clinic where he was taken immediately after the strike. Makhut's skin was

¹⁸⁵ Human Rights Watch interviews with eight residents of Sabool and Humaydah who were witnesses or relatives of those killed, October 4 and 6, 2012, and April 23 and 27, 2013. Human Rights Watch also reviewed several videos and photos of the aftermath that we confirmed were from the site.

¹⁸⁶ Human Rights Watch interview with Nawaf Massoud Awadh, Sanaa, October 6, 2012.

¹⁸⁷ Copies of videos on file with Human Rights Watch.

¹⁸⁸ Human Rights Watch interview with three residents of Sabool and Humaydah including Saleh Saad Atiq, a Humaydah village leader, Sanaa, April 27, 2013.

black from the heat of the strike and he was clearly disoriented. Asked what happened, he replied, “I think a plane fell on us.”¹⁸⁹

Alleged Target Elsewhere

Local and international media quoted unnamed Yemeni government officials as saying the attack's intended target was Abd al-Raouf al-Dahab, an alleged local Al-Qaeda chief whose late brother Tariq had led the January takeover of Radaa. The al-Dahabs are the most influential family in Radaa and surrounding areas. Abd al-Raouf al-Dahab is from Manasseh, a village about 15 kilometers north of Radaa. The Land Cruiser was struck as it approached an intersection where one road led to Sabool and the other to Manasseh. But al-Dahab was not inside the vehicle or anywhere in sight. Subsequent drone strikes have also failed to kill al-Dahab.¹⁹⁰

“That was a clear mistake,” a Yemeni government official, speaking on condition of anonymity, told Human Rights Watch. “The target was in the area but they hit the wrong vehicle.”¹⁹¹

Some security analysts in Yemen question whether Abd al-Raouf al-Dahab is a member of AQAP let alone involved in hostilities against the Yemeni or US governments.¹⁹² “Abd al-Raouf is a sympathizer but he’s not a member,” said Abd al-Razzaq al-Jamal, a journalist who closely tracks AQAP.¹⁹³ Several security analysts also said that they believed Tariq al-Dahab formed the al-Bayda faction of AQAP in an effort to gain the upper hand in a bloody family dispute over land and power.¹⁹⁴

¹⁸⁹ Ibid.

¹⁹⁰ See, e.g., Iona Craig, “Yemen Tribesmen Reportedly in Angry Protest Over Drone Campaign,” *Times of London*, January 5, 2013, <http://www.thetimes.co.uk/tto/news/world/middleeast/article3648934.ece> (accessed January 5, 2013).

¹⁹¹ Human Rights Watch interview with Yemeni government official, September 2013.

¹⁹² Human Rights Watch interviews with eight sources including Western security experts, Yemeni political analysts, Yemeni journalists and western journalists, Sanaa, April-May 2013.

¹⁹³ Human Rights Watch interview with Abd al-Razzaq al-Jamal, Sanaa, May 8, 2013.

¹⁹⁴ Human Rights Watch interviews with security analysts including Nabil al-Bokairi of the Sanaa-based Arab Studies Center. Tariq al-Dahab’s faction “requested al Qaeda’s support to fight the other part of the family, which opened the door for al Qaeda to gain a foothold in that province,” he said. Tariq al-Dahab, who was linked by marriage to Anwar al-Awlaki, was killed by his half-brother Hizzam, who was in turn killed by Tariq’s men as he fled, in February 2012. For a detailed examination of the interplay between AQAP and tribes in al-Bayda, see Sasha Gordon, *Tribal Militias in Yemen: Al Bayda and Shabwah*, Critical Threats Project, February 7, 2013, http://www.criticalthreats.org/yemen/gordon-tribal-militias-yemen-al-bayda-and-shabwah-february-7-2013#_edn18 (accessed July 23, 2013).



Ahmad al-Sabooli holds the photos of his father, Nasser Saleh Nasser, his mother, Raselah Ali, and his sister Doalah, 10, who were among 12 civilians killed in a US airstrike in Sarar on September 2, 2012. © 2013 Letta Tayler/Human Rights Watch

A Western diplomat who spoke on condition of anonymity said that some hardcore members of AQAP operate as “legitimate fronts” who may appear to be no more than sympathizers to outside observers.¹⁹⁵

Initial media reports quoted Yemeni officials as saying Yemeni warplanes carried out the Radaa attack. However the Yemeni authorities have a record of taking responsibility for US strikes, and the *Washington Post* published a report three months after the strike quoting unnamed Obama administration officials as saying a US military aircraft, “either a drone or a fixed-wing airplane,” fired on the vehicle.¹⁹⁶

¹⁹⁵ Human Rights Watch interview with a western diplomat, Sanaa, May 2013. The diplomat spoke on condition of anonymity.

¹⁹⁶ Sudarsan Raghavan, “When U.S. drones kill civilians, Yemen’s government tries to conceal it,” *Washington Post*, December 24, 2012, http://www.washingtonpost.com/world/middle_east/when-us-drones-kill-civilians-yemens-government-tries-to-conceal-it/2012/12/24/bd4d7ac2-486d-11e2-8af9-9b50cb4605a7_story_1.html (accessed December 25, 2013).

Available evidence from the site does not clarify whether the attack was carried out by a drone or a fighter jet. Six witnesses said they saw the warplanes drop or launch munitions that they thought were bombs or missiles. Two witnesses told Human Rights Watch they saw a black tail fin near the burning vehicle, and that would-be rescuers used it to try to ram open a door of the vehicle.¹⁹⁷ A black tail fin is typical of a Hellfire, a US missile that can be launched by either drones or fighter jets. The shrapnel that witnesses brought Human Rights Watch from the site is more consistent with damage caused by a bomb, which would point to warplanes.

“We Will Give You the Guns”

The victims’ villages, Sabool and Humaydah, are clusters of brick-and-mud homes that have no electricity, paved roads, schools, or hospitals. Most workers are subsistence farmers who grow and sell qat. Seven of those killed were breadwinners; in al-Sabooli’s family alone, six of his siblings were too young to fend for themselves.

Distraught relatives and friends had to collect the charred remains of the victims by themselves and drive them to the city morgue in Radaa. Upon reaching the outskirts of the city, troops from the elite Republican Guard blocked their entry for two hours. Then officials at the morgue refused the bodies.

The Sabool villagers spent the night on the streets of Radaa, fending off stray dogs from the corpses spread out on the beds of pickup trucks. The next day, Radaa shopkeepers joined the Sabool residents in blocking the city’s main street and threatening to bring the decomposing bodies to the doorstep of President Hadi in Sanaa.

Within hours, Sinan Garoon, a sheikh and the deputy governor of al-Bayda, the province that includes Radaa and Sabool, arrived to pay off victims’ relatives the tribal way, with 95 Kalashnikov rifles and a total of 15 million rials (about US\$70,000) in burial money. He also promised further compensation, villagers said. “We will give you the guns,” Deputy Governor Garoon is seen telling told the angry demonstrators in a video taken by a local resident. “If you demand blood money, it will be given to you.”¹⁹⁸

¹⁹⁷ Human Rights Watch interviews with six residents of al-Sabool and Humaydah, October 4 and 6, 2012, and April 23 and 27, 2013.

¹⁹⁸ Copy of the video is on file with Human Rights Watch.

In Sanaa, President Hadi announced he would create a special committee to investigate the Radaa attack.¹⁹⁹ But no authorities came to Sarar to investigate. “They were toying with us,” said Awadh.²⁰⁰

On April 26, 2013, Garoon again promised payments to Sabool residents if they did not participate in a news conference on targeted killings being held that day in Sanaa by the UK-based nongovernmental organization Reprieve. The residents did not participate, yet the payment did not arrive, they said.²⁰¹

While the airstrike was in clear violation of the laws-of-war requirement that attacks distinguish between civilians and combatants, the Yemeni government only in June 2013, following queries from Human Rights Watch and other nongovernmental organizations to Yemeni and US authorities, paid the families compensation: 12 million rials (\$55,800) for each person injured and 200 million rials (\$93,000) for each person killed. It is not publicly known if the funds came from the United States.²⁰²

Backlash against Yemen and US Governments

Long before the Yemeni authorities took financial responsibility for the killings, the family of Abd al-Raouf al-Dahab, the purported target of the strike, offered financial assistance to families around Radaa who lost relatives in targeted killing operations.²⁰³

In Radaa, animosity toward the Yemeni and the US governments was in evidence after the airstrike. At a rally in Radaa the night after the attack, one man drew cheers as he railed against both countries:

It’s as if Yemeni airspace belonged to the United States. In the Western countries, when one person is killed the whole country will mobilize and

¹⁹⁹ “President Hadi directs to investigate over Baidah incident,” Saba news, September 5, 2012, <http://www.sabanews.net/en/news279858.htm> (accessed August 30, 2013).

²⁰⁰ Human Rights Watch interview with Awadh, October 6, 2012. Relatives said nothing had changed when interviewed again on April 23 and 27, 2013.

²⁰¹ Human Rights interviews with five Sabool and Humaydah residents, April 23 and 27, 2013, and follow-up telephone calls.

²⁰² Human Rights Watch telephone interview with Ahmad al-Sabooli. Sanaa to al-Sabool, September 24, 2013.

²⁰³ Human Rights Watch interviews with residents of al-Sabool, October 4 and 6, 2012.

turn itself upside down, but in our country our government does not value its citizens.²⁰⁴

Before the strike, the people of Sabool and Humaydah “had no issues with America,” said Abd al-Aziz Muhammad Ali, whose cousin was among the victims. “But since the incident people feel like both the Yemeni government and the US government are our enemies.” Speaking shortly before the government provided payments to families, he added: “People feel that if there is no compensation maybe they will join al-Qaeda.”²⁰⁵

²⁰⁴ Copy of video on file with Human Rights Watch.

²⁰⁵ Human Rights Watch interview with Abd al-Aziz Muhammad Ali, Sanaa, April 27, 2013.

5. Khashamir: Killing of Anti-AQAP Cleric

“If Salim and Walid are Al-Qaeda, then we are all Al-Qaeda.”

– Villagers chant after strike that killed two civilians in Khashamir,
September 2012



Salim bin Ali Jaber, an anti-AQAP cleric (left), and his cousin Walid bin Ali Jaber, a local policeman, were killed along with three alleged AQAP members in a US drone strike in Khashamir on August 29, 2012.

© 2012 Private

On August 29, 2012, four missiles launched from a drone killed five men outside a mosque in Khashamir, a farming village of mud-and-stone huts in Hadramawt province in southeast Yemen. The strike killed three suspected AQAP members who were strangers to the village.²⁰⁶ It also killed two pillars of the community: a popular cleric who preached against AQAP, and one of the village's only policemen.

Assuming the laws of war were applicable, the attack may have been unlawfully disproportionate depending on the military importance of the alleged AQAP members.

²⁰⁶ “Qaeda Suspects Arrested, Killed in Yemen,” *Yemen Post*, August 30, 2012, <http://yemenpost.net/Detail123456789.aspx?ID=3&SubID=5906&MainCat=3> (accessed July 26, 2013).

Yemen's Defense Ministry told media that the three suspected AQAP members were "wanted and were targeted while meeting their fellows."²⁰⁷ But the two local men who were killed had no known involvement with violent militancy. Rather, relatives said the three targeted suspects had sought out the cleric to challenge his statements criticizing AQAP.²⁰⁸

Slain Cleric Preached Against Al-Qaeda

Salim bin Ahmed Ali Jaber, 42, the father of seven children and the imam of al-Mutadharirin mosque in Mukalla, had been preaching against violent Islamist militancy since AQAP and Ansar al-Sharia took over towns in Abyan in 2011. He taught at a government school and was studying for a doctorate at Hadramawt University.

His cousin, Walid Abdullah bin Ali Jaber, 26, who had a 2-year-old son, was Khashamir's traffic policeman. "Every day he would go to work in his uniform, so proud of his work," said his mother, Hayat bin Ali Jaber.²⁰⁹

Salim Jaber had returned to his native village that week to attend the wedding of a cousin. The Friday before his death, he repeated his denunciation of AQAP during a sermon at the mosque in Khashamir, saying the group's killings were against Islam.²¹⁰

"He used harsh words against Al-Qaeda and challenged them to provide proof of the justness of their attacks on America, and invited them to a debate," said Faisal Jaber, the brother-in-law of Salim Jaber and the uncle of Walid Jaber.²¹¹ Faisal Jaber said that at the request of Salim Jaber's father, he asked the cleric to tone down his sermons:

The day before the attack I said, "You should be careful, your family is worried that something will happen to you." Salim said, "If we all keep

²⁰⁷ Ibid.

²⁰⁸ Human Rights Watch interviewed five relatives of the two local men killed in the strike, as well as three Yemeni journalists and two Yemeni human rights defenders who investigated the strike. We also reviewed dozens of photographs and more than a dozen video clips taken immediately after the attack as well as the preceding night.

²⁰⁹ Human Rights Watch interview via Skype with Hayat bin Ali Jaber, Sanaa to Khashamir, April 29, 2103.

²¹⁰ Human Rights Watch interviews with three relatives and a Hadramawt journalist, April 27 and 29 and May 4, 2013.

²¹¹ Human Rights Watch interview with Faisal bin Ali Jaber, Sanaa, April 27, 2013.

silent then who will speak out? If we keep silent, these people will destroy the country.”²¹²

That night was the wedding party, Faisal Jaber said: “The whole village was dancing and Salim and Walid were very happy and hugging my son and congratulating him.”²¹³

Twice on the afternoon of August 29, a black Suzuki Vitara sports utility vehicle with unmarked plates stopped outside Salim Jaber’s family home. The second time, three unknown men inside the car, who were not from Khashamir, sent neighborhood children to ask for the cleric to come out. Salim Jaber’s father went to the car and told the men that his son would return after *Isha* (evening prayer) at the local mosque. The father was suspicious but invited the men in as he was accustomed to people seeking his son’s counsel. The men refused. After *Isha* prayer, several villagers saw the men drive to the back of the mosque.²¹⁴

The three men in the car asked a young boy to go to the mosque to bring the cleric to them. Salim Jaber feared the strangers were seeking revenge for his sermons and proposed meeting them over dinner at his house.²¹⁵ But he agreed to meet them when Walid Jaber, his cousin the police officer, offered to accompany him with his handgun. “Walid said, ‘We are both men, what are you scared of? It is not good manners,’” Faisal Jaber said.²¹⁶

Salim and Walid Jaber approached the men and sat with two of them beneath a cluster of date palms. Several villagers gathered at a corner to watch, in case the Jabers needed protection. But if the unidentified men intended to harm Salim Jaber, the drones struck first. As Faisal Jaber told Human Rights Watch:

The first two missiles hit the circle of men directly. When the men heard it they all ran toward the spot where it landed. Then the second missile struck and shrapnel flew over their heads. The third missile came from an angle

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Human Rights Watch interviews with Faisal Jaber, April 27, 2013; Abdullah bin Ali Jaber, Aden, May 4, 2013; and Ahmad bin Ali Jaber, Skype interview, Sanaa to Khashamir, April 29, 2013.

²¹⁵ Ibid.

²¹⁶ Human Rights Watch interview with Faisal Jaber, April 27, 2013.

and took off the roof of the car and hit them again. The fourth missile took a bit of time. Maybe they were checking to see if they were still alive. They [villagers] saw a man crawling and the fourth missile hit that man and his body was thrown 20 meters or more, onto the wall of a sheep's manger near the mosque. His body was intact. Only the back of his head was gone.²¹⁷

The men waited several minutes and then approached slowly, said Abdullah Salim bin Ali Jaber, a cousin of Salim and Walid who also had rushed to the scene:

It was dark except for the burning car. We could make out many body parts scattered several meters apart—fingers, hands, internal organs. Most bodies had no legs and one was without a face. Another had no head. Until now they still have not found that head.... Imagine this horror.²¹⁸

Ahmad Salim bin Ali Jaber, the cleric's 79-year-old father, said he heard the explosions and arrived at the mosque as villagers were collecting body parts in red and blue water pails:

No one dared tell me. Finally one of them came to me and took my hand and said, "Where is Salim?" I said I did not know, that we were waiting for him to have dinner with us. He said, "*Alhamdulillah, Alhamdulillah, Alhamdulillah* [Praise God, Praise God, Praise God], Salim is dead."²¹⁹

The father said two men brought him into the mosque and supported him by each arm as he viewed the corpses, wrapped in plastic under blocks of ice as the village had no refrigerated morgue:

The people opened the first bag and asked, "Is this Salim?" I said, "No." They opened the second bag, and the third, and the fourth. Then they opened the last one. It was Salim. At that point I could not move."²²⁰

²¹⁷ Ibid.

²¹⁸ Human Rights Watch interview with Abdullah Salim bin Ali Jaber, May 4, 2013.

²¹⁹ Human Rights Watch interview with Ahmad Salim bin Ali Jaber, April 29, 2013.

²²⁰ Ibid.

Relatives said they identified Salim Jaber only by his cheekbone, and Walid Jaber by the remains of his handgun and his ornate belt, which was somehow intact.²²¹

Faisal Jaber showed Human Rights Watch a series of photos and videos he had taken the day before and the day after the attack. The first series showed Walid Jaber, smiling and dancing at the wedding party in a white robe and his ornate belt. The second series showed the SUV melted into a twisted mass, and ordnance that Human Rights Watch identified as remnants of Hellfire missiles. The photos also showed dismembered body parts and faces burned beyond recognition. They showed holes from missile fragments in the walls of nearby homes, and the date palms' branches broken—trees that had been the pride of the village but no longer bear fruit.

Every man, woman, and child in Khashamir has seen the photos and videos, Faisal Jaber said, adding: “Now when villagers see these images, they think of America.”²²²

Only one stranger was identified, by a family that traveled 300 kilometers to Khashamir to view photos of the remains. “One photo showed a head with only a mouth. The man saw the mouth and said, ‘This is my son,’ Faisal Jaber said.²²³

“Obama, This is Wrong”

After the airstrike, enraged villagers created a roadblock that stopped government cars along the main east-west road through the province, but ended it when local leaders persuaded them to instead hold a peaceful rally. Most of the village joined the march four days after the strike, chanting: “No to killing innocents” and “Obama, this is wrong.”²²⁴

Local authorities arranged for a stipend for Salim's eldest son, who is deaf and mute, and promised they would find the young man a job upon completion of his studies.²²⁵ But that and an unofficial call from an officer with Yemen's US-funded and trained Counter-Terrorism Unit were the extent of any redress, Faisal Jaber said:

²²¹ Human Rights Watch interview with Faisal Jaber, April 27, 2013, and Abdullah Salim bin Ali Jaber, May 4, 2013.

²²² Human Rights Watch interview with Faisal Jaber, April 29, 2013. Copies of the photos and video on file with Human Rights Watch.

²²³ Ibid.

²²⁴ Human Rights Watch interviews with relatives and Yemeni journalists and a review of videos of the rally of September 3, 2013. Copies of the videos on file with Human Rights Watch.

²²⁵ Human Rights Watch interview with Hayat bin Ali Jaber, April 29, 2013.

An officer from the Counter-Terrorism Unit called me the night of the attack and said, “I am sorry. It was not Salim and Walid who were being targeted.” He said, “I can’t do anything for you but you can call [President] Hadi at the presidential palace landline. [Three days after the attack] I called the palace. I said to the man who answered, “We used to carry posters supporting Hadi and now we will throw them onto the ground.” I asked him to tell that to Hadi.”²²⁶

Faisal Jaber heard nothing more until June, after Human Rights Watch and other international nongovernmental organizations raised the issue of compensation with US government officials. At that time, the Yemeni government ordered condolence payments of 2.5 million rials (\$11,600) each to Salim Jaber’s and Walid Jaber’s families, Faisal Jaber said. At the the time of writing, the payments had yet to arrive.²²⁷

Villagers want redress, but they also want the drones flying over their area to stop, saying they are traumatizing children and causing women to miscarry. They blame the death of Salim Jaber’s mother in late 2012 on the trauma caused by the strike and the continuing whirr of drones overhead.

“When the drones come, the children run into their houses, terrified,” said Walid’s mother, Hayat Jaber. “When Walid’s son looks at a photo of his father, he says, ‘The plane, the plane.’”²²⁸

“We Yemenis are the ones who pay the price of the ‘war on terror,’” Faisal Jaber said. “We are caught between a drone on one side and Al-Qaeda on the other.”²²⁹

²²⁶ Human Rights Watch interview with Faisal Jaber, April 27, 2013.

²²⁷ Human Rights Watch telephone interview with Faisal Jaber, Sanaa, September 26, 2013.

²²⁸ Human Rights Watch interview with Hayat bin Ali Jaber, April 29, 2013.

²²⁹ Human Rights Watch interview with Faisal Jaber, April 29, 2013.

6. Al-Majalah: Cluster Munitions Kill 14 Al-Qaeda Suspects, 41 Civilians

“America’s goal is to defeat Al-Qaeda. Instead they are creating more Al-Qaeda.”

– Moqbil Moqbil Abu-Lukaish, relative of 28 of the 41 villagers killed in al-Majalah



Sumaya Muhammad al-Anbouri, 9, was among 41 civilians killed in a US cruise missile strike that also killed 14 alleged AQAP militants in al-Majalah on December 17, 2009. © 2009 Private

On December 17, 2009, three days after the US State Department designated AQAP as a terrorist organization, up to five Tomahawk cruise missiles armed with cluster munitions struck the hamlet of al-Majalah in southern Abyan province.²³⁰ Yemeni government officials initially described the strike as a Yemeni security force operation that killed 34 “terrorists” at a training camp stockpiled with weapons.²³¹

In fact the missiles were launched by a US Navy vessel.²³² While the attack killed 14 alleged Al-Qaeda combatants, it also killed at least 41 civilians in a Bedouin camp, all from two

²³⁰ Amnesty International identified the missiles as BGM-109D Tomahawks and the cluster munitions as BLU 97A/B bomblets. See Amnesty International, *Yemen: Cracking Down Under Pressure*, August 2010, <http://www.amnesty.org/en/library/info/MDE31/010/2010>. Human Rights Watch also determined after reviewing video clips and photographs of the site and the ordnance that Tomahawk missiles and cluster munitions were the weapons used. Investigative journalist Jeremy Scahill, in a comprehensive account of the strike, writes that the missiles were BGM-109D Tomahawks. See *Dirty Wars* (New York: Nation Books, 2013), pp. 307-08.

²³¹ Mohammad Taher, “Complete details on recent deadly operations against al-Qaeda,” Saba News, January 3, 2010. <http://www.sabanews.net/en/news202231.htm> (accessed July 28, 2013).

²³² BGM-109D Tomahawks are in the US Navy arsenal. The United States has never exported this type of cruise missile – only the TLAM-C cruise missile, which has a unitary warhead, has been bought by one country, the United Kingdom. There have been no other sales of this system by the US to foreign militaries. US Navy Fact File, “Tomahawk Cruise Missile,” http://www.navy.mil/navydata/fact_display.asp?cid=2200&tid=1300&ct=2. Scahill writes that a US submarine launched

extended families, according to a 2010 investigative report by Yemen's parliament whose findings were accepted by the government.²³³ Nine of the dead were women—five of them pregnant—and 21 were children.²³⁴ At least 4 more civilians were killed and 13 others wounded after the strike when they handled the cluster munition remnants.²³⁵

AQAP was committing violence against the Yemeni government at the time of the 2009 attack, and its predecessor, AQY, had claimed responsibility for attacks such as the deadly suicide bombing of the US Embassy in Sanaa in 2008. However, the hostilities at the time were not considered to have reached the intensity of an armed conflict necessary for the applicability of the laws of war.²³⁶ Thus this attack may more properly be viewed as a violation of international human rights law. However, even within a laws-of-war analysis, the attack used indiscriminate cluster munitions, and caused indiscriminate and possibly disproportionate civilian casualties.

Two classified diplomatic cables released by Wikileaks reveal that the United States engaged with Yemen in a concerted effort to conceal the US role.²³⁷ The United States has never publicly acknowledged its role in the attack.

Much has been written about the strike on al-Majalah,²³⁸ but little has been published on its aftermath. Residents say they never received compensation for civilian deaths or the

the missiles. See *Dirty Wars*, pp. 307-8. Yemen scholar Gregory Johnsen writes that they were launched from a Navy warship. See *The Last Refuge*, p. 252.

²³³ *Republic of Yemen, Special Parliamentary Investigating Committee Report On Security Events In the Province of Abyan* ("Yemen Parliamentary Report on al-Majalah"), February 7, 2010, pp. 7 and 19 (En.), pp. 5 and 15 (Ar.), and Annex 1. Some al-Majalah residents put the civilian toll at 45. The New York-based Center for Constitutional Rights (CCR) has posted the report both in its original Arabic and in English on its website, <http://ccrjustice.org/ourcases/current-cases/al-majalah-freedom-of-information-act-request> (accessed July 28, 2013). All cited page numbers from the Yemen Parliamentary Report on al-Majalah refer to the copies posted on CCR.

²³⁴ Human Rights Watch interviews with three residents of al-Majalah, Aden, May 4, 2013, as well as three Yemeni human rights defenders, April-May 2013.

²³⁵ *Ibid.*, also see Parliamentary Report, p. 20 (En.), p. 15 (Ar.).

²³⁶ Human Rights Watch interviews with five security analysts, two of whom are experts in assessing armed conflict, Sanaa and New York, April-October 2013.

²³⁷ "ROYG Looks Ahead Following CT Operations, But Perhaps Not Far Enough," classified cable from US Embassy in Sanaa, December 21, 2009, <http://www.guardian.co.uk/world/us-embassy-cables-documents/240955>, and "General Petraeus' Meeting with Saleh on Security Assistance, AQAP Strikes," classified cable from US Embassy in Sanaa, January 4, 2010, <http://wikileaks.org/cable/2010/01/10SANAA4.html> (both accessed July 23, 2013).

²³⁸ See, e.g., Jeremy Scahill, *Dirty Wars*, pp. 303-13; Daniel Klaidman, *Kill or Capture: The War on Terror and the Soul of the Obama Presidency* (Houghton Mifflin Harcourt, 2012), pp. 99-210; Johnsen, *The Last Refuge*, pp. 251-268; Alkarama Foundation/HOOD, *The United States' War on Yemen: Drone Attacks*, June 2013, pp. 6-10; http://en.alkarama.org/index.php?option=com_docman&Itemid=218, (accessed July 26, 2013); and Chris Woods, "The

local development projects promised by the Yemeni government.²³⁹ The area remains abandoned and contaminated by cluster munition remnants.²⁴⁰

“Operation Copper Dune”

Al-Majalah is a tiny village at the foot of steep mountains about 230 kilometers east of the southern port city of Aden. It has no schools, electricity or other services; as one resident put it, “The government does not exist here.”²⁴¹ The area that was hit lies on the edge of the village—a stretch of shrubs and rocky earth whose coppery color was in keeping with the US codename for the strike, “Operation Copper Dune.” There, Bedouins from two al-Majalah families tended bees and put their sheep and goats to graze. They slept in huts made of straw and wood or of steel caging on which they draped their tenting.²⁴²

The missiles struck two adjacent sets of Bedouin huts around 6 a.m. while most of the inhabitants were sleeping.²⁴³ The Tomahawk is a long-range, subsonic missile that the United States has used in major conflicts, including the two Gulf Wars and the initial air operations in Afghanistan. The warhead can be loaded with various types of munitions; the model used to strike al-Majalah, the BGM-109D, is designed to launch 166 BLU-97 “Combined Effects Bomblets,” commonly known as cluster munitions.²⁴⁴

Saleh bin Fareed, a prominent tribal leader, drove to the site from Aden fearing he could not reach it. In Yemeni media, he said, Yemeni government officials including then-Interior

civilian massacre the US neither confirms nor denies,” The Bureau of Investigative Journalism, March 29, 2012, <http://www.thebureauinvestigates.com/2012/03/29/the-civilian-massacre-the-us-will-neither-confirm-nor-deny/> (accessed July 23, 2013).

²³⁹ US Senate Select Committee on Intelligence, Nomination of John O. Brennan to be the Director of the Central Intelligence Agency, Responses to Post-Hearing Questions, February 16, 2013, <http://www.intelligence.senate.gov/130207/posthearing.pdf> (accessed June 11, 2013).

²⁴⁰ Human Rights Watch interviewed seven residents of al-Majalah in the port city of Aden in May 2013 including three of the six survivors, as well as two Yemeni human rights defenders, local journalists, and a prominent sheikh who have closely followed the case. We also reviewed media reports and books that reference the attack, as well as videos and photos of the immediate aftermath and ordnance at the site.

²⁴¹ Human Rights Watch interview with Moqbil Abu-Lukaish, Sanaa, April 26, 2013.

²⁴² Human Rights Watch interviews with four local residents and a regional tribal leader, as well as a journalist and a human rights defender who have visited the site, Sanaa, October 7, 2012, and Sanaa and Aden, April-May 2013.

²⁴³ The Parliamentary on al-Majalah cited evidence of up to five missiles, pp.12, 18 (En.), pp. 8, 13 (Ar).

²⁴⁴ US Navy Fact Sheet, Tomahawk Missiles, updated 2010, http://www.navy.mil/navydata/fact_display.asp?cid=2200&tid=1300&ct=2 (accessed July 28, 2013).

Minister Rashad al-Masri were describing the area as an impenetrable mountain enclave stashed with weapons, “as if it were Tora Bora.”²⁴⁵

But the site was in a valley, not dug into the mountains, and while it was three kilometers off a dirt road, bin Fareed drove right up to it. Upon arrival, he said, he saw “no evidence of a training camp whatsoever”—only a sight so horrific that “you could not believe your eyes”:

Goats, sheep, cows, dogs, and people, you could see their bodies scattered everywhere, some many meters away. The clothes of the women and children were hanging from the treetops with the flesh on every tree, every rock. But you did not know if the flesh was of human beings or animals. Some bodies were intact but most, they melted.²⁴⁶

Video footage of the immediate aftermath shows piles of dead or dying sheep and goats, as well as human body parts and the charred metal frames of the Bedouin huts.²⁴⁷

There were 30 houses in the area of the strike. All were burned and 12 were destroyed, said Moqbil Abu-Lukaish, a community leader who lost 28 relatives that day.²⁴⁸ “Nothing was left but smoke and flames,” said another witness and relative, Awadh Saleh Medhi.²⁴⁹

Residents of al-Majalah and nearby areas gathered up the body parts. Unable to identify which pieces belonged to which body, they buried them in common graves.

Many models of Tomahawks can “precisely strike high-value targets with minimal collateral damage,” according to its manufacturer.²⁵⁰ But the model launched on al-Majalah is designed to spread submunitions or bomblets over a wide area.²⁵¹ Moreover, the governor of Abyan at the time, Ahmad al-Maisari, told parliamentary investigators,

²⁴⁵ Human Rights Watch interview with Saleh bin Fareed, May 4, 2013. Tora Bora is the complex of mountain caves in Afghanistan that the US repeatedly bombed in December 2011 in an effort to kill Osama bin Laden.

²⁴⁶ Human Rights Watch interview with Saleh bin Fareed, May 4, 2013.

²⁴⁷ Copy on file with Human Rights Watch.

²⁴⁸ Human Rights Watch interview with Moqbil Abu-Lukaish, Aden, May 4, 2013.

²⁴⁹ Human Rights Watch interview with Awadh Saleh Medhi, Aden, May 4, 2013.

²⁵⁰ Raytheon Company website, “Tomahawk Cruise Missile,” <http://www.raytheon.com/capabilities/products/tomahawk/> (accessed July 27, 2013).

²⁵¹ GlobalSecurity.org, “BLU-97N Combined Effects Bomb,” <http://www.globalsecurity.org/military/systems/munitions/blu-97.htm> (accessed July 27, 2013).

“there were errors in the geographic coordinates and the determination of the location.” The Yemeni parliamentary investigation into the attack, titled *Republic of Yemen, Special Parliamentary Investigating Committee Report On Security Events In the Province of Abyan*, did not report who made the errors.²⁵²



Moqbil Abu-Lukaish sits on remnants of one of the Tomahawk cruise missiles launched by the US Navy that struck al-Majalah on December 17, 2009. © 2012 Farooq al-Sharani

“They hit multiple encampments and they were only supposed to hit one,” said a Yemeni government official who spoke with Human Rights Watch on condition of anonymity, “That one you could argue was bad intelligence from the Yemenis.”²⁵³

²⁵² Yemen Parliamentary Report on al-Majalah, p. 7 (En.), p. 5 (Ar.).

²⁵³ Human Rights Watch interview with Yemeni government official, September 2013.

A report from state-run Saba News described the attack on al-Majalah as part of a four-pronged operation including a strike against an AQAP cell in Arhab province that allegedly was in the “final stages” of plotting to bomb the British Embassy in Sanaa. But the reports did not say that the alleged training camp at al-Majalah was linked to that plot or others.²⁵⁴

Cluster Munitions Kill Four More

The cluster munitions used in the strike, BLU-97 bomblets, are bright yellow cylinders about the size of a large soda can. Each bomblet is encased in steel designed to break into approximately 300 fragments capable of piercing armor.²⁵⁵ Each Tomahawk warhead carries 166 BLU-97 bomblets.²⁵⁶ That means that as many as 830 bomblets fell onto al-Majalah, showering the sleeping Bedouins, their herds, and few belongings with tens of thousands of shards of steel. The BLU-97s also have incendiary capabilities.²⁵⁷

Cluster munitions are inaccurate and unreliable weapons that by their very nature pose unacceptable dangers to civilians. They pose an immediate threat by randomly scattering exploding submunitions over a vast area. And they continue to take even more civilian lives and limbs long after a conflict has ended, littering the landscape with landmine-like “duds”—bomblets that fail to explode immediately but remain dangerous. A total of 84 countries have ratified the 2008 Convention on Cluster Munitions, the international treaty prohibiting the use, production, stockpiling, and transfer of cluster munitions, and requiring clearance of remnants as well as assistance to victims of the weapons. Neither Yemen nor the United States is among them.²⁵⁸

At least four people were killed after the initial strike by handling unexploded bomblets that had been scattered over a 1.5-kilometer-wide area during the strikes.²⁵⁹

²⁵⁴ Taher, “Complete details on recent deadly operations against al-Qaeda,” Saba News, January 3, 2010. <http://www.sabanews.net/en/news202231.htm> (accessed July 28, 2013).

²⁵⁵ GlobalSecurity.org, “BLU-97N Combined Effects Bomb,” <http://www.globalsecurity.org/military/systems/munitions/blu-97.htm> (July 27, 2013).

²⁵⁶ US Navy Fact Sheet, Tomahawk Missiles, updated 2010, http://www.navy.mil/navydata/fact_display.asp?cid=2200&tid=1300&ct=2 (accessed July 28, 2013).

²⁵⁷ Ibid.

²⁵⁸ The treaty requires destruction of stockpiles within eight years and clearance of affected areas within 10 years, and also establishes a strong framework for assistance to cluster munitions victims. Human Rights Watch is a founding member of the international Cluster Munition Coalition, the civil society campaign behind the Convention on Cluster Munitions. See Human Rights Watch, Arms: Cluster Munitions, <http://www.hrw.org/topic/arms/cluster-munitions> and Cluster Munition Coalition, www.clustermunitions.org.

²⁵⁹ Yemen Parliamentary Report on al-Majalah, p. 20 (En.) p.14 (Ar).

Four days after the strike, on December 21, 2009, during a massive protest rally at al-Majalah, three more people were killed and nine others injured by unexploded bomblets from the cluster munition remnants.²⁶⁰ At least two people died on the scene, prompting people there to call a group that had driven away with some of the bomblets to warn them they could explode. The people in the car removed the bomblets, which they had taken as evidence, and in doing so detonated them, killing one other person.²⁶¹

Residents cordoned off the area, but children nevertheless returned to the site of the attack. On January 24, 2012—more than two years after the strike—a young boy brought one of the bomblets with him when he returned home for lunch, with deadly consequences. Mahdi, a relative who went to the house later that day, described what happened:

The family was eating. One of the sons was playing with the cluster bomb. The father told the son, “Throw the bomb away; don’t play with it.” The son went to throw it away but he did not throw it far enough. The bomb exploded. There was blood and food all over the family. The bomb killed the father.²⁶²

The boy and two siblings were injured, Mahdi said.²⁶³

Target “Akron” Moved Freely Through Area

The main target of the strike was Saleh Muhammad Ali al-Anbouri, commonly known as Muhammad al-Kazami.²⁶⁴ The parliamentary report said 13 other suspected Al-Qaeda “operatives” were killed in the attack but it did not name them, saying a local authority believed several names were fictitious.²⁶⁵

²⁶⁰ Ibid.

²⁶¹ Human Rights Watch interview with bin Fareed, May 4, 2013.

²⁶² Human Rights Watch interview with Awadh Saleh Mahdi, Aden, May 4, 2013. Three other residents confirmed his account to Human Rights Watch, Aden, May 4, 2013.

²⁶³ Ibid. The human rights organizations Alkarama Foundation and HOOD also reported that in 2010, one of the unexploded bomblets floated five kilometers downriver and hit a group of people gathering herbs, killing two and injuring four others. See Alkarama Foundation/HOOD, *The United States’ War on Yemen: Drone Attacks*, June 2013, p. 9.

²⁶⁴ Yemen Parliamentary Report on al-Majalah, pp. 19-20 (En.), p. 14 (Ar.), and Klaidman, *Kill or Capture*, pp. 99-102.

²⁶⁵ Yemen Parliamentary Report on al-Majalah, p. 17 (En.), p.12 (Ar.).

Al-Kazami fought in Afghanistan in the 1980s; he was among hundreds of Yemenis who joined the *mujahideen* with the approval of the Saleh government and tribal leaders.²⁶⁶

He was arrested in 2005 by Yemeni security forces on suspicion of terrorism-related crimes and served about two years in prison.²⁶⁷ Upon his release, al-Kazami returned to Abyan and ultimately ended up in al-Majalah, where he had relatives, and lived with his wife and four children there. The parliamentary report said he had pledged “to not get involved in activities with Al-Qaeda.”²⁶⁸

According to *Kill or Capture: The War on Terror and the Soul of the Obama Presidency*, by investigative journalist Daniel Kleidman, the US Joint Special Operations Command (JSOC) had al-Kazami on one of its “most-wanted terrorist” baseball cards, under the codename “Akron.” JSOC said he was “in the late stages of planning a terrorist attack on the US embassy in Sanaa” and that he also was believed to have plotted a July 2007 suicide bombing in Yemen that killed nine people—two Yemenis and seven Spanish tourists, Klaidman wrote.²⁶⁹

In the parliamentary report, the then-governor of Abyan referred to al-Kazami as an “Al-Qaeda leader” and said he was believed to have “funneled money” and as many as 20 Saudi, Emirati and Pakistani Al-Qaeda members into the region, including “a Pakistani expert in poisons and explosives.”²⁷⁰ The Yemeni government official who spoke to Human Rights Watch on condition of anonymity called al-Kazami “a big guy” in AQAP.²⁷¹

Whatever his ties to violent militants, al-Kazami traveled freely through the area upon his release from prison, suggesting ample opportunities for capture. Indeed, residents said his movements required him to pass multiple checkpoints at which security forces could have detained him.²⁷² Surveillance aircraft had been flying low over the area two

²⁶⁶ See “Al-Qaeda in Yemen” chapter of this report.

²⁶⁷ Taher, “Complete details on recent deadly operations against al-Qaeda,” Saba News, January 3, 2010. <http://www.sabanews.net/en/news202231.htm>, and Yemen Parliamentary Report on al-Majalah, p. 16 (En.), p.11 (Ar.). There are conflicting accounts as to how many years al-Kazami was imprisoned.

²⁶⁸ Yemen Parliamentary Report on Al-Majalah, p. 16 (En.), p.11 (Ar.).

²⁶⁹ Klaidman, *Kill Or Capture*, pp. 99-102.

²⁷⁰ Yemen Parliamentary Report on al-Majalah, p. 6 (En.), p. 4 (Ar.). The governor at the time was Ahmad al-Mayssary.

²⁷¹ Human Rights Watch interview with Yemeni government official, September 2013.

²⁷² Yemen Parliamentary Report on al-Majalah, p. 20 (En.), p. 14 (Ar), Al-Zazami’s open movements also were described in Human Rights Watch interviews with three residents of al-Majalah in Aden, May 4, 2013, as well as three Yemeni human rights defenders and three Yemen security experts in Aden and Sanaa, April-May 2013.

months before the strike, residents said, suggesting the authorities could track al-Kazami's movements.²⁷³

"It was possible to reach him by using a different security method," the parliamentary report concluded.

Al-Majalah residents interviewed by Human Rights Watch said they were not aware that he was engaged in military operations and had not seen a training camp, but added that they could not be sure.²⁷⁴ A provincial authority said the men were Islamist fighters.²⁷⁵

Twenty days before the strike, six men who were not known to local residents joined al-Kazami in al-Majalah and began using hydraulic equipment and dynamite to dig a well about one kilometer from the area that the missiles struck. There were no wells near the camp, creating hardships for residents, they said.²⁷⁶

Immediately after the strike, a group of armed, masked men appeared at the scene and removed the bodies of the six newcomers and several wounded men.²⁷⁷

"We'll Continue Saying the Bombs Are Ours, Not Yours"

The Obama and Saleh administrations sought to portray the al-Majalah strike as having been carried by the Yemeni government without direct US participation.

On the very day of the attack, President Obama called President Saleh to "congratulate" him on the raids.²⁷⁸

Two weeks later, state-run Saba News published an extensive account of the strike, which it described as the work of Yemeni security forces, complete with a photograph of a squadron of gleaming MiG-29s—an attack jet in the Yemeni Air Force arsenal that is

²⁷³ Human Rights Watch interviews with three al-Majalah residents, April 26 and May 4, 2013.

²⁷⁴ Human Rights Watch interview with Moqbil al-Lukaish, , May 4, 2013.

²⁷⁵ Yemen Parliamentary Report on al-Majalah. p. 16 (En.), p. 11 (Ar.)

²⁷⁶ Human Rights Watch interviews with al-Majalah residents, April 26 and May 4, 2013.

²⁷⁷ Yemen Parliamentary Report on al-Majalah, p. 18 (En.), p. 12-13 (Ar.)

²⁷⁸ "Saleh gets telephone call from U.S. President Barack Obama," Saba News, December 17, 2009, <http://www.sabanews.net/en/news200912.htm> (accessed October 10, 2013).

incapable of firing Tomahawk cruise missiles. The report said the strike killed 34 “terrorists” and captured 21 others in the four-pronged, nationwide operation, nearly all from al-Majalah. It said Yemeni authorities regretted the killing of an unspecified number of civilians but said their deaths were unavoidable and that they were preparing food for the “Al-Qaeda elements.”²⁷⁹

The Saba News report blamed the “terrorists” for the cluster munitions, saying they “planted mines and explosives” to thwart investigation teams from visiting the site.²⁸⁰

Interior Minister al-Alimi reported that Yemen carried out the attack but with “intelligence cooperation” from the Americans and Saudis.²⁸¹ But in a classified January 2010 US diplomatic cable released by Wikileaks, al-Alimi joked about how he had “lied” to the Yemeni parliament about US responsibility for the attack.²⁸²

“We'll continue saying the bombs are ours, not yours,” Saleh told Gen. David Petraeus, then head of US central command, according to the cable.²⁸³

In a separate cable sent four days after the strike, then-US Ambassador Stephen A. Seche said al-Alimi vowed that the Yemeni government would “‘maintain the status quo’ with regard to the official denial of US involvement in order to ensure additional ‘positive operations’ against AQAP” by the United States. The cable added that “Alimi appeared confident that any evidence of greater US involvement—such as US munitions found at the sites—could be explained away as equipment purchased from the US”²⁸⁴

The January 2010 cable suggests that US authorities were unaware and unconcerned about the civilian toll. When Saleh expressed concern over civilian casualties in the strike, saying “mistakes were made,” General Petraeus responded that only al-Kazami’s wife and two

²⁷⁹ Taher, “Complete details on recent deadly operations against al-Qaeda,” Saba News, January 3, 2010. <http://www.sabanews.net/en/news202231.htm> (accessed October 10, 2013).

²⁸⁰ Ibid.

²⁸¹ “Yemeni security units carried out recent attacks against al-Qaeda, says al-Alimi,” Almotamar.net, December 23, 2009 <http://www.almotamar.net/en/7066.htm> (accessed October 10, 2013).

²⁸² “General Petraeus’ Meeting With Saleh On Security Assistance, AQAP Strikes,” US Embassy Cable, Wikileaks.org, January 4, 2010, <http://wikileaks.org/cable/2010/01/10SANAA4.html> (accessed October 10, 2013).

²⁸³ Ibid.

²⁸⁴ “ROYG Looks Ahead Following CT Operations, But Perhaps Not Far Enough,” classified cable from US Embassy in Sanaa, December 21, 2009, <http://www.guardian.co.uk/world/us-embassy-cables-documents/240955> (accessed October 15, 2013).

children were killed. “Saleh's conversation on the civilian casualties suggests he has not been well briefed by his advisors on the strike,” Seche wrote.²⁸⁵

AQAP immediately sought to capitalize on the strike, showing up at a rally on December 21, 2009, to denounce the deaths.

“Soldiers, you should know we do not want to fight you,” one AQAP operative bearing a Kalashnikov declared. “There is no problem between you and us. The problem is between us and America and its agents. Beware taking the side of America!”²⁸⁶

US and Yemeni Government Response

The Yemeni and US governments’ response to the civilian casualties at Al-Majalah have been inadequate from the start. Surveillance aircraft flew over the site after the attack and the governor of Abyan said the interior minister and then-President Saleh phone him about the strike two hours after it took place, suggesting that the Yemeni government was aware of the civilian casualties.²⁸⁷ Yet the authorities failed to provide even the most basic rescue assistance such as transporting the wounded to hospitals, helping identify the dead and wounded, or securing the area.²⁸⁸

The parliamentary report called on the Yemeni government to investigate and “hold accountable those found guilty” of “mistakes that were made causing the deaths of . . . innocent victims.” It also called on the Yemeni authorities to compensate victims and pay their medical bills in a “swift manner,” remove cluster munition remnants from the site, and develop and bring basic services to the area.²⁸⁹ Despite accepting the report’s findings in 2010, the Yemeni government failed to implement its recommendations.

²⁸⁵“General Petraeus’ Meeting With Saleh on Security Assistance, AQAP Strikes,” US Embassy Cable, Wikileaks.org, January 4, 2010, <http://wikileaks.org/cable/2010/01/10SANAA4.html> (accessed October 15, 2013).

²⁸⁶ Scott Shane, Mark Mazzetti, and Robert F. Worth with Muhammad al-Ahmadi, “A Secret Assault on Terror Widens on Two Continents,” *New York Times* August 15, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9905E2D6133AF936A2575BC0A9669D8B63&ref=robertworth> (accessed July 29, 2013). Scahill identifies the armed militant who spoke as Muhammad al-Kilwi; see *Dirty Wars*, p. 311.

²⁸⁷ Yemen Parliamentary Report on al-Majalah, p. 8 (En.), p. 5 (Ar.).

²⁸⁸ Ibid., p. 20 (En.), p. 15 (Ar.), and Human Rights Watch interviews with four al-Majalah residents and bin Fareed, April 26 and May 4, 2013.

²⁸⁹ Yemen Parliamentary Report on al-Majalah. pp. 21-22 (En.), p. 16 (Ar.).

Seche wrote in a diplomatic cable that al-Alimi had given provincial authorities \$100,000 to distribute to victims' families.²⁹⁰ The Yemeni government subsequently increased the offer to 5.5 million rials (about \$25,000), for each civilian killed, villagers said. They said most residents rejected the sum as insufficient and because the authorities did not promise to hold those responsible for the attacks to account. Said Mahdi:

They offered us 10 Toyota Hiluxes as a down payment if we agreed to the 5.5 million rials. We refused. We have said to the government from the start, we want 10 billion rials [\$51,000] compensation. We were flexible. We could have agreed on a lower sum. But the government refused.²⁹¹

The villagers rebuffed government offers to clear the cluster munition remnants, saying they feared the authorities would do a poor job and seek to conceal the evidence. They called for an international team to clear the site.²⁹²

In mid-2013, several of the al-Majalah families began accepting payments from the Yemeni authorities for property damages from the strike. The compensation of 37 million rials (\$170,000) was divided among 10 households, averaging about \$17,000 each. It does not cover the loss of homes but only of possessions—mostly goats, sheep, and honey bees. The residents were continuing to demand greater compensation for civilian deaths and funds for medical care for the injured.²⁹³

The residents said they are paying medical bills for the four children orphaned in the attack. They include Nada Loqyah Mahdi, and Aysha Nassar Mahdi. Human Rights Watch met the two girls and a third child survivor, Muhammad Ali Loqyah, in May 2013. The children, who at the time of the interview were 5, 4, and 7, respectively, said they still have nightmares about the attack.²⁹⁴

²⁹⁰ "ROYG Looks Ahead Following CT Operations, But Perhaps Not Far Enough," *The Guardian*, December 21, 2009, <http://www.guardian.co.uk/world/us-embassy-cables-documents/240955>.

²⁹¹ Human Rights Watch interview with Mahdi, May 4, 2013.

²⁹² Human Rights Watch interviews with al-Majalah residents Mahdi, Moqbil Abu-Lukaish, and Salaha Moqbil Loqyah, Aden, May 4, 2013.

²⁹³ Human Rights Watch telephone interview with Abu-Lukaish, September 24, 2013. The scant possessions of the al-Majalah residents killed in the strike are listed in the Yemen Parliamentary Report on al-Majalah, Annex II.

²⁹⁴ Human Rights Watch interviewed the children in Aden in the presence of their guardians, Mahdi, Moqbil Abu-Lukaish and Salaha Moqbil Loqyah, on May 4, 2013.



Nada Mobqil Loqyah, 5, with her guardian Salaha Moqbil Loqyah. Nada was orphaned in the 2009 strike on al-Majalah. © 2013 Letta Tayler/Human Rights Watch.

Aysa raised a hand to show a finger she lost in the airstrike. Nada showed the gashes on her stomach from fragments of the ordnance. “Nada had been really healthy,” Medhi said. “Now she is very thin and vomits all the time. There may still be some fragments in her stomach but we can’t afford another operation.”²⁹⁵

Journalist who Probed Killings Detained

In February 2011, Yemeni journalist Abd al-Ilah Haidar al-Shayi', the first journalist to file authoritative reports on the US role in al-Majalah, was sentenced to five years in prison on terrorism-related charges in proceedings that failed to meet international fair trial

²⁹⁵ Human Rights Watch interview with Mahdi , May 4, 2013.

standards.²⁹⁶ President Saleh pardoned Shayi' in 2011, but he remained in prison after President Obama called Saleh and expressed "concern" over his release.²⁹⁷

President Hadi on July 23, 2013, commuted the remainder of Shayi''s sentence to two years' house arrest. The State Department said the United States was "concerned and disappointed by his early release."²⁹⁸

The US government never laid out specific concerns about Shayi'. Some Yemeni observers believe that President Obama's statement about the case, expressing concern at Shayi''s release rather than pressing for a fair trial, has fueled anti-American resentment and eroded confidence in US claims that it supports democracy and rule of law in the post-Saleh era.

On April 17, 2012, the Center for Constitutional Rights and the American Civil Liberties Union filed a Freedom of Information Act request to eight US government agencies seeking information about the al-Majalah attack. At the time of writing that request was pending.²⁹⁹

²⁹⁶ Shaye was held, beaten and threatened one month before his arrest by security agents. Upon his arrest he was held incommunicado for 34 days, and showed signs of being beaten when he first appeared in Yemen's Specialized Criminal Court for national security suspects—a tribunal that is not authorized under Yemen's constitution and has a record of unfair proceedings. The judge failed to investigate his arbitrary detention and alleged abuse.

Prosecutors said Shayi' was a "media advisor" to the American cleric Anwar al-Awlaqi, killed in September 2011 in a drone strike, and said he was passing photographs of Yemen security bases and foreign embassies to AQAP as potential targets. But most of the evidence presented in court consisted of materials that a journalist investigating an armed militant group might review. See, e.g., Iona Craig, "Yemen: Press freedom a distant hope," *X Index*, October 2010, http://www.indexoncensorship.org/2010/10/yemn-journalist-charge-terrorism/?utm_campaign=Listly&utm_medium=list&utm_source=listly (accessed July 29, 2013).

²⁹⁷ "Readout of President's Call with President Saleh of Yemen," White House Office of the Press Secretary, posted February 3, 2011, <http://www.whitehouse.gov/the-press-office/2011/02/03/readout-presidents-call-president-saleh-yemen>.

²⁹⁸ Aya Batrawy, "US Disappointed in Yemen Journalist's Release," Associated Press, July 24, 2013, <http://news.yahoo.com/us-disappointed-yemen-journalists-release-204657960.html> (accessed September 30, 2013).

²⁹⁹ Center for Constitutional Rights, Al-Majalah Freedom of Information Act Request, April 17, 2012, <http://ccrjustice.org/ourcases/current-cases/al-majalah-freedom-of-information-act-request> (accessed July 28, 2013).

III. International Law and US Policy

So America is at a crossroads. We must define the nature and scope of this struggle, or else it will define us.”

– US President Barack Obama referring to hostilities with Al-Qaeda and “affiliated groups,” May 23, 2013

General Legal Considerations

Since the attacks of September 11, 2001, the US government has carried out hundreds of armed attacks against alleged terrorists in several countries. These so-called targeted killings have been defined as deliberate lethal attacks by government forces, under the color of law, against a specific individual not in custody.³⁰⁰ Many of these attacks have been carried out by remotely piloted aircraft–drones–but that is not a necessary component of a targeted killing. The conduct of these operations has raised serious concerns about the US government’s compliance with and commitment to international humanitarian law (the laws of war), and international human rights law.³⁰¹

President Obama and senior members of his administration have on various occasions asserted that its program of lethal attacks has been in full accordance with US and international law.³⁰² However, they have failed to provide a clear legal justification for targeted killings or respond to apparent violations of international law in individual attacks. The Obama administration asserts that it has the authority to carry out targeted killings against members of Al-Qaeda and largely undefined “associated forces”— including

³⁰⁰ Human Rights Watch, Q & A: US Targeted Killings and International Law, December 19, 2011; see also Nils Melzer, *Targeted Killing in International Law* (Oxford University Press, 2008), Chapter 1, <http://global.oup.com/academic/product/targeted-killing-in-international-law-9780199533169?cc=us&lang=en&tab=description> (accessed August 19, 2013).

³⁰¹ For a more detailed explanation of these concerns, see Human Rights Watch, Joint Letter to President Obama on US Drone Strikes and Targeted Killings, April 11, 2013, <http://www.hrw.org/news/2013/04/11/joint-letter-president-obama-us-drone-strikes-and-targeted-killings>.

³⁰² See, e.g., Jeh Johnson, “National Security Law, Lawyers and Lawyering in the Obama Administration,” Yale Law School, Feb. 22, 2012, available at <http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448> (“We must apply, and we have applied, the law of armed conflict, including applicable provisions of the Geneva Conventions and customary international law, core principles of distinction and proportionality, historic precedent, and traditional principles of statutory construction:”).

AQAP—because it is in an ongoing armed conflict with those groups.³⁰³ It claims authority under US law through the 2001 Authorization for the Use of Military Force (AUMF), which Congress passed in the wake of the September 11 attacks, as well as international humanitarian law and the right to self-defense.³⁰⁴

The lawfulness of a targeted killing hinges in part on the applicable international law, which is determined by the context in which the attack takes place. The laws of war are applicable during armed conflicts, whether between states or between a state and a non-state armed group. The laws of war are found in the Geneva Conventions of 1949³⁰⁵ and their two Additional Protocols,³⁰⁶ the 1907 Hague Regulations,³⁰⁷ and the customary laws of war.³⁰⁸ International human rights law is applicable at all times, but it may be superseded by the laws of war during armed conflict. It can be found in multinational conventions such as the International Covenant on Civil and Political Rights³⁰⁹ and in

³⁰³ The US has defined AQAP as an organized armed group that is “either part of, or an associate of, al Qa’ida.” See *Nasser al-Aulaqi vs. Leon Panetta*, US Motion to Dismiss, US District Court for the District of Columbia, December 14, 2012, https://www.aclu.org/files/assets/tk_govt_motion_to_dismiss.pdf (accessed October 13, 2013).

The US State Department lists AQAP as an “affiliate” of al-Qaeda in *Country Reports on Terrorism 2012*, Office of the Coordinator for Counterterrorism, May 30, 2013, <http://www.state.gov/j/ct/rls/crt/2012/209978.htm> (accessed October 12, 2013), Strategic Assessment chapter, paras 3, 5, 7.

³⁰⁴ See, e.g., Jeh Johnson, General Counsel, US Defense Department, “National Security Law, Lawyers and Lawyering in the Obama Administration,” speech at Yale Law School, February 22, 2012, [http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448](http://www.cfr.org/national-security-and-defense/jeh-johnsons-speech-national-security-law-lawyers-lawyering-obama-administration/p27448;); Attorney General Eric Holder, “Remarks at Northwestern University School of Law,” March 5, 2012, <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html> (accessed July 29, 2013).

The AUMF, passed three days after the September 11 attacks, was a joint congressional resolution authorizing the president “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations, or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.” However it does not use the term “associated forces.” AUMF, 107 S.J. Res. 23, 107th Cong., Pub. L. No. 107-40, 115 Stat. 224 (2001).

³⁰⁵ Four Geneva Conventions of 1949, entered into force, October 21, 1950.

³⁰⁶ Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977; Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977. Many of the provisions of both treaties are considered reflective of customary international law. President Obama has recommended ratification of Protocol II. See Press Release, White House Office of the Press Secretary, Fact Sheet: New Actions on Guantanamo and Detainee Policy, March 7, 2011, available at <http://www.whitehouse.gov/the-press-office/2011/03/07/fact-sheet-new-actions-guant-namo-and-detainee-policy>.

³⁰⁷ Hague Convention IV - Laws and Customs of War on Land: 18 October 1907, 36 Stat. 2277, 1 Bevans 631, 205 Consol. T.S. 277, 3 Martens Nouveau Recueil (ser. 3) 461, entered into force Jan. 26, 1910.

³⁰⁸ See generally, International Committee of the Red Cross (ICRC), Henckaerts & Doswald-Beck, eds., Customary International Humanitarian Law (Cambridge: Cambridge Univ. Press 2005).

³⁰⁹ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

authoritative standards such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.³¹⁰

For the laws of war to apply to fighting between the United States and Al-Qaeda or other non-state armed groups, the hostilities must reach the level of an armed conflict as defined by international law. Drawing on the Geneva Conventions of 1949, rulings of international criminal courts and other sources, the International Committee of the Red Cross (ICRC) has articulated the following conditions for an armed conflict between a state and an armed group (or between two armed groups), known as a non-international armed conflict:

First, the hostilities must reach a minimum level of intensity. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces.

Second, nongovernmental groups involved in the conflict must be considered as “parties to the conflict,” meaning that they possess organized armed forces. This means for example that these forces have to be under a certain command structure and have the capacity to sustain military operations.³¹¹

This standard is based on the facts on the ground, not the subjective views of the involved parties.³¹²

³¹⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

³¹¹ See ICRC, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?” Opinion Paper, March 2008, p. 3, <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>.

The 1952 Commentary on the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1952) on Common Article 3 of the Geneva Conventions of 1949 “distinguish[es] a genuine armed conflict from a mere act of banditry or an unorganized and short-lived insurrection.” Geneva: ICRC, 1952, vol. 1, p. 50, Protocol II notes that armed conflicts do not include “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.”

In 1995, the International Criminal Tribunal for the former Yugoslavia (ICTY) offered a clearer definition of non-international armed conflict. The Appeals Chamber in the *Tadic* case stated that “an armed conflict exists whenever there is ... protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” *Prosecutor v. Tadic*, IT-94-1AR72, Decision on Interlocutory Appeal on Jurisdiction, October 2, 1995, para.70, <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>.

The *Tadic* standard has since been adopted by international and hybrid courts such as the Special Court for Sierra Leone and the International Criminal Court, as well as by various international commissions, UN mechanisms, and military field manuals, such as that of the United Kingdom.

³¹² See ICRC, *Commentary on the Geneva Conventions*, 1952, vol. I, pp. 28-29, http://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-I.pdf.

Absent an armed conflict, international human rights law requires forces in operations against terrorist suspects to apply law enforcement standards.³¹³ As discussed below, these standards do not prohibit the use of lethal force, but limit its use to situations in which the loss of human life is imminent and less extreme means, such as capture or non-lethal incapacitation, would be insufficient. Under this standard, individuals cannot be targeted for lethal attack solely because of past unlawful behavior but only for posing imminent or other grave threats to life when arrest is not a reasonable possibility.

Legal Framework for the US in Yemen

The fighting between the Yemeni government and AQAP has since at least 2011 reached the level of an armed conflict, though pinpointing the start of that conflict is difficult. Whether there is a distinct armed conflict between the US and AQAP is less clear.

The US government has acknowledged that it provides the Yemeni government with weapons, training and intelligence to confront AQAP, but it has not claimed to be a party alongside the Yemeni government to the Yemen-AQAP conflict. Obama has said instead that the United States does not carry out attacks against individuals in Yemen unless they pose a direct threat to the United States or its interests.³¹⁴ According to then-US counterterrorism advisor John Brennan:

So while we [the US] have aided Yemen, the Yemeni government, in building their capacity to deal with an AQAP insurgency that exists on the ground there, we're not involved in working with the Yemeni government in terms of direct action or lethal action as part of that insurgency.³¹⁵

³¹³ The application of human rights law (the *lex generalis*, or general law) in situations outside an armed conflict is consistent with the rulings of the International Court of Justice in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (Nuclear Weapons), <http://www.icj-cij.org/docket/files/95/7495.pdf>, and its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (The Wall), <http://www.icj-cij.org/docket/files/131/1671.pdf>.

³¹⁴ President Obama has made this statement in his War Powers Resolution 6-Month Reports of June 15, 2012, December 14, 2012, and June 14, 2013. See <http://www.whitehouse.gov/the-press-office/2012/06/15/presidential-letter-2012-war-powers-resolution-6-month-report>, <http://www.whitehouse.gov/the-press-office/2012/12/14/letter-president-war-powers-resolution>, and <http://www.whitehouse.gov/the-press-office/2013/06/14/letter-president-regarding-war-powers-resolution> (accessed July 15, 2013).

³¹⁵ John Brennan speech, Council on Foreign Relations, Washington, DC, August 9, 2012, <http://www.lawfareblog.com/2012/08/transcript-of-john-brennans-speech-at-the-council-on-foreign-relations/> (accessed June 10, 2013).

In those instances in which the United States acts as a party to the armed conflict between the Yemeni government and AQAP, US military actions would fall within the laws of war. However, the administration asserts that it is only responding to a threat to the United States, suggesting it does not consider itself a party to the Yemen-AQAP conflict. Under that rationale, the US government should be applying a war model to its actions only if there is a genuine armed conflict between the US and AQAP, which is not evident. Otherwise the United States needs to be acting in accordance with the higher threshold for the use of force under applicable law enforcement standards found in international human rights law.³¹⁶

Laws of War

The fundamental tenets of the laws of war are "civilian immunity" and "distinction." Parties to a conflict are required to distinguish at all times between combatants and civilians, and to direct attacks only against combatants and other military objectives. Deliberate attacks on civilians and civilian objects are strictly prohibited.³¹⁷ Also prohibited are attacks that cannot or do not discriminate between combatants and civilians,³¹⁸ or in which the expected loss of civilian life or property is disproportionate to the anticipated military gain of the attack.³¹⁹ Therefore, not all attacks that cause civilian deaths violate the laws of war, only those that target civilians, are indiscriminate or cause disproportionate civilian loss.

Military objectives consist of combatants and "those objects which by their nature, location, or purpose make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."³²⁰ Combatants include members of armed groups who are directly participating in hostilities. They would include individuals actively planning or

³¹⁶ The International Court of Justice first affirmed the applicability of international human rights law even during armed conflicts in *Nuclear Weapons* (1996): "The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency," <http://www.icj-cij.org/docket/files/95/7495.pdf>. Similarly in *The Wall* (2004), the Court confirmed the applicability of international human rights law to situations of military occupation, <http://www.icj-cij.org/docket/files/131/1671.pdf>.

³¹⁷ ICRC, *Customary International Humanitarian Law*, rule 1, citing Protocol II, art. 13(2).

³¹⁸ ICRC, *Customary International Humanitarian Law*, chapter 3, citing Protocol I, art. 51(4).

³¹⁹ ICRC, *Customary International Humanitarian Law*, chapter 4, citing Protocol I, art. 57.

³²⁰ ICRC, *Customary International Humanitarian Law*, rule 8, citing Protocol I, arts. 48, 51(2), and 52(2).

directing future military operations, but not mere recruiters or propagandists who have no military operational role. Civilians may only be deliberately attacked when and for that time they are “directly participating in the hostilities.”³²¹

In the conduct of military operations, warring parties must take constant care to spare the civilian population and civilian objects from the effects of hostilities, and are required to take precautionary measures with a view to avoiding, and in any event minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects. These precautions include: doing everything feasible to verify that the objects to be attacked are military objectives and not civilians or civilian objects³²²; taking all feasible precautions in the choice of means and methods of warfare to minimize loss of civilian life³²³; and doing everything feasible to cancel or suspend an attack if it becomes apparent that a target is not a military objective or would result in disproportionate civilian loss.³²⁴

The laws of war also place obligations on warring parties to take steps to minimize harm to civilians. These include: avoiding locating military objectives within or near densely populated areas³²⁵; endeavoring to remove the civilian population from the vicinity of military objectives³²⁶; and not deliberately seeking to prevent attacks on one's forces by using them as "human shields."³²⁷

At least four of the strikes detailed in this report were carried out by remotely piloted aircraft, or drones. The use of drones rather than manned aircraft does not directly affect the legal analysis of a particular attack. Drones, with their weaponry of missiles and laser-guided bombs, are not illegal under the laws of war—they can be used lawfully or unlawfully depending on the circumstances. When used appropriately, drones’ enhanced surveillance capabilities and ability to linger for long periods may help remote operators distinguish valid military targets from civilians who are immune from attack. As with other

³²¹ ICRC, *Customary International Humanitarian Law*, rule 6, citing Protocol II, art. 13(3).

³²² Ibid., rule 16, citing Protocol I, art. 57(2)(a).

³²³ Ibid., rule 17, citing Protocol I, art. 57(2)(a).

³²⁴ Ibid., rule 18, citing Protocol I, art. 57(2)(b).

³²⁵ Ibid., rule 23, citing Protocol I, art. 58(b).

³²⁶ Ibid., rule 24, citing Protocol I, art. 58(a).

³²⁷ Ibid., rule 97, citing Protocol I, art. 51(7).

aerial attacks, drone operations may be hampered by poor intelligence or a failure to minimize the risk of civilian harm.³²⁸

US statements and actions indicate that US forces are applying an overly broad definition of “combatant” in targeted attacks, for example by designating persons as lawful targets based on their merely being members, rather than having military operational roles, in the armed group.³²⁹ Individuals who accompany or support an organized armed group, but whose activities are unrelated to military operations, are not lawful military targets under the laws of war. Thus members of an armed group who play a political role or a non-military logistics function cannot be targeted on that basis alone.

The reported practice of so-called signature strikes in Yemen, based on observation of certain alleged patterns of behavior and other “signatures,” also expands the notion of target beyond laws-of-war requirements.³³⁰ The laws of war do not require that the name or identity of a target be known. But they do require knowledge about an individual’s participation in hostilities. Carrying out signature strikes increases the risk that civilians may be targeted, despite the obligation under the laws of war to presume an individual is a civilian unless determined to be a valid military objective.

International Human Rights Law

International human rights law provides every person with the inherent right to life.³³¹ It permits the use of lethal force outside of armed conflict situations only if it is strictly and directly necessary to save human life. In particular, the use of lethal force is lawful only where there is an imminent threat to life and less extreme means, such as capture or non-lethal incapacitation, are insufficient to address that threat.

³²⁸ Human Rights Watch, “Q&A: Targeted Killings and International Law,” December 19, 2011, <http://www.hrw.org/news/2011/12/19/q-us-targeted-killings-and-international-law#6>. Does using aerial drones in targeted killings affect the legal regime involved?

³²⁹ These terms are widely used in media on reports quoting US officials on who is targetable. See Columbia Law School Human Rights Clinic & Center for Civilians in Conflict, *The Civilian Impact of Drones*, 2012, p. 75.

³³⁰ See Jo Becker and Scott Shane, “Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,” *New York Times*, May 29, 2012, http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&_r=0 (accessed October 10, 2013).

³³¹ The International Covenant on Civil and Political Rights (ICCPR) states that “Every human being has the inherent right to life. This right shall be protected by law. No man shall be deprived of his life arbitrarily.” International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, art. 6, <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that the “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” This standard permits using firearms only in self-defense or defense of others “against the imminent threat of death or serious injury” or “to prevent the perpetration of a particularly serious crime involving grave threat to life” and “only when less extreme means are insufficient to achieve these objectives.”³³² Under this standard, individuals cannot be targeted for lethal attack merely because of past unlawful behavior, but only for imminent or other grave threats to life when arrest is not a reasonable possibility.

If the United States targets individuals based on overly elastic interpretations of the imminent threat to life that they pose, these killings may amount to an extrajudicial execution, a violation of the right to life and basic due process.

Failure to Investigate and Provide Redress

States participating in an armed conflict have a duty to investigate serious violations of the laws of war. The Geneva Conventions state that “[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”³³³ Where there is credible evidence that an attack has violated the laws of war, the responsible state party is obligated to investigate for possible war crimes and appropriately prosecute the perpetrators, or extradite them for prosecution elsewhere.³³⁴

A warring party is obligated to provide redress for the loss or injury caused by a violation of the laws of war.³³⁵ The US government’s unwillingness to admit to, let alone provide any information on specific targeted attacks, has deprived victims of unlawful attacks and their families any meaningful right to redress.

In recent years, some military forces deployed abroad, including US-led coalitions in Iraq and Afghanistan, have offered public expressions of regret and provided “condolence payments” to civilian victims of attacks without reference to fault, recognizing that

³³² Basic Principles on the Use of Force and Firearms, principle 9.

³³³ Common article 1 to the four Geneva Conventions of 1949.

³³⁴ ICRC, *Customary International Humanitarian Law*, rule 158, citing, e.g., Fourth Geneva Convention, art. 146.

³³⁵ ICRC, *Customary International Humanitarian Law*, rule 150.

mishandling of a strike's aftermath can exacerbate animosity over casualties.³³⁶ Although those civilian compensation systems are imperfect, they provide concrete assistance and some measure of emotional redress.³³⁷

The right to remedy is also recognized under international human rights law.³³⁸ Where there is evidence that a targeted killing might have violated international human rights standards, a state also has an obligation to investigate.³³⁹ Beyond these general provisions, some instruments provide a specific mandate to international and regional courts to award reparations and compensation for human rights violations.³⁴⁰

Human Rights Watch is unaware of the US providing condolence payments to civilian victims or their families in Yemen. In response to a Freedom of Information Act request, the US military Central Command told the investigative news service ProPublica that it has 33 pages of material related to “condolence payments” in Yemen. But Central Command refused to release or describe the documents.³⁴¹

³³⁶ See e.g., Center for Civilians in Conflict, *United States Military Compensation to Civilians in Armed Conflict*, May 7, 2010, <http://civiliansinconflict.org/resources/pub/united-states-military-compensation-to-civilians-in-armed-conflict>.

³³⁷ Ibid. See also Larry Lewis and Sarah Holewinski, “Changing of the Guard: Civilian Protection for an Evolving Military,” *Prism*, vol. 4, no. 2, June 20, 2013, <http://civiliansinconflict.org/resources/pub/prism-changing-of-the-guard>, accessed October 12, 2013.

³³⁸ The Universal Declaration of Human Rights states that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights.” Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 8, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (December 10, 1948). The ICCPR states in article 2(3) that: “[e]ach State Party to the present Covenant undertakes (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.”

³³⁹ For instance, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions state that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death.” E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989), Principle 9.

³⁴⁰ The Rome Statute of the International Criminal Court (ICC), for example, provides that the ICC “shall establish principles relating to reparations to, or in respect of victims, including restitution, compensation and rehabilitation.” See Rome Statute, art. 75(1), July 17, 1998, 2187 U.N.T.S. 90, http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/o/rome_statute_english.pdf.

³⁴¹ Cora Currier, “Does the US Pay Families when Drone Kill Innocent Yemenis?” *ProPublica*, August 12, 2013, <http://www.propublica.org/article/does-the-u.s.-pay-families-when-drones-kill-innocent-yemenis> (accessed August 12, 2013).

Obama's May 2013 Policy Guidelines

In response to mounting calls for transparency about the targeted killing program, President Obama on May 23, 2013 outlined steps that he said his administration takes or will take before targeting an individual for attack.³⁴² Along with the speech, the White House released a Fact Sheet “summarizing” a classified Presidential Policy Guidance on targeted killings that Obama had signed one day earlier.³⁴³

The speech and fact sheet did not adequately explain the legal rationale for the targeted killings. Nor did they address the lawfulness of specific strikes.³⁴⁴ In broad terms, however, the policies unveiled in the president's speech and in the fact sheet suggest a policy that is reflective of the higher threshold for the use of lethal force under international human rights law than the laws of war require. That is, the standards articulated go beyond the requirement of the laws of war. This may be indicative of a shift within the US administration from an armed conflict approach to a law enforcement approach in operations against alleged terrorists. However, the administration has not referred to international human rights law with respect to these policies, and spoke in terms of meeting policy guidelines, not adhering to law.

The president's speech and the fact sheet did not specify which policies had already been implemented and which were being implemented in the future.³⁴⁵ In addition, the White House refused to publicly release the Presidential Policy Guidance, the document on which the fact sheet purportedly was based.

None of the six strikes investigated by Human Rights Watch for this report appear to have complied with the administration's guidelines. Less clear is whether that is because the standards the administration unveiled in May 2013 were not in effect at the time or because US military forces failed to apply them.

³⁴²“Remarks by the President at the National Defense University,” May 23, 2013, <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university> (accessed May 23, 2013).

³⁴³ The White House, “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities” (Targeted Killing Fact Sheet), May 23, 2013, www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf (accessed May 23, 2013).

³⁴⁴ Human Rights Watch, “US: Pledges to End ‘War,’ Close Guantanamo,” news release, May 24, 2013, <http://www.hrw.org/news/2013/05/24/us-pledges-end-war-close-guantanamo> (accessed May 23, 2013).

³⁴⁵ Targeted Killing Fact Sheet, May 23, 2013, www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf

The following five standards are drawn from Obama's May 23 statement and the White House Fact Sheet:

1. **No Civilian Casualties.** The administration said that targeted strikes are only made when there is "near-certainty that no civilians will be killed or injured." In an apparent reference to so-called signature strikes, based on individuals' patterns of behavior, the Fact Sheet asserted that, "it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants" [emphasis in the original].

In at least four of the targeted killings detailed in this report, Human Rights Watch found that civilians were present at the strike location and were killed. In two cases the civilians included women and children. In the other two cases the civilians were young men.

2. **Ensure Target is Present.** The White House Fact Sheet said there must be a "near-certainty" that the target is present.

In one of the targeted killings detailed in this report, the target was not in the vicinity of the strike, which killed 12 civilians.

3. **Capture When Feasible.** Obama said that the US does not carry out targeted killings when capture is feasible. "Our preference is always to detain, interrogate, and prosecute" targets, he said. The Fact Sheet said capture "offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots."

In three of the cases detailed in this report, the evidence strongly suggests that capture of the target was feasible in areas under government control.

4. **Target Must Pose an Imminent Threat.** Obama said the United States only carries out strikes against those who pose a "continuing and imminent threat to the American people," and does not target anyone to "punish" them for past deeds.

The meaning of the phrase "continuing and imminent threat" is not clear. In none

of the cases has the administration sought to provide evidence that the target posed an imminent threat to life, the law enforcement standard.

5. **Compensate Civilians.** In February 2013, then-White House counterterrorism chief and current CIA director, John Brennan said that in the “rare instances” in which civilians are killed in targeted killings, the government carries out reviews of the strikes. “Where possible, we also work with local governments to gather facts and, if appropriate, provide condolence payments to families of those killed,” he said.³⁴⁶

Human Rights Watch found no evidence of US post-strike investigations to verify the extent of civilian casualties. The Yemeni authorities began payments to some civilians in the cases described in this report after Human Rights Watch and other organizations raised concerns with the United States and Yemen about the failure to compensate. However if the United States contributed to such payments it has not made that information public.

Armed Conflict Over with Al-Qaeda?

It is not evident that the US remains in an armed conflict with either Al-Qaeda or AQAP as defined by international humanitarian law. Since taking office, President Obama has disavowed the notion of a “global war on terror,” perhaps out of recognition that an armed conflict paradigm did not accurately reflect each and every situation in which the United States encountered Al-Qaeda or other armed groups. The sporadic and smaller scale of operations against US targets by these groups in the 12 years since the attacks of September 11, 2001, further diminishes the legal relevance of the war model.

In his speech at the National Defense University on May 23, 2013, Obama put forward legal and policy rationales for using force in various ways, yet he never explained why he believed a war paradigm was still applicable in many areas where the United States is using force in its counterterrorism efforts.

³⁴⁶ US Senate Select Committee on Intelligence, Nomination of John O. Brennan to be the Director of the Central Intelligence Agency, Responses to Post-Hearing Questions, February 16, 2013, <http://www.intelligence.senate.gov/130207/posthearing.pdf> (accessed June 11, 2013).

It is not apparent that there is “protracted armed violence” between the United States and either Al-Qaeda or AQAP at a sufficient level of intensity to qualify as armed conflict. As Obama noted, “There have been no large-scale attacks on the United States, and our homeland is more secure.”

While the deployment of military forces by a state against a non-state armed group is a factor in determining whether an armed conflict exists, the genuine need to use that level of force is crucial; otherwise a state could turn any criminal activity into a “war”—indeed, any criminal into a military target—simply by responding with high levels of force.

IV. Recommendations

To the Government of the United States

To the Obama Administration

- Explain the full legal basis on which the US carries out targeted killings, including the attacks detailed in this report.
- Conduct prompt, thorough, and impartial investigations into all cases where targeted strikes may have resulted in unlawful killings. Make public the findings and seek disciplinary measures or criminal prosecutions as appropriate.
- Publicly clarify all policy guidelines for targeted killings. Make public, to the extent possible, government documents that set forth these standards, including the Presidential Policy Guidance on targeted attacks of May 2013; disclose when each standard went into effect.
- Ensure that all targeted killings conducted during armed conflict situations are in accordance with the laws of war, including by taking all feasible precautions to minimize harm to civilians. Outside of armed conflict situations, use lethal force only when absolutely necessary to protect human life in accordance with international human rights law.
- Review pre-strike and post-strike assessment procedures, and implement appropriate changes in order to reduce, track, investigate, and publicly report on all incidents of civilian casualties as effectively as possible. Post-strike material that should be made public includes US video footage of the strikes.
- Implement a system of prompt and meaningful compensation for civilian loss of life, injury, and property damage from unlawful attacks, in coordination with governments in countries where the strikes take place. To address the backlash from targeted killings causing civilian harm, the US should institute a system of condolence or ex-gratia payments for losses in which there is no assumption of liability such as the one instituted by the US and other NATO forces in Afghanistan.
- Sign and ratify without delay the 2008 Convention on Cluster Munitions; even prior to ratification, abide by its prohibitions, including on cluster munitions use, clearance of cluster munition remnants, and assistance for victims of the weapons.

- Abide by US policy enunciated by President Obama on May 23, 2013, that, where feasible, “always ... detain” rather than kill a target, and strike only when there is “near-certainty” that the target is present and that civilians will not be harmed.
- Promptly transfer command of all targeted killing operations from the CIA to the US military.

To the US Congress

- Appropriate congressional committees should conduct impartial investigations into the targeted killings documented in this report, as well as into other potentially unlawful targeted killings carried out by the United States in Yemen, Pakistan, Somalia and elsewhere. The investigations should incorporate classified and unclassified information, and provide full sharing of all relevant information among investigatory committees. The committees should report publicly on their findings, including any evidence of human rights violations.

To the Government of Yemen

- Ensure that all targeted killings in Yemen during armed conflict situations, whether conducted by Yemeni or US forces, accord with the laws of war, including the fundamental requirement that combatants take all feasible precautions to minimize harm to civilians. Outside of armed conflict situations, ensure that Yemeni and US forces use lethal force only when absolutely necessary to protect human life in accordance with international human rights law.
- Implement a system of prompt and meaningful compensation for civilian loss of life, injury, and property damage from wrongful strikes. Coordinate compensation with the United States in instances of attacks carried out with US forces.
- Seek the release of Hafizallah al-Kulaibi and his son Barq al-Kulaibi, the father and son taken captive by AQAP following the drone strike that killed Adnan al-Qadhi, a suspected local AQAP leader, in Beit al-Ahmar. Investigate reports that the son was unlawfully recruited by Yemeni military officers to facilitate a targeted killing. Investigate and prosecute as appropriate those responsible for recruiting any children under age 18.

- Conduct transparent and impartial investigations into credible allegations of laws-of-war violations in Yemen. Make public the findings and include recommendations for disciplinary measures or criminal prosecutions where violations are found.
- Sign and ratify without delay the 2008 Convention on Cluster Munitions; even prior to ratification, abide by its prohibitions, including on cluster munitions use, clearance of cluster munition remnants, and assistance for victims of the weapons.
- Promptly confirm and set dates for a visit to Yemen by the UN special rapporteur on extrajudicial, summary, or arbitrary executions, to which the government of Yemen already has agreed in principle.

To the Friends of Yemen

- Call on the US and Yemeni governments to ensure that all military operations, including targeted killings, comply with international law, and to implement all recommendations listed above.

To United Nations Bodies and Mechanisms including the General Assembly, Human Rights Council, and Special Rapporteurs on Extra-Judicial Executions and Countering Terrorism

- **UN member states** should call on the US and Yemeni governments to ensure that all military operations, including targeted killings, comply with international law, and to implement all recommendations listed above.
- **The special rapporteur on extrajudicial, summary and arbitrary executions of the Human Rights Council** should devote substantial attention to the issue of targeted killings in Yemen during his next visit to the country, and should recommend to the Human Rights Council the concrete steps Yemen and the US should take to fulfil their international legal obligations, with a request that the Council recommend in a timely manner a follow-up report from the special rapporteur to assess progress on these steps.
- **The Human Rights Council** should support the existing inquiry into targeted killings of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which is to conclude in March

2014. If after that date there is a need for further inquiries, the Human Rights Council should consider establishing an independent, impartial, international investigation into US targeted killings in Yemen and elsewhere.

Acknowledgments

This report is dedicated to the memory of Ibrahim Mothana, a Yemeni youth activist and Human Rights Watch consultant who died on September 5, 2013, at the age of 24.

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“Between a Drone and Al-Qaeda”

The Civilian Cost of US Targeted Killings in Yemen

The United States has carried out approximately 80 targeted killings against alleged terrorists in Yemen since 2009 that have killed several hundred people. With few exceptions the US has neither acknowledged the attacks nor revealed casualty figures, including civilian deaths. Most of the strikes involved remotely piloted aerial vehicles, known as drones.

“Between a Drone and Al-Qaeda” investigates six US targeted airstrikes in Yemen, one from 2009 and the others from 2012-13. It finds that two of these attacks killed civilians in clear violation of the laws of war. In the remainder, factual questions about whether those attacked were valid military targets, and whether civilian casualties were disproportionate, raise concerns about the attacks’ legality.

The report also finds that the six strikes did not meet US policy guidelines for targeted killings that President Barack Obama disclosed in May 2013, and which the White House said had been partially implemented.

The Yemeni government has compensated some families for civilian deaths, but payments have been haphazard and often inadequate.

“Between a Drone and Al-Qaeda” calls on the US to provide its full legal rationale for targeted killings and ensure these strikes comply with international humanitarian and human rights law. The US should impartially investigate potentially unlawful attacks and hold those responsible to account. It should appropriately compensate wrongful—if not all—civilian losses. Without such measures, the US will fuel anti-US sentiment among Yemenis, to the benefit of Al-Qaeda in the Arabian Peninsula.



The remnants of a US drone strike on August 29, 2012 in Khashamir, Yemen. The strike killed three alleged members of Al-Qaeda in the Arabian Peninsula, a policeman, and a cleric who preached against the armed group.

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