



U.S. Drone Strikes in Yemen

Follow-up to Alkarama's alternative report submitted to the Human Rights Committee in the context of the review of the fourth periodic report of the United States of America

1. Evolution in Official U.S. Discourse on Drone Strikes

Following the delay of the review due to the State party's internal financial situation, Alkarama seeks to provide the Committee with updated information on the United States' official discourse concerning the issue, as well as information, provided in the enclosed annex on a new drone strike documented by our team in Yemen in December 2013.

On 23 May 2013, President Obama publicly took position on the United States' "targeted killings" policy for the first time, affirming that "the United States has taken lethal, targeted action against al Qaeda and its associated forces, including with remotely piloted aircraft commonly referred to as drones."¹ President Obama also spoke about standards that should be applied to the use of lethal force. These standards are further developed in the "U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities" published by the White House in May 2013.² The document details that "whenever the United States uses force in foreign territories, international legal principles, including respect for sovereignty and the law of armed conflict, impose important constraints on the ability of the United States to act unilaterally – and on the way in which the United States can use force. The United States respects national sovereignty and international law."

From 24 May 2013, a day after President Obama's speech, to February 2014, the Bureau of Investigative Journalism counted 22 strikes allegedly carried out by U.S. drones, resulting in the death of between 113 and 141 people.³

An explanation of the gap observed between the figures available and the U.S administration's official discourse may be found in an article by the Washington Post of 3 December 2013, reporting that "the Pentagon has loosened its guidelines on avoiding civilian casualties during drone strikes, modifying instructions from requiring military personnel to "ensure" civilians are not targeted to encouraging service members to "avoid targeting" civilians (...) These subtle but important changes in wording provide insight into the military's attempts to limit expectations in regards to minimizing collateral damage and predicting the lethal effects of military operations (...)."⁴ The Washington Post "conducted a word-for-word analysis of an instructional document from the chairman of the Joint Chiefs of Staff titled "No-Strike and the Collateral Damage Estimate Methodology". The document, initially published in 2009, was updated in October 2012. The 2009 version directs military personnel to take reasonable precautions to ensure that civilians are not targeted in attacks; the 2012 version says service members should "avoid targeting" civilians. Moreover, commanders had been instructed to "consider the military necessity for attacking the target, proportionality of the means planned, and reasonableness within the framework of operational objectives." The modified language tells that collateral damage "must not be excessive" in relation to mission objectives. What's more, the updated version adds a paragraph which states that the process for estimating collateral damage outlined in

¹ Greg McNeal, *Prepared Text: Obama's Speech On Drones And Guantanamo*, Forbes Magazine, 23 May 2013. <http://www.forbes.com/sites/gregorymcneal/2013/05/23/prepared-text-obamas-speech-on-drones-and-guantanamo> (accessed 12 February 2014)

² *U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities*, White House, 23 May 2013. http://www.whitehouse.gov/sites/default/files/uploads/2013.05.23_fact_sheet_on_ppg.pdf (accessed on 12 February 2014)

³ *Yemen: Reported US covert actions 2013*, The Bureau of Investigative Journalism, 3 January 2013. <http://www.thebureauinvestigates.com/2013/01/03/yemen-reported-us-covert-actions-2013/> (accessed 12 February 2014)

⁴ Kristina Wong, *Obama war chiefs widen drone kill box*, Washington Post, 3 December 2013. <http://www.washingtontimes.com/news/2013/dec/3/pentagon-gives-more-room-for-deadly-error-in-drone/?page=all> (accessed 12 February 2014)

the document “does not account for secondary explosions” caused by the strike, such as of a weapons cache or fuel tank, because those explosions “cannot be consistently measured or predicted.”⁵

More concerning are the revelations made in a recent article by investigative journalists Jeremy Scahill and Glenn Greenwald, based on the testimonies of a former Joint Special Operations Command (JSOC) agent who also worked with the NSA. This article asserts that drone strikes in Yemen do not target individuals on the basis of human intelligence, but are in fact aimed at mobile phone SIM cards, with no certainty that the person in possession of the phone containing the targeted SIM is actually the target. “[...] the agency often identifies targets based on controversial metadata analysis and cell-phone tracking technologies. Rather than confirming a target’s identity with operatives or informants on the ground, the CIA or the U.S. military then orders a strike based on the activity and location of the mobile phone a person is believed to be using. [...] As a result, even when the agency correctly identifies and targets a SIM card belonging to a terror suspect, the phone may actually be carried by someone else, who is then killed in a strike. According to the former drone operator, the geolocation cells at the NSA that run the tracking program – known as Geo Cell –sometimes facilitate strikes without knowing whether the individual in possession of a tracked cell phone or SIM card is in fact the intended target of the strike.”⁶

The “U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities” assumption that U.S. strikes comply with international law is undermined by statements made by UN officials. On 13 September 2013, the Special Rapporteur on extrajudicial, summary or arbitrary executions addressed the issue by recommending in his report to the General Assembly (A/68/382) that “States must recognize the extraterritorial applicability of human rights treaties, in addition to the global applicability of the right to life on the basis of customary law and the general principles of international law, including during armed conflict. States that invoke the right to self-defence to use inter-State force should submit a report to the Security Council pursuant to Article 51 of the Charter in respect of each State on whose territory they use force. If a conflict is extended to the territory of a new State, a new report should then be submitted. Whether or not they recognize this as a legal obligation, States should capture rather than kill during armed conflict where feasible.” The United States of America has never reported to the UN Security Council concerning its military actions in Yemen.

The political context in which these strikes occur shows that the United States has gone far beyond its stated goal of eliminating terrorists and is in fact directly intervening in an internal conflict currently taking place in Yemen, violating article 2 and 6 of the ICCPR. More concerning is the gap between President Obama’s public discourse and the actions his administration takes. President Obama’s 23 May 2013 speech appears to be a first step in trying to comply with ICCPR provisions and the Special Rapporteur’s recommendations (“America does not take strikes when we have the ability to capture individual terrorists – our preference is always to detain, interrogate, and prosecute them”⁷). The strikes which took place in Wuld Rabi on 12 December 2013, documented by our research team in Yemen on 18 and 19 December 2013 show that the State party continues its policy with the same *modus operandi* as the strikes documented in our initial submission.

2. Conclusion and Recommendations

Despite clear international condemnation of the extra-judicial killings carried out by the United States in Yemen and elsewhere by experts, and international jurisprudence, the State party continues to openly violate its international obligation under the Covenant. Even more worrying is the fact that the United States does not show any political will to bring its practise in line with the Covenant’s

⁵ Kristina Wong, *Obama war chiefs widen drone kill box*, Washington Post, 3 December 2013.

<http://www.washingtontimes.com/news/2013/dec/3/pentagon-gives-more-room-for-deadly-error-in-drone/?page=all> (accessed 12 February 2014)

⁶ Jeremy Scahill, Glenn Greenwald, *The NSA’s Secret Role in the U.S. Assassination Program*, The Intercept, 10 February 2014. <https://firstlook.org/theintercept/article/2014/02/10/the-nas-secret-role/> (accessed 12 February 2014)

⁷ Greg McNeal, *Prepared Text: Obama’s Speech On Drones And Guantanamo*, Forbes Magazine, 23 May 2013. <http://www.forbes.com/sites/gregorymcneal/2013/05/23/prepared-text-obamas-speech-on-drones-and-guantanamo> (accessed 12 February 2014)

provisions, as shown in their answers to the Committee's List of Issues which remained vague and did not provide any indication of any steps it planned to take to ensure a better compliance with its obligations under international law. Moreover, none of the victims' families of the strikes documented by our organisation in our submission, as well as the new case submitted in this briefing note have received any proper reparation from the State party. Finally, no judicial proceedings have been opened to hold any of the persons responsible for the extrajudicial executions accountable for the violations they have committed.

We therefore recommend that the United States:

- 1) Immediately ceases all violations of the Covenant's provisions, and in particular violations of article 6.
- 2) Launch independent and transparent inquiries into acts having led to violations of the right to life as set out in article 6, and condemn perpetrators of extrajudicial executions.
- 3) Provide full reparation to victims that have survived strikes, and to their families in the case where their loved one has died due to U.S. strikes.

Annex 1

Wuld Rabi drone strike – 12 December 2013

On 12 December 2013 at 4:30 pm, a wedding procession composed of 14 vehicles and 70 passengers was targeted by four missiles launched from a drone. The strike resulted in the deaths of 12 people and 13 injured. Alkarama representatives, accompanied by the head of the League of Families of Drone Strikes Victims visited the location of the strike near Aqaba Za'j in the town of Wuld Rabi, a district of Radaa in the al-Baydha Governorate in Yemen, on 18 and 19 December 2013, to meet with families of victims and survivors of the strike. The delegation also visited the town of Yakla, where most of the victims originated from.

One drone – four missiles

After the festivities at the bride's home in Surmia Dhi al- Kaleb in al- Quraishia town, the spouses and their wedding procession took the direction of the husband's village, Yakla, some 30km away from the strike spot, and 70 km away from the city of Radaa, taking a dirt road. Approximately 10km away from Yakla, a car tire burst, leading the 14-car convoy to stop, at which point the passengers suddenly saw a drone approaching. One of the drivers of the land cruisers, Salem 'Abdallah al-' Amiri, who had heard the sound of a low-flying drone and attests to having seen a twinkle in the sky a few seconds before the strike, shouted at the passengers to leave his vehicle which was hit by a missile, causing the deaths of four people and damaging three other cars, while he miraculously survived the strike unharmed. Two other missiles were then shot at the same spot, forming two craters in the road. The four cars closest to the explosion were also damaged, as the fire provoked by the missile quickly spread.

One of the passengers' bodies was completely shredded, whilst the others were propelled out of the vehicles. A number of people were killed or injured by shrapnel from the missiles. Some survivors report that one of the missiles exploded in the air before reaching the car, causing many of the casualties. The drone continued to fly over the area for nearly two hours impeding those trying to come to the assistance of the injured for fear of further attacks.

The 65-year old groom, Abdallah Mabkhut al-'Amiri and his new wife, were slightly injured, but Mr al-'Amiri's only son, who was financially supporting, the family was killed. The tribal leader of the Yakla region, Abdullah bin Muhamed al- Tissi, was also injured while his son was killed by the strike. According to his father, Mr al-Tissi's son supported the youth revolution in 2011 that ousted President Ali Abdallah Saleh, while another of his sons was injured during violent crackdown against the demonstrations. "I was hoping that a real change would occur that would free us from the corruption, marginalization and under-development affecting a large part of the country. But I did not know that a president would come along who would violate our dignity with American drones which have no respect for the sacred blood of the Yemeni people. "

Anger in the population

Drone strikes have an aggravating effect on the population, which has already suffered past attacks. For example, on 2 September 2012, a car carrying 14 people returning from Radaa market was targeted by a strike which was documented in Alkarama's initial submission. Twelve of them, including two children and a woman, died. This is not the only example – in fact, the Radaa region has been targeted by American strikes in the past. In fact, a number of regions are under constant drone surveillance, seriously affecting the daily lives of residents.

The Yemeni authorities did not provide assistance to the victims and their families following the 12 December strike, nor was any investigation opened. In the absence of State representatives, no official action has been possible, and as no morgue is available in Radaa to ensure the conservation of the bodies, the deceased had to be buried quickly without the issuance of death certificates assessing the cause of their deaths. In reaction to the central authorities' indifference, residents organized roadblocks on the main road as well as a gathering in Radaa to present their grievances to politicians in Sana'a.

The authorities finally responded by sending a delegation headed by a representative of the governorate of al-Baydha, as well as the head of the 7th Military Region in order to calm the protesters. Local representatives were provided with 100 rifles and 40 million Riyal (representing some 186'000 USD) for funeral expenses. After an unofficial apology was issued to the victims' families, a "cease-fire" between local tribes and the government was signed for a one-month period, during which an agreement on compensation must now be negotiated. Inhabitants also asked that a ban on drone flights be imposed over their territory.

The authorities' actions can be interpreted as an implicit recognition of their responsibility in the tragedy, a position which is inconsistent with official statements. The purpose of the meeting organised with local tribal leaders has not been reported publicly. However, the official news agency reported on 14 December 2013 about the need to strengthen security and coordination between the different security services and the army in the region to improve the exchange of information and to prevent the entry of weapons into Radaa. A second meeting between government officials, local military and tribal leaders was held on 15 December in order to strengthen cooperation in the fight against extremism and terrorism.

Targeted strikes or mistake?

Two official sources in the United States and one in Yemen assert that the strike targeted Shawqi Ali Ahmed al-Badani⁸, suspected of plotting attacks on U.S. embassies in the summer of 2013. Since 2008, he is said to be listed as one of Yemeni's most wanted individuals. He was reportedly wounded in the strike but managed to escape. U.S. officials deny that civilians were targeted and claim that the 12 victims killed were Al Qaida fighters. But witnesses and families are clear: the 12 killed in the convoy and the 13 wounded all belonging to the al-Tissi and al-'Amiri families, were not members of Al Qaida.

The New York Times reported that the attack was carried out by the military from the U.S. military base in Djibouti, on orders of the Pentagon.⁹ Officially the U.S. government has provided no explanation for this strike or its purpose. It is clear that the drone attack of 12 December corresponds to those that preceded it: the targeted suspects were not named, no concrete charge was made against them, civilians were not spared, the U.S. government did not take responsibility for the attack, nor did it undertake any public investigation, or provide compensation to the survivors and victims' families.

Yemeni Parliament adopted a courageous resolution

On 15 December 2013, the Yemeni Parliament considered the matter and responded by expressing its categorical rejection of U.S. drone strikes under the pretext of fighting Al Qaida. The Parliament adopted a resolution in order to "force the government to prohibit overflight by drones and protect the sovereignty of the territory." On 16 December, the resolution was debated in Parliament and the text was completed by the following new recommendation: "The armed and security forces must fulfil their duty of prosecuting terrorists by arresting them in order to present them to court."

This is the first time that the Parliament adopted a text which, even if not binding, clearly underlines the opposition of Members of the Parliament to U.S. drone attacks in the country and also highlights the responsibility of the Yemeni authorities in this regard.

It should be recalled that the National Dialogue Conference had also adopted a decision to criminalize "the use of drones and guided missiles and extrajudicial executions."¹⁰

⁸ Kimberly Dozier, *US Officials: Drone target embassy plot leader*, Associated Press, 20 December 2013 <http://bigstory.ap.org/article/us-officials-drone-targeted-embassy-plot-leader> (accessed 30 December 2013)

⁹ Mark Mazzetti, Robert F Worth, *Yemen Deaths Test Claims of New Drone Policy*, New York Times, 20 December 2013. <http://www.nytimes.com/2013/12/21/world/middleeast/yemen-deaths-raise-questions-on-new-drone-policy.html?pagewanted=all&r=2&> (accessed 30 December 2013).

¹⁰ Anwar Altaj, *Parliament asks the Government to forbid US drone strikes in Yemen*, Yemeni Parliament Observatory, 15 December 2013. http://www.yppwatch.org/news.php?go=show_news&id=611#.UvD7P_tvq5A (accessed 30 December 2013).

While the United States continues its drone war, the UN General Assembly finally considered the subject in October 2013. On 26 December 2013, Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "if armed drones are to be used, States must adhere to international humanitarian law, and should disclose the legal basis for their operational responsibility and criteria for targeting. Yemen cannot consent to violations of the right to life of people in its territory," he added. UN Special Rapporteur on Torture Juan Méndez also expressed concern about the legitimacy of the airstrikes, highlighting that each State was obliged to undertake due investigation into the reported incidents, including the effect on civilians. "A deadly attack on illegitimate targets amounts to cruel, inhuman or degrading treatment if, as in this case, it results in serious physical or mental pain and suffering for the innocent victims," Mr. Méndez said.