

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL G/SO 214 (33-27) Terrorism (2005-4) G/SO 214 (53-24)
YEM 5/2013

20 December 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/5, 22/8, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **a lethal air strike in the Republic of Yemen on 12 December 2013, allegedly involving the use of armed drones belonging to the authorities of the United States of America.**

According to the information received,

On 12 December 2013, an airstrike was conducted in the Al-Baida Governorate of the Republic of Yemen, with three missiles lethally targeting a convoy of cars on their way to a wedding. While the facts are still being established, there are serious allegations that the air strike involved the use of an armed drone belonging to the authorities of the United States of America. According to reports, the statements of the local security officials indicate to the fact that the attack allegedly occurred as a consequence of a mistaken identification of the victims as members of the terrorist organization Al-Qaeda.

As a consequence of the air strike, it is reported that at least 12 men were killed and at least 10 individuals were injured. Furthermore, three bodies were reportedly unidentifiable, given the level of lethal force used against them and their decomposition in pieces following the attack. It is reported that the majority of the individuals killed, all men, were civilians.

The names and age of the men who had been killed were reported as follows: Mr. **Hussein Mohammed Saleh Al-Ameri**, aged 65; Mr. **Mohammed Ali Muss'ed Al-Ameri**, aged 30; Mr. **Muss'ed Dhaifullah Hussein Al-Ameri**, aged 25; Mr. **Saif Abdullah Mabkhoot Al-Ameri**, aged 20; Mr. **Saleh Abdullah Mabkhoot Al-Ameri**, aged 30; Mr. **Saleh Muss'ed Abdullah Al-Ameri**, aged 42; Mr. **Shaif Abdullah Mabkhoot Al-Ameri**, aged 23; Mr. Zeidan Mohammed Al-Ameri, aged 40; Mr. **Ali Abdullah Mohammed Al-Tays**, aged 35; Mr. **Aref Ahmed Mohammed Al-Tayssi**, aged 30; Mr. **Hussein Mohammed Al-Tameel Al-Tayssi**, aged 20; Mr. **Matlaq Hamood Mohammed Al-Tayssi**, aged 45.

It is further reported that on the same day, another convoy of cars was also lethally targeted on its way to a wedding at an army checkpoint in Ta'izz. Allegedly, the attack resulted in the killing of a five-year-old child and the wounding of three women and one man.

Two more airstrikes, allegedly involving the use of missiles fired from armed drones belonging to the authorities of the United States of America, reportedly occurred in Rada' since September 2013. It is alleged that, as a consequence, at least 11 individuals were killed, including a family of three persons and three men travelling in a car. It is reported that the authorities of the United States of America alleged that the three men killed were members of the terrorist organization Al-Qaeda.

Reportedly, no investigation has been yet carried out on any of the four incidents mentioned.

Without prejudging the accuracy of the information received, we would like to express concern about the killings and injuries that reportedly occurred during the attack on 12 December 2013, which, at least to a large extent, led to civilian casualties. We are also concerned about the casualties resulting from the other three lethal attacks mentioned. Particular concern is expressed about the reported lack of investigation on any of these incidents.

In this connection, we would like to refer Your Excellency's Government to the fundamental legal rules applicable under international humanitarian law and human rights law.

We would like to draw your Excellency's attention to General Assembly Resolution 66/171 and Human Rights Council Resolution 19/19, whose paragraph 1 reaffirms "that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law."

Furthermore, we would like to bring to the attention of your Excellency's Government common article 3 to the 1949 Geneva Conventions which provides that:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.

We would like to further refer to the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (ICRC). In accordance with Rule 15, all feasible precautions must be taken to avoid and minimize incidental loss of civilian life.

Investigations into war crimes must be undertaken as provided for in ICRC Customary Rule 158 of International Humanitarian Law, providing that “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.”

In his report on armed drones, presented to the 68th session of the General Assembly (A/68/382), the Special Rapporteur on extrajudicial, summary or arbitrary executions specifies in paragraph 101 that “Whenever there are reasons to query whether violations of international humanitarian law may have occurred in armed conflict as a result of a drone strike, such as the incorrect designation of persons as targetable or disproportionate civilian harm, accountability demands at least a preliminary investigation. Civilian casualties must be determined and should be disclosed.”

In his report on armed drones, presented to the 68th session of the General Assembly (A/68/389), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism states in paragraph 41 that “[t]he single greatest obstacle to an evaluation of the civilian impact of drone strikes is lack of transparency, which makes it extremely difficult to assess claims of precision targeting objectively (see A/HRC/14/24/Add.6). As the United Nations High Commissioner for Human Rights pointed out during an address to the Security Council on 18 August 2013, the current lack of transparency creates an accountability vacuum and affects the ability of victims to seek redress.” In that report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism makes inter alia the following recommendation, “[h]aving regard to the duty of States to protect civilians in armed conflict, the Special Rapporteur considers that, in any case in which civilians have been, or appear to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there

is a plausible indication from any source that civilian casualties may have been sustained, including where the facts are unclear or the information is partial or circumstantial. The obligation arises whether the attack was initiated by remotely piloted aircraft or other means, and whether it occurred within or outside an area of active hostilities.”

We would like to further refer to the relevant provisions under international human rights law.

In this regard, we wish to draw the attention of your Excellency’s Government on the principles set forth in the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), acceded to by the Republic of Yemen on 9 February 1987. Articles 3 and 6 (1) of these instruments respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. Furthermore, we would also like to refer to the principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (resolution 1989/65 Economic and Social Council) which underlines that Governments shall undertake a “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 in the above circumstances (...)”. It should be noted that “the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.”

Principle 18 further requires Governments to “ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.” We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

The obligation to investigate and respond to grave breaches of international human rights and humanitarian law is further enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, II.b) and III.).

Furthermore, we would like to remind that States have the duty not to allow violations of human rights and humanitarian law on their territory by other foreign States. In paragraph 115 of his report on armed drones, presented to the 68th session of the General Assembly (A/68/382), the Special Rapporteur on extrajudicial, summary or arbitrary executions makes the following recommendation to States on whose territory armed drones are used: “States must continue to honour their own human rights obligations and recognize that they cannot consent to the violation of human rights or international humanitarian law by foreign States. They must recognize that the duty to protect the right to life of their subjects rests primarily with them. States must investigate

allegations of violations of the right to life through drone killings and provide redress where applicable.”

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would also like to draw your Excellency's Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate?
2. Please inform on any preliminary assessment made, which may have led to the decision to target lethally the individuals in the said incidents. Please specify the targeting criteria used.
3. Please inform whether an investigation has been opened, and if so, please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these cases.
4. Please provide details on the casualties established following the said incidents, in particular on the civilian casualties.
5. Please provide detailed information on the judicial or administrative proceedings initiated in relation to this case. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please indicate whether compensation will be provided to the victims or their families.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Finally, we would like to inform your Excellency's Government that we have addressed a communication with the same contents to the Government of the United States of America.

Please accept, Excellency, the assurances of our highest consideration.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment