

Joint Letter to the UN Human Rights Council on Targeted Killings and the Use of Armed Drones

Submitted to the 27th Session of the UN Human Rights Council for the Panel discussion on “Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law”

To Permanent Representatives of Member and Observer States of the UN Human Rights Council

Index: ACT 30/015/2014
Geneva, 17 September 2014

Your Excellencies,

The undersigned human rights and civil rights organizations write to share our concerns about state practices of targeted killings and the use of armed drones. We welcome the holding of a panel on the use of armed drones during the 27th session of the United Nations Human Rights Council and urge UN member states to support and take steps to monitor and promote meaningful transparency and legal compliance by states with regard to their targeted killing policies and practices. In particular, we call on states to publicly disclose their targeted killing standards and criteria; ensure that their use or facilitation of lethal force operations abroad comply with international law; enable meaningful oversight and remedies; and ensure effective investigations, tracking and response to civilian harm.

Disclose legal standards and criteria. We are concerned about the lack of transparency in targeted killing operations. While many states affirmed their commitment to transparency at the UN General Assembly in 2013, some states have made only minimal progress in practice. Commitment to the rule of law requires that states disclose the legal constraints on their lethal targeting operations. Greater disclosure of legal and policy standards, and procedural mechanisms, is a prerequisite to informed assessment and debate. We believe this disclosure is an essential first step toward ensuring accountability and redress, and are confident it is possible to improve transparency without putting intelligence sources at risk or endangering national security interests.

Ensure operations comply with international law. States should ensure that their standards and criteria for determining that they can conduct lethal targeting

operations are in accordance with international law. The use of force by a state in the territory of another state may be a lawful act of self-defense in response to an armed attack or imminent threat of armed attack. If states permit targeted killings by other states on their territory, they should ensure that such strikes comply with international law. Outside of an armed conflict, where international human rights law applies— including in extraterritorial operations – states can only target individuals who pose an imminent threat to life and lethal force is the last resort; any use of force must be both necessary and proportionate. When states use force as part of hostilities in an armed conflict, there are important legal constraints on targeting operations. For example, civilians may only be deliberately attacked when and for such time as they are directly participating in hostilities, and in cases of doubt as to civilian status, persons must be presumed to be protected against direct attack.

Enable meaningful oversight and the right to a remedy. We are concerned that civilian victims of unlawful attacks are denied the right to access to effective remedies. No state should argue that judicial review of targeted killings is foreclosed. We are also concerned that both domestic and international oversight is inhibited by the lack of transparency. Oversight and judicial review are essential for accountability, and we urge states not to prevent cases alleging serious violations from being heard on their merits, and to fully cooperate with international mechanisms investigating and seeking to provide accountability for wrongful killings.

Ensure effective investigations, tracking and response to civilian harm. Based on a review of a wide range of civilian casualty estimates, we are especially concerned that states may be consistently undercounting and overlooking civilian casualties. A refusal to acknowledge civilian harm is contrary to the rule of law, denies victims the justice they deserve, and compounds anger in impacted communities. These concerns heighten the need to ensure there are effective mechanisms to track and respond to civilian harm.

Many of our concerns are shared by two UN Special Rapporteurs. In 2013-2014 reports, the two UN experts strongly criticise the lack of transparency surrounding these operations. They call on states carrying out these strikes to reveal the number of individuals killed and to investigate all credible allegations of potentially unlawful deaths and injuries. These concerns have also been documented in reports in the last year on targeted killings by Human Rights Watch and Amnesty International.

In light of these concerns, we urge the Human Rights Council, as well as the participants in the HRC Panel on the use of remotely piloted aircrafts or armed drones in counter-terrorism and military operations, to support the following recommendations to states:

- Ensure that any measure employed to counter terrorism, including the use of armed drones, comply with states' obligations under international law, including the Charter of the United Nations, international human rights law and international humanitarian law, as noted in HRC resolution 25/22;
- Ensure transparency on the use of armed drones, to publicly disclose the legal criteria governing their lethal targeting operations, to specify the safeguards in place to ensure compliance with international law, and to conduct prompt, independent and impartial investigations whenever there is credible information of a violation of international law caused by their use;
- Make public the identity and number of individuals killed or injured in targeted killing operations, and the measures in place to prevent civilian casualties and ensure redress when they occur;
- Encourage the Special Rapporteurs on the protection of human rights and fundamental freedoms while countering terrorism and on extrajudicial, summary or arbitrary executions to continue to monitor states' use of armed drones and report back regularly to the Human Rights Council and to the Third Committee of the U.N. General Assembly on states' progress in adopting their recommendations, as well as states' compliance with international law, and in particular, applicable extraterritorial international human rights obligations, transparency with respect to the legal basis for the use of drones, invocation of self-defence under Article 51 of the Charter of the United Nations, consent to the use of force, and the assessment of civilian casualties, as well as what steps states have taken to ensure meaningful oversight, investigations, and accountability;
- Honor states' own legal obligations with regard to targeted killings taking place within their territory and recognize that states cannot consent to violations of international human rights law or international humanitarian law by foreign states.

Finally, we encourage the Human Rights Council to build upon its resolution 25/22 and adopt a resolution that would reflect the above mentioned points in order to ensure that states meet their international legal obligations. Such a resolution would also help ensure that states uphold their commitment to the Global Counter-Terrorism Strategy approved by the UN General Assembly in 2006, which recognizes that effective counter-terrorism measures and the protection of human rights are "complementary and mutually reinforcing aims."

We appreciate your attention to our concerns.

Sincerely,

American Civil Liberties Union

Amnesty International

Center for Human Rights & Global Justice, and the Global Justice Clinic, NYU
School of Law

Center for Civilians in Conflict

Center for Constitutional Rights

Human Rights Clinic, Columbia Law School

Human Rights First

Human Rights Watch

International Commission of Jurists

Open Society Foundations