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UNITED STATES OF AMERICA

An extrajudicial execution by the CIA?

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Amnesty International is concerned by the reported killing on 7 May 2005 by US forces in Pakistan of Haitham al-Yemeni, a Libyan national who is alleged to have been a senior member of *al-Qa'ida*. He and another man, identified as Samiullah Khan, are reported to have been killed in Toorikhel in Mirali, Pakistan, when the car they were in was hit by a missile fired from a CIA-controlled Predator unmanned aerial vehicle. Haitham al-Yemeni is alleged to have been the target.

Amnesty International fears that, if the circumstances of these killings have been reported accurately, the USA has carried out an extrajudicial execution, in violation of international law. Amnesty International reminds the USA that it has condemned such unlawful actions when carried out by other states in the past. It calls upon the USA to end immediately all operations aimed at killing suspects instead of arresting them, investigate all past suspected cases of extrajudicial executions, and revoke all orders that may allow extrajudicial executions.

Haitham al-Yemeni had reportedly been under surveillance by US agents. After the arrest in Pakistan of another Libyan national and alleged *al-Qa'ida* member, Abu Faraj al-Libbi, on or around 2 May 2005, (<http://web.amnesty.org/library/Index/ENGASA330072005>), intelligence agents are said to have feared that Haitham al-Yemeni would go into hiding. It is alleged that the decision was taken to kill him to avoid that possibility. The Pakistani authorities have denied knowledge of the incident. On 18 May 2005, the Office of Public Affairs of the CIA in Washington, DC, would neither confirm nor deny the reports to Amnesty International, offering only “no comment”.

The United Nations (UN) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

Amnesty International believes that the governments of the USA and Pakistan should have cooperated to arrest Haitham al-Yemeni rather than kill him. Under international human rights standards, lethal force should have been used only as a last resort. If the US authorities deliberately decided to kill, rather than attempt to arrest Haitham al-Yemeni, his killing would amount to an extrajudicial execution. Under international standards, extrajudicial executions are always unlawful, and “a state of war or threat of war, internal political instability or any public emergency may not be invoked as a justification of such executions”.

On 27 August 2001, US State Department spokesperson had said of the Israeli government's resort to targeted killings: "We remain opposed to targeted killings. We think Israel needs to understand that targeted killings of Palestinians don't end the violence..." A week earlier a State Department spokesperson had similarly said: "We have long made very clear – we have made known the US Government's opposition to the policy and practice of targeted killings, and we are going to continue to urge the Israelis to desist from this policy."

On 17 September 2001, President Bush is reported to have signed an executive order giving the CIA broad authorities, including the use of lethal force, in the "war on terror". In January 2003, President Bush said "you can't hide from the United States of America. You may hide for a brief period of time, but pretty soon we're going to put the spotlight on you, and we'll bring you to justice... We're working with friends and allies around the world. And we're hauling them in, one by one. Some have met their fate by sudden justice; some are now answering questions at Guantánamo Bay. In either case, they're no longer a problem to the United States of America and our friends."

An earlier case of what President Bush characterizes as "sudden justice" occurred in Yemen on 3 November 2002, when six men were killed in a car, blown up by missiles fired from a CIA-controlled Predator drone. One of the people in the car was alleged to be a senior member of *al-Qa'ida*, Abu Ali al-Harithi, and the strike was carried out with the cooperation of the Government of Yemen.

In January 2003, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions described the killing of six men in Yemen as "truly disturbing" and "an alarming precedent", adding that in her opinion the attack "constitutes a clear case of extrajudicial killing". The USA dismissed her findings, stating that "enemy combatants may be attacked unless they have surrendered or are otherwise rendered hors de combat", and that any "Al Qaida terrorists who continue to plot attacks against the United States may be lawful subjects of armed attacks in appropriate circumstances". It stated that the mandate of the Special Rapporteur does not extend to "allegations stemming from any military operations conducted during the course of an armed conflict with Al Qaida", and that the Special Rapporteur lacked competence "to address issues of this nature arising under the law of armed conflict".

In December 2004, the new Special Rapporteur on extrajudicial, summary or arbitrary executions followed up on this issue. He stated: "Empowering Governments to identify and kill 'known terrorists' places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative had been exhausted. While it is portrayed as a limited 'exception' to international norms, it actually creates the potential for an endless expansion of the relevant category to include any enemies of the State, social misfits, political opponents, or others. And it makes a mockery of whatever accountability mechanisms may have otherwise constrained or exposed such illegal acts under either humanitarian or human rights law." Amnesty International similarly rejects the US view of the world being in effect a "war zone" in which persons which it considers to be "enemy combatants" can be killed with impunity.

Under the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, all suspected cases of extrajudicial killings should be subject to a thorough, prompt and impartial investigation. The US administration has not initiated such an investigation into the November 2002 killings in Yemen. Given that the CIA has reportedly been given presidential authority to use lethal force, and in light of the USA's response to the UN Special Rapporteur, it has to be considered highly unlikely that any such investigation will be conducted into the killing of Haitham al-Yemeni and Samiullah Khan.

Amnesty International continues to call on US Congress to set up a full independent commission of inquiry into all aspects of the USA's "war on terror" detention policies and practices. Such an inquiry should include an investigation into all cases of alleged extrajudicial execution. Anyone found to have authorized or committed extrajudicial executions should be brought to justice.

In a 160-page report issued on 13 May, which included discussion of the question of extrajudicial killings in the "war on terror", Amnesty International concluded that hypocrisy, secrecy, an overarching war mentality and a disregard for international human rights law continues to mark the USA's conduct in the "war on terror" (see, *USA: Guantánamo and beyond: The continuing pursuit of unchecked executive* <http://web.amnesty.org/library/Index/ENGAMR510632005>).

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM