



EXECUTIVE SUMMARY

DEATH BY DRONE

CIVILIAN HARM CAUSED BY
U.S. TARGETED KILLINGS IN YEMEN

Open Society Justice Initiative



Mwatana Organization
For Human Rights

Executive Summary

“*Our villages are poor—no education, no hospitals, no roads, nor any services. Of all the progress and advances in the modern world, only these deadly missiles reached us.*”

The United States has been conducting targeted killings in Yemen at least since 2002. These killings have been cloaked in secrecy. Neither the U.S. nor the Yemeni government systematically discloses information on civilian deaths and injuries caused by U.S. airstrikes. In the face of pervasive government secrecy, this report provides detailed and thorough information on civilian harm caused by nine such strikes in Yemen, all apparently conducted by U.S. drones.⁵ Based on in-depth investigations into civilian harm spanning the Yemeni governorates of al-Baidha, Sana’a, al-Jawf, Hadramout, Marib, and Dhamar, this report offers the following conclusions:

First, this report provides credible evidence that U.S. drone strikes have killed and injured civilians in Yemen. The nine case studies documented in this report provide evidence of 26 civilian deaths and injuries to an additional 13 civilians. This evidence casts doubt on the U.S. and Yemeni governments’ statements about the precision of drone strikes. Yemen’s President Abdu Rabbu Mansour al-Hadi praised U.S. drone strikes in Yemen as having a “zero margin of error” and commented that “the electronic brain’s precision is unmatched by the human brain.”⁶ The United States government has similarly emphasized that the precision afforded by drone technology enables the U.S. to kill al-Qaeda terrorists while limiting civilian harm.⁷

In addition, the nine strikes examined in this report raise questions about the extent to which the United States is complying with international law. These questions are especially serious with respect to the January 23, 2013 strike on a civilian house containing 19 civilians in Silat al-Jarraah village and the September 2, 2012 strike in which 12 civilians, including three children and a pregnant woman, were killed.

More generally, there are serious questions about whether the U.S. is using an overbroad definition of who may lawfully be targeted with lethal force. This would allow the U.S. to label civilians as lawful targets, thereby significantly increasing civilian casualties while underestimating actual civilian harm.

Second, U.S. airstrikes in Yemen have significant, adverse effects not only on civilian victims and their family members but also more generally on residents of the areas where the strikes occur. In assessing the impact of U.S. airstrikes on the ground in Yemen, it is vitally important to consider these effects. The individuals whose accounts are documented in this report are generally extremely poor, with little access to political influence or other means of ensuring that their voices are heard. Especially in light of the U.S. and Yemeni governments' refusal to disclose significant information about civilian casualties, these testimonies are crucial to understanding the effects of the U.S. targeted killing program.

General Stanley McChrystal (Ret.), who led coalition forces in Afghanistan and was the head of the U.S. Joint Special Operations Command, has said that drone strikes create "a perception of arrogance... a perception of helpless people in an area being shot at like thunderbolts from the sky by an entity that is acting as though they have omniscience and omnipotence."⁸ The testimonies in this report confirm his observations. Yaslem Saeed bin Ishaq, whose son was killed in an August 1, 2013 U.S. drone strike said: "They just kill. They do not know what havoc their missiles have caused. They are unaware of the suffering they create for our families."⁹ Moqbel Abdullah Ali al-Jarraah, a villager from Silat al-Jarraah, where a January 23, 2013 U.S. airstrike hit a civilian house, observed: "I believe that America is testing its lethal inventions in our poor villages, because [it] cannot afford to do so at any place where human life has value. Here, we are without value."¹⁰

In the incidents documented in this report, civilians were going about their everyday lives—driving to work, going to the market, or hitching a ride home after shopping—when they were killed. The father of Nasser Mohammed Nasser, one of four civilians killed in an April 19, 2014 U.S. drone strike, said: "My son and those who were with him had nothing to do with al-Qaeda. They were simply on their way to earn a living. Why then did the American aircraft strike them?"¹¹

The testimonies paint a picture of desperately poor communities left to fend for themselves amid the devastation caused by U.S. airstrikes. One Yemeni witness said: "Our villages are poor—no education, no hospitals, no roads, nor any services. Of all the progress and advances in the modern world, only these deadly missiles reached us."¹² The brother of one of the men killed in a September 2, 2012 attack in which only civilians were killed added: "The U.S. government should come to the region to see what targets it has hit. All of them were innocent and poor people who had nothing to do with any terrorist group. We had hoped that America would

come to the region with educational and development projects and services, but it came instead with aircrafts to kill our children.”¹³

In incident after incident, the fathers and mothers of individuals killed in drone strikes asked why their children had been killed when they had nothing to do with al-Qaeda or any other militant group. They spoke of their children’s bodies being charred beyond recognition. They described inconsolable loss and continuing pain and ill-health associated with their loss. Wives spoke of losing their husbands, and of young children asking where their fathers have gone. Many family members lost their breadwinners and described the extreme economic hardship caused by their loss.

This report also notes the terrorizing effects of U.S. drones on local populations. In many of the incidents documented here, local residents had to live with drones flying overhead continually prior to the strikes and have lived in constant fear of another attack since then. Some fled their villages for months after the strike, and lost their source of livelihood in the process. Survivors of the attacks continue to have nightmares of being killed in the next strike. Men go to their farms in fear. Children involuntarily urinate when they hear the sound of aircraft. They are afraid to go to school.

Third, this report raises questions about President Obama’s claim in his May 2013 National Defense University (NDU) speech that beyond the Afghan war theater, “before any strike is taken, there must be near-certainty that no civilians will be killed or injured.”¹⁴ Specifically, the report questions whether the “near-certainty” standard is being satisfied in its application. The White House said that this policy guidance applies outside “areas of active hostilities.”¹⁵ Although the Obama administration has not clearly defined which areas this covers, news reports suggest that the policy guidance applies in Yemen.¹⁶ Casting doubt on the adherence to this policy, this report provides credible evidence that civilians were killed and/or injured in all nine airstrikes, including four which post-date President Obama’s speech. To be sure, it is possible—owing to a mistake or an unforeseeable change of circumstances that manifests between the ordering of a strike and its occurrence—for civilians to be killed or injured despite a near-certainty prior to the strike that this would not happen. Nonetheless, the evidence of civilian deaths and injuries in nine cases raises serious concerns about the effective implementation of the “near-certainty” standard.

This report provides credible evidence that children have been amongst those killed and/or injured in U.S. airstrikes in Yemen. Less than a week after President Obama's NDU speech, Secretary of State John Kerry said: "We do not fire when we know there are children . . . we just don't do it."¹⁷ In four of the incidents documented in this report, two of which post-date the president's NDU speech, children were killed and/or injured.¹⁸

Fourth, the report raises questions about whether the United States is killing individuals when it is possible to capture them. President Obama said in his NDU speech that beyond the Afghan war theater, the U.S. "does not take strikes when we have the ability to capture individual terrorists; our preference is always to detain, interrogate, and prosecute."¹⁹ The White House added that outside of areas of active hostilities, "the policy of the United States is not to use lethal force when it is feasible to capture a terrorist suspect, because capturing a terrorist offers the best opportunity to gather meaningful intelligence and to mitigate and disrupt terrorist plots."²⁰ However, in at least two instances described in this report, it appears that alleged militants killed in U.S. airstrikes could have been arrested by the Yemeni government.²¹

Fifth, the report raises questions with respect to President Obama's claim in his NDU speech that beyond the Afghan war theater, America "act[s] against terrorists who pose a continuing and imminent threat to the American people."²² In none of the incidents documented here did the U.S. or the Yemeni government state that the individuals targeted and killed had posed a continuing and imminent threat to the American people. In at least one instance, analysts specifically questioned whether the threat presented by the alleged al-Qaeda target of a U.S. airstrike was actually directed towards the United States.²³ More generally, questions remain about whether the U.S. targets militants associated with the al-Qaeda insurgency in Yemen who are not plotting against the U.S.²⁴

Sixth, although the White House fact sheet issued on the same day as President Obama's NDU speech emphatically states with respect to areas outside active hostilities that "it is not the case that all military-aged males in the vicinity of a target are deemed to be combatants,"²⁵ several incidents raise questions as to who the U.S. counts as "combatants." Indeed, in five of the nine incidents civilians appear to have been killed while they were riding in the same car as alleged militants, either because they were relatives²⁶ or because one party had hitched a ride with the other.²⁷ It is common practice in Yemeni villages for people to share

rides with strangers. Being in the same car as an alleged militant does not render a person targetable under international law. However, had these civilians known that they were riding with wanted men, they might have avoided such proximity.²⁸

Seventh, local residents, survivors, and witnesses in the attacks documented here said that strikes which kill civilians are counterproductive and do not make Yemen or the United States safer. They blamed both the Yemeni government and the U.S. for the strikes. They said that such strikes would not solve the terrorism problem, but would only strengthen al-Qaeda by generating outrage and a desire for revenge. These testimonies support the views of General James E. Cartwright (Ret.), former vice chairman of the Joint Chiefs of Staff and a former adviser to President Obama, who said: "We're seeing that blowback...If you're trying to kill your way to a solution, no matter how precise you are, you're going to upset people even if they're not targeted."²⁹

Finally, none of the victims or other individuals interviewed for this report knew of any investigations being undertaken into civilian killings associated with the airstrikes. Nor is there a formal reparations system in place. In most cases, victims have not been adequately compensated for civilian harm caused by U.S. airstrikes.

In February 2013, then-White House counterterrorism chief John Brennan testified at his Senate confirmation hearing to become CIA director that the United States "need[s] to acknowledge . . . publicly" mistaken killings "in the interest of transparency."³⁰ In response to post-hearing questions, he added, "to the extent that U.S. national security interests can be protected, the U.S. Government should make public the overall numbers of civilian deaths resulting from U.S. strikes targeting al-Qa'ida."³¹ He also said that "[i]n those rare instances in which civilians have been killed, after-action reviews have been conducted to identify corrective actions and to minimize the risk of innocents being killed or injured in the future. Where possible, we also work with local governments to gather facts and, if appropriate, provide condolence payments to families of those killed."³²

But the U.S. does not publicly acknowledge mistaken killings or the overall numbers of civilian deaths. Moreover, the victims and other individuals interviewed for this report knew nothing of any "after-action reviews" or of any U.S. condolence payments in cases where civilians were killed.

In every incident documented in this report, the victims of U.S. airstrikes said they wanted justice. This report urges the U.S. and Yemeni governments to effectively investigate credible allegations of unlawful civilian casualties, publicly

acknowledge the identities and numbers of civilians killed or injured, and institute a formal mechanism to provide prompt and meaningful reparations for civilian harm associated with U.S. airstrikes in Yemen.

The findings of this report are relevant far beyond the U.S. and Yemen. Recent reports have implicated NATO and countries including Australia, Denmark, Djibouti, Germany, the Netherlands, New Zealand, Saudi Arabia, and the United Kingdom in U.S. targeted killings.³³ This report calls on all governments participating in U.S. targeted killings to publicly disclose their policies and practices and the legal basis for such participation, effectively investigate credible allegations of unlawful participation, and provide meaningful reparations for civilian harm where such participation occurred.

In addition, there is a danger that the proliferation of drones will enable states to increasingly resort to the use of lethal force in violation of international law. By dispensing with the need for boots on the ground and allowing states to kill remotely, drone technology makes it easier for states to use lethal force across national boundaries.

NATO has established a NATO Members User Group for MQ-9 Reaper drones³⁴ which reportedly provides a forum for new European Reaper drone operators to understand U.S. tactics, techniques, and procedures.³⁵ Britain, France, Italy, and the U.S. met under the auspices of this group in early 2015.³⁶ New NATO Reaper users are also expected to join the group.³⁷ At the time of writing, the U.S. had sold armed-capable drones to the U.K. in 2007 and to France in 2013.³⁸ In February 2015, the State Department announced that it had approved the sale of four armed-capable MQ-9 Reapers to the Netherlands.³⁹ In addition, Germany reportedly remains a potential customer.⁴⁰

Finally, in February 2015 the U.S. released a new policy for the export of U.S.-origin drones, as part of a broader effort to work with other countries to “shape international standards” for the use of drones while restricting recipient states “to use these systems in accordance with international law.”⁴¹ While the U.S. is to be commended for fostering international law, this report’s findings cast doubt on whether the U.S. is complying with its own policy guidance as well as with international law. Unless the U.S. reforms its own use of drones, there is a danger that other states will adopt problematic aspects of the U.S. model. Under these circumstances, the proliferation of U.S. drones could lead to a proliferation of civilian casualties of the kind described in this report.

Recommendations

To the Governments of the United States and Yemen:

1. Ensure that U.S. targeted killings in Yemen comply with international law.
2. Conduct effective investigations into all credible allegations of unlawful civilian casualties associated with U.S. airstrikes in Yemen, including those documented in this report, prosecute and impose disciplinary measures and/or other penalties where appropriate, and publicly disclose the findings.
3. Publicly acknowledge the numbers and identities of civilians killed and injured by U.S. airstrikes in Yemen as well as the criteria for determining civilian and non-civilian status.
4. Create a formal mechanism by which civilians can seek and obtain prompt and meaningful reparations for civilian harm caused by U.S. airstrikes.

To the United States Government:

1. Publicly disclose the full legal basis for U.S. targeted killings, including those documented in this report.
2. Publicly disclose the May 2013 Presidential Policy Guidance relating to targeted killings, and clarify where it applies, when it took effect, and how it is enforced.

To the other Governments that have participated in U.S. targeted killing operations:

1. Publicly disclose policies, practices, and full legal basis for participation in U.S. targeted killings, including but not limited to the context of intelligence sharing and hosting of U.S. bases supporting targeted killing operations.
2. Conduct effective investigations into credible allegations of unlawful participation in U.S. targeted killings, prosecute and impose disciplinary measures and/or other penalties where appropriate, and publicly disclose the findings of said investigations.
3. In cases where unlawful participation has occurred, provide prompt and meaningful reparations for civilian harm caused by U.S. targeted killings.

In 2013, President Obama promised that before any U.S. drone strike, “there must be near-certainty that no civilians will be killed or injured.”

Death by Drone questions whether he has kept that promise.

The report casts serious doubt on whether the United States’ “near-certainty” standard is being met on the ground, and whether the U.S. is complying with international law. The nine case studies documented in this report provide credible evidence that U.S. airstrikes have killed and injured Yemeni civilians. These incidents include a drone strike that killed 12 people, including a pregnant woman and three children, and another in which the U.S. struck a house containing 19 people, including women and children.

The U.S. has not officially acknowledged any of these strikes or the resulting civilian casualties. None of the victims are aware of any investigation into the strikes, and in most cases did not receive meaningful compensation. Many survivors argue that the strikes are counterproductive, pushing Yemenis into the arms of al-Qaeda.

Despite the U.S. government’s best efforts to keep the strikes secret, this report exposes the suffering of civilians directly affected by U.S. airstrikes: innocent people burned alive, parents who saw their children killed, families that lost breadwinners, and traumatized communities that continue to live under the threat of drones.

Based on the testimonies of eyewitnesses and survivors, this report provides a first-hand, in-depth account of civilian harm caused by U.S. airstrikes.