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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2019]

* Issued as received, in the language(s) of submission only.



The Use of Lethal Drones in Counter-Terrorism Operations

Since 2002, remotely piloted aircraft (drones) have been used to target and kill terrorists outside the scope of a traditional armed conflict.¹ The most common forms of weaponized drones include the Heron and Hermes systems used by the Israeli military, and the Predator and Reaper systems used by the United States of America (U.S.) and the United Kingdom of Great Britain and Northern Ireland.² These can be armed with a range of precision-guided munitions.³ This technology has been employed to target and kill real or suspected terrorists in Afghanistan, Pakistan, Yemen, Libya, Iraq, Somalia, and Gaza.⁴ The use of drones for the targeted killings of suspected terrorists violates the right to life and other human rights. States should thoroughly investigate the potential damage caused by a drone strike before and after an attack to minimize human rights violations. Furthermore, the legal principles guiding the use of lethal drones need to be clarified to avoid undermining the protection of international human rights law.

1. Targeted killings of suspected terrorists with drones violate the freedom from the arbitrary deprivation of life

The right to life has two components. The first and material component is that every person has a right to be free from the arbitrary deprivation of life.⁵ An “arbitrary” deprivation of life means using lethal force without complying with internationally accepted limitations.⁶ One limitation that States must comply with is the requirement of a sufficient legal basis.⁷ This requirement is not met if lethal force is used without authority in domestic law, or if it is based on domestic law that does not comply with international standards.⁸ The use of drones to kill suspected terrorists in foreign countries does not have a sufficient legal basis because there is still no universal definition of terrorism.⁹ Without a universal definition of terrorism, States can arbitrarily deprive anyone they label a terrorist of their life, even if that person would not be labeled a terrorist elsewhere.

Furthermore, drone strikes arbitrarily deprive life when their use does not comply with principles of necessity, precaution, and proportionality. It is “necessary” to deprive someone of life if the use of lethal force is not avoidable, the amount of force used does not exceed that which is required to achieve the objective, and the target presents an immediate threat.¹⁰ The principle of precaution urges States to avoid situations where they would have to use lethal force, and if they do use lethal force, to contain the damage as much as possible.¹¹ The principle of proportionality requires that States balance the interest protected against the threat posed, and to only use as much force as necessary to complete an objective.¹² There are many examples where drone strikes have not complied with the

¹ United Nations, General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, A/HRC/26/36 (1 April 2014), para 135.

² United Nations, General Assembly, *Promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/68/389 (18 September 2013), para 26.

³ *Id.*

⁴ United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while Countering terrorism*, Ben Emmerson, A/HRC/25/59 (11 March 2014) para 39-69.

⁵ United Nations, General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, A/HRC/26/36 (1 April 2014), para 46.

⁶ *Id.* para 55.

⁷ *Id.* para 56.

⁸ *Id.*

⁹ Alex P. Schmid, *The Routledge Handbook of Terrorism Research*, Taylor & Francis, February 25, 2011, 39.

¹⁰ United Nations, General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, A/HRC/26/36 (1 April 2014), para 60.

¹¹ *Id.* para 63.

¹² *Id.* para 65.

principles of necessity, precaution, and proportionality. For example, on September 7, 2013, a drone reportedly under the control of ISAF (International Assistance Security Force), was used to strike a vehicle in the Watapur district of Kunar province, Afghanistan.¹³ Six combatants and ten civilians were reportedly killed in the attack, and one civilian (a 4 year-old-girl) was injured.¹⁴ A report by UNAMA (United Nations Assistance Mission in Afghanistan) investigated the incident and concluded that the failure of international forces to identify the presence of a group of women and children in the vehicle prior to the strike, and the failure to confirm the identity and status of the men accompanying the fighter targeted, suggested negligence and a failure to take sufficient precautionary measures.¹⁵ This is just one example out of many where a drone strike failed to comply with the principles of necessity, precaution, and proportionality.

2. The lack of transparency surrounding drone use violates the procedural component to the right to life

The second a component of the right to life requires a proper investigation and accountability where there is a reason to believe an arbitrary deprivation of life may have occurred.¹⁶ Data on drone strikes is scarce and rarely released to the public. In 2014, the Human Rights Council passed a resolution which called upon States to be transparent when using drones and to conduct prompt, independent, impartial investigations when there are indications of a violation to international law.¹⁷ This call to transparency has not been met, and without transparency, there can be no accountability. Thus, this issue must be revisited.

The U.S. government admits to some civilian casualties but has not released much data on its drone strikes. The U.S. released a report in July 2016 which provided the range of combatants killed (2,372-2,581) and the range of non-combatants killed (64-116) resulting from (473) strikes against terrorist targets outside areas of active hostilities from January 2009 through 2012.¹⁸ This effort at transparency is insufficient because non-governmental organizations consistently find more civilian casualties than the U.S. and other States admit.¹⁹ Even the leading organizations for counting U.S. drone strikes, The Bureau of Investigative Journalism, The Long War Journal and The New America Foundation, have underreported drone strike casualties according to a study by Columbia Law School's Human Rights Clinic.²⁰ Thus, more data about drone strikes is needed to ensure transparency and accountability.

3. Ambiguous legal principles currently guiding drone use challenges human rights law

States who use drones, such as the U.S., claim that the international legal principle of "self-defense" gives them the right to use lethal force outside areas of active hostilities.²¹

¹³ United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while Countering terrorism*, Ben Emmerson, A/HRC/25/59 (11 March 2014), para 46.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ United Nations, General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, A/HRC/26/36 (1 April 2014), para 46.

¹⁷ United Nations, General Assembly, *Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law*, A/HRC/RES/25/22 (15 April 2014).

¹⁸ United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/34/61 (21 February 2017), para 29.

¹⁹ *Id.*

²⁰ Human Rights Clinic at Columbia Law School, *Counting Drone Strikes*, October 2012.

²¹ United Nations, General Assembly, *Promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/68/389 (18 September 2013), para 55.

However, this policy conflicts with established norms of international human rights law and international humanitarian law.²² For example, international human rights law would rarely permit the use of lethal force outside a situation of armed conflict.²³ Therefore, it is important to reach a consensus on clearly defined legal principles to guide lethal drone use because the current justifications advanced by States do not comply with established international legal standards.²⁴

The use of drones by States for the targeted killing of terrorists violates the right to life and other human rights. As a result, States need to collect data before and after strikes to minimize human rights violations. Finally, the legal controversies surrounding the use of drones need to be resolved in a manner that will protect human rights.

Human Rights Advocates urges:

1. The Human Rights Council clarify that international human rights law is the primary source of law governing lethal drone use outside a situation of armed conflict
 2. States to delineate the geographical scope of their armed conflict against terrorists
 3. States to not use lethal drones outside situations of armed conflict
 4. States gather sufficient data before and after a drone strike to minimize human rights violations
 5. States release more data on their use of lethal drones to increase transparency and accountability
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²² Id. para 59.

²³ United Nations, General Assembly, *Promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/68/389 (18 September 2013), para 60.

²⁴ United Nations, General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/34/61 (21 February 2017), para 25.