



KEY PRINCIPLES ON THE USE AND TRANSFER OF ARMED DRONES



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Cover: US military using an armed Predator drone against the Taliban in Kandahar, Southern Afghanistan, 2 May, 2006. © Veronique de Viguerie/Getty Images

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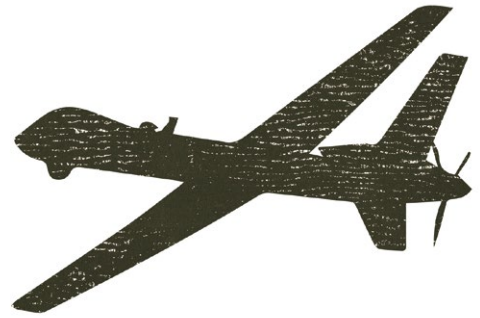
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INTRODUCTION



The use of remotely piloted aircraft or unmanned aerial vehicles (UAVs), most commonly known as drones, has grown rapidly in recent years. Since at least 2002, there have been reports of extra-territorial intentional killings by the United States of America (USA) against specified individuals (so-called “targeted killings”) or against individuals or groups who appear to match a particular profile or have an affiliation with a particular group, far from any recognized battlefield and without charge or trial. In the years since, armed drones have been used increasingly by various militaries around the world – including those of the United Kingdom (UK), Israel, Nigeria and Pakistan – for such killings in Afghanistan, Pakistan, the Occupied Palestinian Territories and Yemen and more recently in Syria, Iraq and Nigeria.

Amnesty International is gravely concerned that some of these drone strikes have violated the right to life, and have included cases of extrajudicial executions and other unlawful killings. The intentional use of lethal force outside armed conflict can only be justified when strictly unavoidable to protect against an imminent threat to life. In situations of armed conflict, drone strikes have caused a significant number of civilian casualties, and in some instances appear to have violated the rules of international humanitarian law.

While many of these drone strikes have taken place as part of actual armed conflicts, some States – particularly the USA – have continued to assert the right to carry out intentional killings against members of certain groups wherever they are as part of a “global war” doctrine or on the basis of a purported right of self-defence as a stand-alone justification to use lethal force across borders against individuals and groups of people. A common feature of the use of armed drones outside areas of active hostilities has been a lack of transparency that has impeded assessment of basic facts surrounding drone strikes, including the applicable legal framework, and has prevented accountability and access to justice and remedies for victims and their families.

Whilst Amnesty International does not oppose the use of armed drones in itself, it has consistently called on States to ensure that the use of armed drones complies with States’ obligations under international law, including international human rights law and international humanitarian law. In particular, Amnesty International is calling on States to: ensure that their use or facilitation of lethal force operations abroad complies with international law, including international human rights law; publicly disclose the legal and policy standards and criteria they apply to the use of armed drones; ensure effective investigations into all cases where there are reasonable grounds to believe that drone strikes have resulted in unlawful killings and/or any civilian casualties; and enable meaningful oversight and remedies.

Given the increasing trend towards use of armed drones and their rapid proliferation, it is crucial that their use is brought in line with international human rights and humanitarian law. Amnesty International is therefore calling on all States to articulate and rigorously implement clear, binding and transparent policies on the use and transfer of armed drones that incorporate the following key principles:



1 ENSURE THE USE OF ARMED DRONES COMPLIES WITH INTERNATIONAL LAW AND STANDARDS, IN PARTICULAR THE RIGHT TO LIFE

In their use of armed drones, States must respect their obligations under international human rights law and standards and, in the exceptional situations of armed conflict where it applies, under international humanitarian law.

ARBITRARY DEPRIVATION OF LIFE

The prohibition of the arbitrary deprivation of life is a “peremptory norm” – a fundamental principle of international law that is binding on every State even if they are not party to particular treaties containing the prohibition, and which may never be suspended or otherwise derogated from, whether in times of peace or in times of war.¹

States must abide by this legal obligation to respect the right to life at all times, whether or not armed drone strikes occur in the context of an armed conflict. This is also enshrined in Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which states that “every human being has the inherent right to life. No one shall be arbitrarily deprived of his life.”

The question of whether a killing committed within an armed conflict constitutes an arbitrary deprivation of life will be determined by the relevant rules of international humanitarian law. Deliberately killing civilians who are not directly participating in hostilities violates both international humanitarian law and the right to life.

Targeted killings outside situations of armed conflict are very likely to violate the prohibition of arbitrary deprivation of life and may constitute extrajudicial executions.² In such situations, where international humanitarian

law does not apply, the intentional use of lethal force is governed by law enforcement standards under international human rights law. States must act in strict compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. That is to say, they must demonstrate, for each strike, that intentional lethal force was only used when strictly unavoidable in order to protect life, that no less harmful means such as capture or non-lethal incapacitation was possible, and that the use of force was proportionate in the prevailing circumstances.³

DELIBERATELY KILLING CIVILIANS WHO ARE NOT DIRECTLY PARTICIPATING IN HOSTILITIES

VIOLATES BOTH INTERNATIONAL HUMANITARIAN LAW AND THE RIGHT TO LIFE.



- 1 See article 4(2) International Covenant on Civil and Political Rights (ICCPR) and, inter alia, Human Rights Committee, General Comment No 29 on states of emergency, UN Doc. CCPR/C/21/Rev.1/Add.11, paras 7 and 11; see also Human Rights Committee, General Comment No 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/ Rev.1/Add.13, para. 11.
- 2 UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, para. 33.
- 3 See Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter UN Basic Principles) and article 3 of the UN Code of Conduct for Law Enforcement Officials and its Commentary. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: “A State killing is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or non-lethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture.” Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, para. 32.

EXTRAJUDICIAL EXECUTIONS

Unlawful and deliberate killings carried out by order of government officials or with their complicity or acquiescence amount to extrajudicial executions; they are prohibited at all times and constitute crimes under international law.⁴ Deliberate killings by armed drones, taking place outside armed conflict, without an attempt first to arrest suspected offenders, without adequate warning, without the suspects offering armed resistance, and in circumstances in which suspects posed no immediate and deadly threat to security forces or others, would be considered extrajudicial executions in violation of international human rights law.

ARMED DRONE STRIKES AS PART OF AN ARMED CONFLICT

When there is an armed conflict, international humanitarian law applies alongside international human rights law; and this has serious implications for the protection of the right to life, and specifically in regard to assessing what amounts to an arbitrary deprivation of life. Therefore, it is crucial that an accurate determination is made as to whether and where a situation of armed conflict exists.

International armed conflicts occur when one or more States have recourse to armed force against another State or States, regardless of the reasons for or the intensity of this confrontation.⁵ Far more common today are non-international armed conflicts. According to the International Committee of the Red Cross (ICRC), a non-international armed conflict is a “protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation.”⁶ International humanitarian law does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.⁷

When States use force as part of hostilities in an armed conflict, there are important legal constraints on targeting operations. Under international humanitarian law drone operators and their commanders must at all times abide by the principle of distinction; namely, they must distinguish between civilians and combatants (and others directly participating in hostilities) and direct attacks only at the latter.⁸ Civilians are protected against attack unless and for such time as they take a direct part in hostilities.⁹ In case of doubt, a person must be presumed to be protected against direct attack. The practice of so-called “signature” drone strikes, where the identity of the individuals or groups targeted is not known but their activities as viewed from the sky appear to fit a pattern that has been deemed suspicious, may effectively deny individuals the presumption of civilian status, leading to direct attacks on civilians. Signature strikes do not appear to require specific knowledge about an individual’s participation in hostilities or an imminent threat, raising concerns that such strikes are likely to lead to unlawful killings.¹⁰

4 See UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 1. See also Human Rights Committee, General Comment No 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, para. 18.

5 Article 2 Common to the Geneva Conventions of 1949.

6 International Committee of the Red Cross, *How is the Term “Armed Conflict” Defined in international humanitarian law?* Opinion Paper, March 2008, p. 5. See also, Article 3 Common to the Geneva Conventions of 1949 (Common Article 3) and Protocol II Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

7 Article 1(2) of Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

8 International Committee of the Red Cross, Customary international humanitarian law (hereinafter ICRC, Customary IHL), Volume I: Rules 1, 3, 5 and 6; International Committee of the Red Cross, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under international humanitarian law*, Recommendation V.

9 International Committee of the Red Cross, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under international humanitarian law*, Recommendation VIII.

10 Amnesty International, *Will I be next? US drone strikes in Pakistan*, October 2013, pp. 27-28, (Index: ASA 33/013/2013), <https://www.amnesty.org/en/documents/ASA33/013/2013/en/>

Flowing from the principle of distinction is the prohibition of indiscriminate attacks,¹¹ that is, attacks that do not distinguish between military objectives and civilians or civilian objects.¹² In addition, attacks must not be disproportionate. A drone strike would be disproportionate if it “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.¹³ Launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage, is a war crime.¹⁴ Officials, particularly US officials, often stress that drone technology allows for increased precision in carrying out strikes, claiming that extremely few civilians have been killed in drone strikes. However, a number of credible studies have suggested that civilian deaths, in particular, may be higher than officials admit.¹⁵



“SIGNATURE” DRONE STRIKES

WHERE THE IDENTITY OF THE INDIVIDUALS OR GROUPS TARGETED IS NOT KNOWN BUT THEIR ACTIVITIES AS VIEWED FROM THE SKY APPEAR TO FIT A PATTERN THAT HAS BEEN DEEMED SUSPICIOUS.



The protection of the civilian population and civilian objects is further underpinned by the requirement that all parties to a conflict take precautions in attack as well as in defence. In the conduct of drone operations, then, “constant care must be taken to spare the civilian population, civilians and civilian objects”, which requires that “all feasible precautions” must be taken to avoid and minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.¹⁶ Everything feasible must be done to verify that targets are military objectives, to assess the proportionality of attacks, and to halt attacks if it becomes apparent they are wrongly-directed or disproportionate.¹⁷ Where circumstances permit, parties must give effective advance warning of attacks which may affect the civilian population.¹⁸

States have publicized the capabilities of drones, which enable their operators to survey a target for a considerable period of time before launching an attack in order to provide accurate intelligence ahead of strikes. Documented cases of civilians being killed when clearly not directly participating in hostilities have however highlighted catastrophic failures in such intelligence processes, with targets apparently misidentified and/or selected on the basis of faulty intelligence and strikes not being cancelled once the target’s civilian status has been made clear.¹⁹

USE OF FORCE IN ANOTHER STATE’S TERRITORY

Separate to the rules governing international human rights law and international humanitarian law is the international law governing the use of force in another State’s territory, known as extraterritorial use of force. This requires a State’s consent to armed drone strikes being carried out in its territory, obtaining a specific mandate of the UN Security Council under Chapter VII of the UN Charter, or compliance

11 ICRC, Customary IHL, Volume I: Rules, Rule 11.

12 ICRC, Customary IHL, Volume I: Rules, Rule 12.

13 ICRC, Customary IHL, Volume I: Rules, Rule 14.

14 ICRC, Customary IHL, Volume I: Rules, Rule 156, page 599.

15 See for example: Human Rights Clinic at Colombia Law School, *Counting Drone Strike Deaths*, October 2012, available at: <http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/COLUMBIACountingDronesFinalNotEmbargo.pdf>, and; The Bureau of Investigative Journalism, *US claims of no civilian deaths are untrue*, 18 July 2011, <https://www.thebureauinvestigates.com/stories/2011-07-18/us-claims-of-no-civilian-deaths-are-untrue>, and; Human Rights First, *Drone strike casualty data by the numbers*, July 2016, http://www.humanrightsfirst.org/sites/default/files/Drone_Casualty_Data_Fact_Sheet.pdf

16 ICRC, Customary IHL, Volume I: Rules, Rule 15. See also Protocol II, article 13(1).

17 ICRC, Customary IHL, Volume I: Rules, Rules 16-19.

18 ICRC, Customary IHL, Volume I: Rules, Rule 20.

19 Amnesty International, *Will I be next? US drone strikes in Pakistan*, 2013, pp. 18-23, (Index: ASA 33/013/2013), <https://www.amnesty.org/en/documents/ASA33/013/2013/en/> and; Human Rights Watch, *A Wedding That Became a Funeral: US Drone Attack on Marriage Procession in Yemen*, 19 February 2014, <https://www.hrw.org/report/2014/02/19/wedding-became-funeral/us-drone-attack-marriage-procession-yemen>

with the specific requirements of the right to self-defence under Article 51 of the UN Charter.²⁰ Institutionally, as an organization whose focus is human rights, Amnesty International does not take a position on the issue of when the extraterritorial use of force is justified or legal under this particular set of rules of international law. However the issue of whether a State consents to drone strikes is relevant to whether it shares responsibility for violations by the State carrying out the strikes on its territory.²¹ Regardless of whether or not a State's extraterritorial use of drones is lawful under the law on the extraterritorial use of force, a State carrying out such a strike would still need to adhere to its obligations under international human rights law and, where applicable, international humanitarian law. Further, a State on whose territory another State is conducting unlawful drone strikes cannot lawfully "consent" to violations of international human rights or humanitarian law by that State (see Principle 3 of this briefing for discussion on State responsibility for assisting unlawful drone strikes).²²



2 ENSURE TRANSPARENCY AROUND ARMED DRONE OPERATIONS

States have for the most part kept their policies and interpretations of the legal frameworks governing armed drone operations shrouded in secrecy. States have been hesitant to publicly disclose the factual and legal basis for drone strikes, often citing national security concerns. Any policy on the use and export of armed drones must contain clear provisions to ensure transparency, as an important means to verify the legality of drone strikes, and to ensure effective accountability and respect for the right to redress of victims of violations (see Principles 4 and 5 of this briefing).

In particular, in their use of armed drones, States must be transparent about the intentional use of lethal force, including in targeted killing operations. This includes promptly, regularly and publicly disclosing:

- The policy and legal frameworks for the use of armed drones, including definitions of key terms;
- Detailed statistics and aggregate data on the use and impact of armed drones. This should include:
 - Number of armed drone strikes, broken down by location and date;
 - An explanation of the legal basis for each strike;
 - Number of people killed or injured in drone strikes, broken down by location, date, age and sex; and
 - In situations of armed conflict, the number categorized as "civilians", or "combatants", and the criteria used to determine such statuses; and
 - In situations outside of armed conflict, the number killed or injured and whether they were deemed to pose an imminent threat to life or of serious injury;
 - Names and ages of individuals killed and, in situations of armed conflict, in each case whether they were categorized as "civilian" or "combatant";
- Any post-event assessment of whether the drone strike and/or resulting killings and injuries were lawful;
- Individual acknowledgments of each and every drone strike carried out;

20 For a discussion about the very limited set of circumstances where the right to self-defence against attacks by non-state actors, such as armed groups, can be validly claimed, see UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6, paras 40-41.

21 The question of whether a State has consented to the use of force by another State on its territory is also relevant for determining the applicable legal framework: international armed conflict, non-international armed conflict, or no armed conflict.

22 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/68/382, 13 September 2013, para. 51.

- Clear explanations of the decision-making process, including information on the chain of command and target selection criteria, and procedures for avoiding unintentional deaths and, in armed conflict situations, the mitigation of civilian harm;
- Detailed information about oversight mechanisms;
- Detailed information about accountability mechanisms, and of procedures to ensure effective remedies for victims of potentially unlawful drone strikes and their families (see Principle 5 for further detail).²³



Such disclosure is a necessary prerequisite to informed assessment and independent scrutiny of such operations and would serve as a demonstration of a State's commitment to transparency and the rule of law.



3 REGULATE STATE RESPONSIBILITY FOR ASSISTANCE (COMPLICITY)

Policies governing the use and transfer of armed drones need to regulate not only the direct use by States but also the provision of assistance to other States' (or non-state actors') use of armed drones.²⁴ A State bears direct responsibility if its organs or agents violate international human rights or humanitarian law. In addition, under Article 16 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts,²⁵ a State can be considered to be responsible for assisting, or complicit in, a violation of international human rights or humanitarian law if three conditions are met:

- 1 When providing assistance, the assisting State has "knowledge of the circumstances of the internationally wrongful act";
- 2 The assistance provided aids the commission of the internationally wrongful act;
- 3 The act is such that it would have been wrongful had it been committed by the assisting State itself.

Consequently, where specific State organs or officials knowingly assist in another State's unlawful drone strikes, the State may be held responsible for assisting such violations. Such responsibility could extend to situations in which a State provides assistance to drone strikes carried out by another State which employs a different interpretation of international law. For example, State A allows State B to deploy armed drones from a military base on State A's territory. State A employs a definition of the term "combatant" that complies with international humanitarian law but State B employs an overly broad definition and therefore directly targets a drone strike at individuals in State C whom State B incorrectly classifies as "combatants", but whom State A would consider civilians. In State A's view, the attack on State C would therefore constitute a violation of international humanitarian law.

²³ This section draws extensively on: Columbia Law School Human Rights Clinic and The Sana'a Center for Strategic Studies, *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force*, June 2017, <https://www.outoftheshadowsreport.com/>, which includes a set of "Ensuring Transparency in the Use of Force Benchmarks"; and Jessica Dorsey, *Towards an EU Common Position on the Use of Armed Drones*, European Parliament Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2017, pp. 26-27, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU\(2017\)578032_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf),

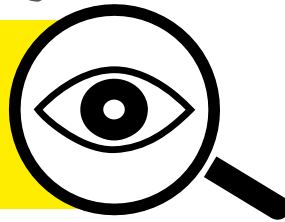
²⁴ For a discussion on the law on aiding and assisting, as well as practical recommendations for States to reduce the risk of assisting unlawful acts by other States, see Harriet Moynihan, *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*, International Law Programme, Chatham House, November 2016, <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-11-11-aiding-assisting-challenges-armed-conflict-moynihan.pdf>

²⁵ International Law Commission, *Responsibility of States for internationally wrongful acts*, annexed to UN General Assembly Resolution 56/83, Article 16. The International Law Commission (ILC) adopted the Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("Draft Articles") in August 2001. The UN General Assembly took note of the Articles and commended them to the attention of governments in resolutions 56/83 of 12 December 2001, 59/35 of 2 December 2004, 62/61 of 6 December 2007, and 65/19 of 6 December 2010. Some states have pressed for a diplomatic conference to consider the articles, but others have preferred to maintain their status as an ILC text approved *ad referendum* by the General Assembly. The Articles have been very widely approved and applied in practice, including by the International Court of Justice (see UN Audio-visual Library of International Law <http://legal.un.org/avl/ha/rsiwa/rsiwa.html>).

STATES HAVE THE OBLIGATION TO ASSESS THE RISK THAT ANY KIND OF ASSISTANCE TO ANOTHER STATE (OR AN ARMED GROUP) USING DRONES COULD CONTRIBUTE TO



HUMAN RIGHTS VIOLATIONS OR ABUSES OR VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW.



If State A has knowledge of State B's overly broad definition of "combatant", and provides assistance to the attack in such knowledge, then State A could be held responsible for assisting that violation.

Any regulations governing the use of armed drones will need to be comprehensive and acknowledge that assistance to unlawful drone use can take many forms – for example, by sharing intelligence which is then used to locate and identify targets for drone strikes, or by providing operational and logistical support, such as assisting with communications by providing live feeds via satellite, or by allowing another State to deploy armed drones from their territory. States have the obligation to assess the risk that any kind of assistance to another State (or an armed group) using drones could contribute to human rights violations or abuses or violations of international humanitarian law.



4 IMPLEMENT ROBUST OVERSIGHT MECHANISMS ON THE USE OF ARMED DRONES

States must establish fully independent and effective oversight mechanisms to ensure the decision to authorize the use of armed drones is independently and impartially scrutinized and complies with the State's obligations under international law. This includes enabling effective parliamentary oversight and judicial review of government decisions and actions around the use of armed drones, ensuring that national security concerns or the classification of information as secret are not obstacles to effective scrutiny by the judiciary or Parliament.²⁶

States should make public full information about these oversight mechanisms, including in relation to their mandate and powers, types and categories of information made available to them, and the findings, recommendations and actions taken by the mechanism and, in response, by the State itself.²⁷

²⁶ Jessica Dorsey, *Towards an EU Common Position on the Use of Armed Drones*, European Parliament Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2017, p.28, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU\(2017\)578032_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf)

²⁷ Columbia Law School Human Rights Clinic and Sana'a Center for Strategic Studies, *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force*, June 2017, p.84, <https://www.outoftheshadowsreport.com/>



5 ENSURE ACCOUNTABILITY

According to the UN's Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, a State must investigate all incidents where it has "caused a death or where it is alleged or suspected that the State caused a death".²⁸ This duty, the Protocol explains, "applies to all peacetime situations and to all cases during an armed conflict outside the conduct of hostilities...regardless of whether it is suspected or alleged that the death was unlawful".²⁹

During the conduct of hostilities, in situations governed by international humanitarian law, a "post-operation assessment" should be carried out to determine the facts wherever "it appears that casualties have resulted from an attack", and if any death is suspected or alleged to have resulted from a violation of international humanitarian law, further inquiry is necessary. In the case of possible war crimes, a full investigation and prosecution of suspected perpetrators is required.³⁰

In all cases where there are reasonable grounds to believe that drone strikes resulted in unlawful killings or other violations of international human rights or humanitarian law, States must ensure prompt, thorough, transparent, independent and impartial investigations are conducted.³¹ Where there is sufficient admissible evidence of criminal wrongdoing, those responsible should be brought to justice in fair and public trials.

For there to be effective investigations, States must ensure that an independent investigative body is given the necessary powers, expertise and resources to promptly, independently, impartially, thoroughly and transparently investigate all potentially unlawful deaths caused by drone strikes which the State has carried out or has assisted another State in carrying out. The investigative body should have access to classified information it deems relevant, be independent of agencies that order or carry out strikes, have sufficient resources and necessary powers, including the ability to compel witnesses and evidence, and a mandate to report publicly on its findings.³²

Given the secrecy surrounding States' armed drone operations, it is difficult to properly assess whether States have fulfilled their duty to investigate. However, according to publicly available information, to date there appears to have been a lack of effective investigations into suspected unlawful drone strikes,

FOR THERE TO BE EFFECTIVE INVESTIGATIONS, STATES MUST ENSURE THAT

AN INDEPENDENT INVESTIGATIVE BODY IS GIVEN THE NECESSARY POWERS, EXPERTISE, AND RESOURCES

TO PROMPTLY, INDEPENDENTLY, IMPARTIALLY, THOROUGHLY AND TRANSPARENTLY INVESTIGATE ALL POTENTIALLY UNLAWFUL DEATHS CAUSED BY DRONE STRIKES.



28 OHCHR, *The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths*, 2016, UN Doc. HR/PUB/17/4, Section II, C, para. 16 (hereinafter OHCHR, *The Minnesota Protocol*).

29 OHCHR, *The Minnesota Protocol*, Section II, C, para. 16.

30 OHCHR, *The Minnesota Protocol*, Section II, C, para. 21.

31 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 9. For an explanation of the elements of the duty to investigate see OHCHR, *The Minnesota Protocol*, Section II, D. Also see OHCHR, 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, 2005, UN Doc. A/RES/60/147, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

32 See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/26/36, 1 April 2014, para. 80.

and in some cases States appear to have undercounted or even failed to register unintended victims of strikes. A refusal to acknowledge such casualties is contrary to the rule of law and denies victims the justice they deserve; it can also compound anger in affected communities. States must ensure there are effective mechanisms to track and respond to civilian harm caused by the use of armed drones.

Victims of potentially unlawful drone strikes, including family members of those killed, must have effective access to remedies, including in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. To ensure this, States should put in place mechanisms to collect and process claims for remedy, and to oversee distribution of compensation or restitution payments, as well as other remedies. Since drone strikes are often carried out in rural areas presenting challenges for the administration of such mechanisms, States should take effective steps to address such challenges, including by distributing information publicly about remedies available for violations, and ensuring that mechanisms are geographically accessible to all affected by drone attacks and that adequate assistance is provided to those seeking justice.³³

In order to ensure compliance with the fundamental principles of transparency and accountability, States should release publicly:

- Detailed information about accountability mechanisms, including any investigations carried out into casualties caused by drone strikes. This should include details of:
 - The post-strike investigation's scope and objective;
 - Who is investigating, what expertise the investigators have, and what information is available to investigators;
 - Results of any investigations, with redactions only if requested by victims of drone strikes or their families or where shown to be strictly necessary for the protection of legitimate national security interests; information should not be withheld that prevents victims of human rights violations from seeking or obtaining a remedy;
 - Any individual accountability measures taken against individuals involved in any allegedly unlawful drone strike, including disciplinary measures or criminal prosecutions and their outcomes;

VICTIMS OF POTENTIALLY UNLAWFUL DRONE STRIKES, INCLUDING FAMILY MEMBERS OF THOSE KILLED,

**MUST HAVE EFFECTIVE ACCESS TO REMEDIES, INCLUDING IN
THE FORM OF RESTITUTION, COMPENSATION, REHABILITATION,
SATISFACTION AND GUARANTEES OF NON-REPETITION.**



- Clear information on policies and procedures in place to ensure that victims of potentially unlawful drone strikes, including the families of those killed, have effective access to remedies, including compensation, rehabilitation and restitution, satisfaction and guarantees of non-repetition. This should include:
 - Practical information as to how these mechanisms can be accessed by victims and their families;
 - Timelines for processing of claims and any compensation payments;
 - Explanation of how compensation and restitution payments are calculated and made;

³³ UN 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, UN Doc. A/RES/60/147, 21 March 2006, para 12.

- Details of compensation and restitution payments made to victims of drone strikes including the families of those killed, broken down by individual amount, subject to legitimate privacy concerns;
- Statistical information on individual accountability for strikes and any form of redress delivered, including through compensation payments.³⁴



6 PUT IN PLACE RIGOROUS CONTROLS ON TRANSFERS

Given the heightened risks of the misuse of armed drones, the prevention of the proliferation of this technology is paramount. International transfers of armed drones must be subject to the most rigorous export controls possible. These export controls must cover the transfer, re-export, brokering, transit and transshipment, production and co-production of armed drones, including specialist components, related technology and any technical assistance.

States should establish a presumption of denial on the transfer of armed drones, meaning transfers will only be permitted when it can be reasonably demonstrated that the end user will not use them to commit or facilitate serious violations of international human rights and international humanitarian law, including war crimes or extrajudicial executions. Before any transfer of armed drones can be authorized, end-user agreements should be in place, including the provision for post-delivery checks and binding guarantees on use in accordance with relevant rules of international law and standards in particular on the prohibition on the unlawful use of lethal force and the principles laid out in this document. Re-export should only be permitted with the express authorization of the original exporter, and only where the re-export is in line with all the above standards.

INTERNATIONAL TRANSFERS OF ARMED DRONES

**MUST BE SUBJECT TO THE MOST RIGOROUS
EXPORT CONTROLS POSSIBLE.**



34 This section draws extensively on: Columbia Law School Human Rights Clinic and The Sana'a Center for Strategic Studies, *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force*, June 2017, pp.72, 95, 96, 99, and 102 <https://www.outoftheshadowsreport.com/> and; Jessica Dorsey, *Towards an EU Common Position on the Use of Armed Drones*, European Parliament Directorate-General for External Policies of the Union, Directorate B, Policy Department, 2017, p. 28, [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU\(2017\)578032_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578032/EXPO_STU(2017)578032_EN.pdf)



7 ESTABLISH REGIONAL AND INTERNATIONAL STANDARDS REGULATING USE AND TRANSFER OF ARMED DRONES

In order to ensure that the use and transfer of armed drones is brought in line with international human rights and humanitarian law and standards, it is essential that States establish effective national policies on the use and transfer of armed drones. In addition, given the rapid development and proliferation of armed drones it will be necessary for States to establish regional and international standards regulating the use of and international trade in armed drones.

Such standards should be in line with existing export control agreements and include specific language to ensure comprehensive transfer controls on drones and related technologies, which are not adequately covered by existing regimes. Any standards should be legally binding, establish a presumption of denial on the transfer of armed drones, and include a requirement for regular review of the list of weapons and related technologies that are either prohibited or controlled to ensure consistency with rapidly developing armed drone technology.



8 ENSURE MEANINGFUL CIVIL SOCIETY PARTICIPATION IN THE DEVELOPMENT OF STANDARDS

It is vitally important that the development of standards and policies on the use and transfer of armed drones is done in consultation with a broad range of stakeholders, including meaningful and substantive engagement with non-governmental organizations, people directly affected by the use of armed drones, including survivors of drone attacks, industry and relevant experts. Broad civil society and industry participation and transparency in negotiations on standards are essential to the development of robust agreements which will ensure that the use and transfer of armed drones complies with States' obligations under international law, including international human rights and humanitarian law.

Full transparency requires that civil society – as well as the media and interested individuals – should have timely information about the ongoing discussions. Civil society and relevant experts should be afforded formal channels to contribute substantively to drafting processes and any subsequent monitoring mechanisms.



BROAD CIVIL SOCIETY AND INDUSTRY PARTICIPATION AND TRANSPARENCY IN NEGOTIATIONS ON STANDARDS IS ESSENTIAL TO THE DEVELOPMENT OF ROBUST AGREEMENTS.



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