

December 4, 2013

The Honorable Barack Obama
President of the United States
White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Re: Shared Concerns Regarding U.S. Drone Strikes and Targeted Killings

Dear President Obama,

Six months ago, the undersigned human rights and civil rights groups wrote to you to express concern about U.S. targeted killing operations, in particular outside the internationally recognized armed conflict in Afghanistan. In that letter, attached hereto, we call on your administration to: publicly disclose key targeted killing standards and criteria; ensure that U.S. lethal force operations comply with international law; enable meaningful congressional oversight and judicial review; and effectively investigate, track and respond to allegations of unlawful strikes and civilian harm.

Since then, a number of new developments have reinforced our concerns and raised new questions. We write to urge a response to these issues.

We welcome your statements at the National Defense University (NDU) in May 2013 indicating your intent to restrict the use of lethal force and recognizing the United States' obligation to comply with international law. We also welcome your acknowledgement of the importance of greater transparency and oversight. However, your speech left many important questions unanswered, and since then the U.S. government has not publicly disclosed any further information about its targeted killing operations.

For example, the full Presidential Policy Guidance, which you summarized in your speech, remains classified. In U.S. court cases, the government continues to refuse even to acknowledge which agencies carry out lethal strikes, let alone provide basic information about the number and identities of the people these strikes have killed. The one exception is your administration's acknowledgment of the killings of four U.S. citizens—a citizenship-based distinction that does nothing to assuage concerns about the use of lethal force against citizens of other countries, or the legal basis for any of the killings. The result is that the public remains in the dark about how exactly U.S. policy governing targeted killings is operating, under which legal authorities, and who exactly are its victims.

Commitment to the rule of law requires that your administration disclose publicly the legal criteria governing each of its lethal targeting operations. In addition, your administration should disclose the full Presidential Policy Guidance as well as when and where any of these policies have been implemented. We also urge you to disclose which, if any, of the policy guidelines your administration believes are legally binding. Your

administration also should disclose the identities of the individuals killed and the criteria it uses to classify these individuals as “civilian,” “militant” or “combatant.”

We are also particularly concerned about three specific aspects of the targeted killing policy announced in your NDU speech. The first is the standard for who may be targeted. You stated: “we act against terrorists who pose a continuing and imminent threat to the American people, and when there are no other governments capable of effectively addressing the threat.” Administration officials have in the past defined an “imminent threat” in ways that emphasize the opportunity to attack a target rather than the immediacy of the threat posed. Justifying the use of lethal force against a “continuing” threat seems to similarly endorse the use of lethal force in response to fear of an unspecified adverse action at an undefined point in the future. These interpretations of imminence are inconsistent with international law.

Second, you said that “America does not take strikes when we have the ability to capture individual terrorists,” without explaining how feasibility of capture is defined and determined. Your administration should elucidate this criterion, as well as explain why capture was not feasible in each instance. We urge your administration to affirm that, outside of actual armed conflict, lethal force may only be used when strictly unavoidable to protect against an imminent threat to life.

Third, you said that beyond the Afghan war theater, “before any strike is taken, there must be near-certainty that no civilians will be killed or injured—the highest standard we can set.” This point follows previous statements from administration officials that U.S. drone strikes have resulted in few, if any, civilian casualties. News media and recently-released reports from Human Rights Watch and Amnesty International, however, suggest U.S. drone strikes have killed and injured people your administration would likely consider civilians, and resulted in unlawful killings.

Your administration should commit to investigating these and other credible reports of potentially unlawful deaths and civilian harm, and to releasing the results of those investigations to the public. As CIA Director John Brennan has said, the United States “need[s] to acknowledge publicly” any mistaken killings and should “make public the overall numbers of civilian deaths resulting from U.S. strikes targeting al-Qa’ida.”

Director Brennan has also said that the government makes condolence payments to families of those killed “if appropriate.” However, the government has not provided any information about condolence payments that may have been made. Furthermore, Amnesty International and Human Rights Watch found no evidence of payments made by the United States in either Pakistan or Yemen.

Many of our concerns are shared by two United Nations Special Rapporteurs. In new reports, the two U.N. experts strongly criticize 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.

We appreciate your attention to our concerns and urge the administration to take the steps we have outlined, both here and in our previous letter.

Sincerely,

American Civil Liberties Union
Amnesty International
Center for Human Rights & Global Justice, NYU School of Law
Center for Civilians in Conflict
Center for Constitutional Rights
Global Justice Clinic, NYU School of Law
Human Rights First
Human Rights Watch
Open Society Foundations