

HUMAN RIGHTS WATCH

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December 16, 2011

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Via Facsimile: +1-202-456-2461

Re: Targeted Killings by the US Government

Dear President Obama,

We previously wrote to you on December 7, 2010, to express our concerns regarding the US targeted killing program. We made recommendations that would minimize harm to civilians and ensure US policies and practices were in line with the country's international legal obligations. Since then, the use by the United States of Unmanned Combat Aircraft Systems (drones) to conduct targeted killings has expanded rapidly in Pakistan and other countries. Yet, your administration has taken few steps to provide greater transparency and accountability in conducting targeted killings, intensifying concerns both in the US and abroad about the lawfulness of these attacks.

Human Rights Watch recognizes that the US government has a responsibility to address threats to national security. The deliberate use of lethal force against a specific target can be legal in operations against a combatant on a genuine battlefield, or in a law enforcement situation in which there is an imminent threat to life and there is no reasonable alternative. We also recognize the challenges faced in trying to address potential threats that are not in a traditional conflict zone yet are also beyond the reach of any law enforcement. We have read the statements from administration officials – most recently the September talk at Harvard University by counterterrorism advisor John Brennan – which posits the legal basis for the overall use of force but do not clearly provide one for conducting specific targeted killings and the legal limits on such strikes. Among the questions raised:

- Where does your administration draw the line between lawful and unlawful targeted killings? Are international human rights law considerations taken into account?
- John Brennan has argued for a more flexible definition of “imminence” to justify the use of force. Is this in the context of self-defense as provided under the United Nations Charter or in the law enforcement context, which requires an imminent threat to life for lethal force to be used?
- The administration suggests that targeted killings can be conducted without geographic limits, making the entire world a battlefield. What is different about the US government rationale for targeted killings that would not apply to other countries, such as Russia or China, that assert threats from terrorists?

The US government should clarify fully and publicly its legal rationale for conducting targeted killings and the legal limits on such strikes. Your administration has yet to explain clearly where it draws the line between lawful and unlawful targeted killings. The government should also explain why it believes that its attacks are in conformity with international law and make public information, including video footage, on how particular attacks comply with that standard. To ensure compliance with international law, the United States should conduct investigations of targeted killings where there is credible evidence of wrongdoing, provide compensation to all victims of illegal strikes, and discipline or prosecute as appropriate those responsible for conducting or ordering unlawful attacks.

We are particularly concerned about the expanded involvement of the Central Intelligence Agency (CIA) in the targeted killings program. International humanitarian law does not prohibit intelligence agencies from participating in combat operations during armed conflicts. However, parties to an armed conflict have obligations to investigate credible allegations of war crimes and provide redress for victims. Because the US government routinely neither confirms nor denies the CIA’s well-known participation in targeted killings in northern Pakistan and elsewhere, there is no transparency in its operations. In 2009, then-CIA chief Leon Panetta unusually acknowledged the US airstrikes against al Qaeda leaders in Pakistan as being “very effective” because they are “very precise” and “very limited in terms of collateral damage.” However, he also said he would not provide more details, highlighting the government’s unwillingness to divulge information about CIA operations.

The CIA, like all US government agencies, is bound by international human rights and humanitarian law. Unlike the US armed forces, the CIA provides little or no information regarding the training and composition of its drone teams, or the procedures and rules it follows in conducting targeted killings. Nor has the government provided information as to whether the CIA has conducted any investigations into possible international law violations and their outcomes. As a

result there is no basis for determining whether the US government is actually meeting its international legal obligations with respect to its targeting operations or providing redress for victims of unlawful attacks. Repeated assertions by senior officials within your administration that all US agencies are operating in compliance with international law – without providing information that would corroborate such claims – are wholly inadequate.

Human Rights Watch believes that so long as the US government cannot demonstrate a readiness to hold the CIA to international legal requirements for accountability and redress, the use of drones in targeted killings should be exclusively within the command responsibility of the US armed forces. This would be consistent with the findings of the independent 9/11 Commission, which in 2004 specifically recommended that “[l]ead responsibility for directing and executing paramilitary operations, whether clandestine or covert, should shift to the Defense Department.” Such a recommendation has been made more recently by former director of national intelligence Dennis Blair, among others. At the same time, while the US military has a more transparent chain of command and operational procedures, it too needs to ensure compliance with the laws of war, and provide accountability of redress when violations occur.

We again ask you to consider these concerns in light of your own words when you accepted the Nobel Peace Prize: “Even as we confront a vicious adversary that abides by no rules ... the United States of America must remain a standard bearer in the conduct of war,” stating, “that is what makes us different from those whom we fight. That is the source of our strength.” We respectfully urge that you provide the legal framework to uphold these words.

We have enclosed our December 2010 letter and a recent Q&A addressing these issues. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Roth". The signature is fluid and cursive, with a large initial "K" and "R".

Kenneth Roth
Executive Director

Cc: Secretary of State Hillary Clinton
Secretary of Defense Leon Panetta
CIA Director David Petraeus

