

Death Coming through the Clouds

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Translation from Arabic to English by Nour Salibi

1. Introduction

I chose this title for this discussion panel, because it uses the simple Yemeni wording that describes death caused by drones, in the form of the title of a poem someone wrote in solidarity with victims [of drone strikes].

Yemen is the first arena to fight terrorism and the most miserable in terms of the effects of "War on Terror" on the enjoyment of all human rights. If we briefly evaluate the "War on Terror" strategy we will find the numbers of dead and wounded civilians, material losses and the destruction of houses and farms are the obvious facts demonstrating the absence of human rights principles in those strategies, in which armed drones are most often used.

2. The context of the use of force in counter-terrorism operations in Yemen

The process of using force, especially US drones, began in the context of the US "War on Terror" policy in Yemen. Specifically at the end of the year 2002, Yemeni airspace became a showcase for drones, with the approval and cooperation of the Yemeni government. The intensity of their hovering and strikes has increased since 2009, for example, the drone strike that targeted the Al Majalah area, Abyan governorate on 17 December 2009 leaving 54 people dead, including many children and women. American drones strike operations burned a large area of the country's major provinces.

Public pressure and societal mobilization did not succeed in changing the conviction of the US or the Yemeni government to stop this practice, despite workshops set up by civil society groups concerned with protecting human rights, that were demanding the international community agree on a clear legal definition of terrorism and mechanisms to combat it, in addition to providing data in shadow reports to the Committee Against Torture.

It is worth mentioning here that after the coup and the seizing of control by the Houthis over a large area of Yemen and the acquisition of all state institutions, the task of classifying people under the heading of terrorism is now in the hands of the national security of the armed Houthi group, which holds an extremist ideology towards anyone who contradicts its doctrine, approach and policies.

3. The Impact of Drone Strikes on Human Rights in Yemen

Neither the Yemeni nor the US authorities have so far provided any inventory of the number of dead whilst civil society has not been able to provide a statistical reports on the number of victims of human rights violations. This may be due to more than one reason, including:

- the majority of those incidents in which civilian casualties occur happen in areas where illiteracy is widespread, in addition to lack of awareness on the issue of reporting,
- the weak financial capacity of civil society to assist in monitoring and documentation,
- the lack of media coverage and
- a failure to distinguish between civilians who are legally protected from the use of lethal force, and a targeted person who belongs to an extremist fighting faction. (This definitely does not mean depriving [the latter] of access to justice and a fair trial in relation to the charges against them.)

A number of reports have been published by various organizations, especially after 2012 - a year in which the intensity and frequency of drone strikes increased against residential areas and on innocent people who were making their way to work. These reports focused on the analysis of some of the bombing incidents and the lack of commitment by US forces as well as the Yemeni government to the principles of human rights, in addition to presenting testimonies of witnesses to the killing of innocent civilians.

The National Investigation Commission is one of the very few national bodies that conduct investigations. The fieldwork and investigations of the National Commission started in 2016, following a decree of the Republic of Yemen No. (140) 2012, which established the Commission and granted it the temporal and spatial jurisdiction to investigate human rights violations committed against Yemenis in Yemen from the year 2011 until the state takes control. In other words, the mandate of the Commission is based on the facts after December 2010.

The Commission set this type of violation amongst its priorities in its investigations, especially the process of proving the facts, meeting with witnesses and proving the non-compliance of the US with the rules and principles of human rights, its transgressions in the use of force and violations of the right to life and physical and mental integrity. International human rights law applies at all times, including during armed conflict, in addition to the prohibition of mutilation and torture which are violations that are not subject to a statute of limitations and no justification can provide an exception. Accordingly, the Commission considers the right to life requires the imposition of strict conditions on the use of lethal force, which is not evident in the facts determined through the Commission's investigations.

The Committee was able to complete investigations of 27 incidents of drone strikes that took place after the year 2011. There were 142 civilians victims, including 112 killed: 79 men, 8 women, and 24 children; and 23 wounded including 12 men and 10 children and one woman.

The Commission was able to investigate the facts, determine the number of victims, interview witnesses, listen to the families of the victims [who were killed], as well as a number of victims who were injured in bombings which caused disabilities. The Commission also reviewed the

medical and criminal reports relating to these cases, and visited a number of sites that were bombed, all within the investigative mechanisms followed by the Commission in its work. The Commission also reported on the psychological devastation experienced by the families of the victims who lost their sons – most of them the breadwinners, in addition to the great destruction of property and homes of these families. The Commission included 16 sample investigation forms in its 9 reports.

The Case of the Khashem Family

At half past six on the morning of Saturday 19 April 2014, 10 members of Al Khashem family were heading to work. A drone targeted their car with one missile in the Hazmieh area about 10 kilometres from the city of Al Baydha' in the governorate of Al Baydha'. The bombing killed four members of the family: Abdelrahman Hussein Al Khashem, Salem Nasser Al Khashem, Nasser Mohamed Al Khashem and six other members of the family.

On the day of the incident, the National Commission met with a local community leader who stated that those killed were innocent civilians who have no connections with Al Qaeda or other organisations and were just on their way to work. He explained that after he had learned of the deaths and injuries of the Khashem and Masoud Families, he contacted the leadership of Al Baydha' governorate by phone, informing them of the incident. He asked the governor to arbitrate this incident within the tribe, because the incident caused great resentment between tribesmen, the people of the governorate and neighbouring tribes. The governor informed him that he was in Sana'a, and that he would pass the information to the Minister of Defence and the military leadership of the area, and would inform him of their response to his request.

The community leader stated that on the evening of the incident, the governor contacted him and informed him that the Ministry of Defense had agreed to arbitrate. The families of the victims, and a group of tribesmen who were in Sana'a went to the governor's house, and in the presence of the Area Commander, a number of weapons and a sum of money were handed over to them as proof of approval the state is required to arbitrate.

An arbitration document was also drafted, signed by the Governor and the region's Commander on behalf of the state. It noted the state's obligation to implement what the victims' families judged as just reparations. The families of the victims sentenced the state to pay the amount of 20,700,000 Yemeni Riyals, which is equivalent to approximately one million dollars. The ruling was passed on 13 June 2014.

The Al Khashem family is still waiting for justice until the present day. Only one person is left of the family who now supports seven families. The person was the only one to survive the bombing – fate prevented him from leaving the house with the rest and he stayed asleep at home.

4. Opportunities to address human rights and their compatibility with counter-terrorism operations

The investigations and interviews with civilian victims, revealed to us the fact that US drone strikes do not comply with international law, under both human rights and humanitarian law and there is a complete disconnect between human rights and counter-terrorism operations. The

United Nations General Secretariat identified the element of defending human rights among the five elements of counter-terrorism announced in the final statement in March 2005, regarding development, peace, security and human rights. These issues are interlinked and mutually reinforce each other. Therefore, it is the duty of all states to:

1- Stop committing extrajudicial killings, and instead follow judicial procedures guaranteed in international human rights covenants, which are also in line with the rights and procedures for combating terrorism provided in the national laws of state parties; [to this end] ensure fair trials for the accused.

2- Compensate the victims and their families and provide them with fair and dignified reparations for all the violations they have suffered: murder, mutilation, destruction of property, stigma, environmental damage, loss of their breadwinner, fear, panic, and forced displacement.

3- The international community [must] take action towards countries that export drone technology used to kill Yemenis. Using this method without applying the law is a violation of international laws and covenants. Just as states and the international community have taken anti-Semitism as a pivotal and unacceptable action, there ought to be a tendency to consider the use of this weapon and the method of killing civilians as a form of racism against citizens in these countries such as Yemen, whose residents are living in fear of drones. All strikes against civilians are extrajudicial killings without any legal provisions.

4- Activating the role of the Special Rapporteur on the promotion and protection of human rights, especially her role in collecting information on alleged human rights violations, and highlighting, through reports submitted to the Human Rights Council, the danger of these practices to human rights in Yemen and the need to start of the accountability process.