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Dear Special Rapporteur

Request for allegation letters concerning two Australians killed by United States drone strikes

This letter is to inform you of recent reports in the Australian media that two Australian citizens have been killed by US drone strikes during counter terrorism operations in Yemen. Given your mandate's work on the civilian impact of drone strikes, we kindly request that the circumstances surrounding the two deaths be formally raised in letters to the Australian and the United States governments. If time still permits, the deaths might also be relevant to your inquiry into the civilian impact of drone strikes.

Public reporting of circumstances surrounding Australian deaths

On 16 April 2014 *The Australian* newspaper reported that two Australian men, Christopher Havard and Muslim bin John (a New Zealand dual citizen), were killed by a US Predator drone strike in Hadramout in eastern Yemen on 19 November 2013. We **attach** a copy of the article.

Australia's Department of Foreign Affairs and Trade (**DFAT**) stated that the two men were killed during counter terrorism operations and has refused to discuss the details of the deaths. Similarly, the US embassy refused to comment on the incident but asserted that it "uses all lawful means at its disposal and works closely with foreign partners and allies to mitigate the threats we face."

Undisclosed counter-terrorism sources within the Australian government told the media that the men were "foot soldiers" for al-Qa'ida in the Arabian Peninsula (AQAP). No official statement has been made or evidence otherwise provided to substantiate these claims. The undisclosed source stated that the two men were in a car in a convoy that was targeted and that they may have been collateral damage from the attack.

The report states that US authorities notified Australian officials about the possibility that Australian citizens might have been 'collateral damage' in a strike aimed at wiping out AQAP militants. The Australian government asserts that it had no prior knowledge of the strike.

Australia's involvement in providing location information used in targeting

Last year, we wrote to inform your mandate of allegations that the joint Australian-American Pine Gap facility in Australia provides the US with location information used to track targets of US drone strikes. Reports in the media stated that former personnel at Pine Gap reported that the signals intelligence base has located and tracked al-Qaeda and Taliban leaders and has passed on location data to the US drone strike program and other military operations. The Australian Defence Minister has told Australian Parliament that the Pine Gap base operates with the 'full knowledge and concurrence' of the Australian government and that all activities are consistent with Australian law. The statement is silent as to Australia's compliance with international humanitarian law or international human rights law. We **attach** a copy of the letter (co-written with Human Rights Watch) and a copy of the statement by the Defence Minister.

Request for communication of the allegations

We note your mandate's work on the civilian and human rights impact of the use of drones, including your current inquiry. We also note that the Australian government states that the deaths occurred during a counter-terrorism operation. For these reasons, we believe that the deaths of the two Australian citizens fall within your mandate.

We are concerned about Australia's lack of transparency around its involvement in drone strikes and also the official silence around the deaths of Mr Havard and Mr bin John, which may have involved violations of international human rights law and international humanitarian law. In the absence of any official information provided by either the Australian or US governments it is nearly impossible to assess whether those violations occurred.

We kindly request that your mandate send allegation letters to the US and Australian governments requesting greater transparency surrounding the drone strike that killed Mr Havard and Mr bin John.

The following sets out specific information that you may wish to request of the Australian and US governments. Provision of this information would aid an assessment of whether the deaths involved violations of international human rights law and international humanitarian law.

Information concerning the lawfulness of the deaths

It would be useful to seek further information on the deaths of Mr Havard and Mr bin John, including the basis on which each country asserts that the men's deaths were lawful under international human rights law and international humanitarian law. In particular:

- Were Mr Havard and Mr bin John targets of the US drone strike? If so, on what basis were they considered to be lawful targets of a US drone strike?
- Were Mr Havard and Mr bin John considered to be combatants? If so, please provide evidence and state the legal basis on which they were considered to be combatants, including the war in which they were involved.
- If Mr Havard and Mr bin John were not directly targeted, on what basis were their deaths considered to be lawful?
- Were Mr Havard or Mr bin John involved in activities that presented an imminent threat to the United States or Australia? Please provide details.

- How could the use of force against Mr Havard and Mr bin John be considered strictly necessary and proportionate limitations on their right to life?
- Please provide information on any investigations including battle damage assessments carried out in relation to the drone strikes that killed the two men, including the independence and impartiality of those investigations.
- Have any efforts been made to provide compensation or other remedies to the families of the two men killed?

Information concerning the Pine Gap facility

It would also be useful to obtain information on the extent to which the joint Australian-American Pine Gap facility was involved in the US drone attack that killed the two Australian citizens.

- Was information that was downlinked, processed or analysed at the Pine Gap facility used in the drone strike that killed Mr Havard and Mr bin John?
- Have the Australian and US governments entered into any specific agreement in relation to the sharing of locational intelligence downlinked, processed or analysed by Pine Gap that might be used in relation to drone strikes?

Information to be requested specifically from the Australian government

- To what extent is Australia involved in US drone strikes in Yemen, including through the provision of location information sourced from the Pine Gap facility? What is the legal basis for Australia's participation in drone strikes in Yemen?
- Does the Australian Government consider itself legally at war with Yemen or with al-Qa'ida in the Arabian Peninsula?
- The Australian Defence Minister has declared that all activities at Pine Gap are conducted in compliance with Australian law. Are activities at Pine Gap also conducted in compliance with Australia's international law obligations, in particular international human rights law and international humanitarian law?

We thank you for your work on the civilian impact of drone strikes to date. We would be happy to provide your mandate with further assistance to the extent that it would be useful.

Yours sincerely



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