
REPRIEVE

Complaint to the UK National Contact Point under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises in respect of BT plc

15 July 2013

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1. Summary of complaint

1.1. Reprieve submits that BT Group plc has breached the OECD Guidelines by:

- (i) contracting with the US Defense Information Systems Agency to supply an STM-16 from RAF Croughton to Camp Lemonnier in Djibouti, which is likely to be used in support of US unmanned aerial vehicles (UAVs) or 'drones' operated by the United States Air Force and CIA as part of its "targeted killing" programme; and
- (ii) refusing to provide Reprieve with information showing how the company has sought to prevent, address or mitigate the human rights impacts to which it appears to be contributing, as required in order to comply with the OECD Guidelines.

2. Introduction

2.1. This complaint is brought by Reprieve, a legal action charity which works to ensure respect for the human rights of prisoners, including those whose rights may be infringed by counter-terror operations effected by the US and other governments. This work includes investigation and advocacy in relation to the use of UAVs by the US in non-war zones, which violates international law and a number of internationally

recognized human rights. Reprieve represents a number of individuals in Yemen whose human rights have been adversely impacted by US drone use in the country.

2.2. BT Group plc (“BT”) (company no. 04190816) is based at 81 Newgate Street, London EC1A 7AJ. Its shares are listed on the London and New York Stock Exchanges.

3. Background to complaint

3.1. On 26 September 2012, BT was awarded Contract number BTPW662739 by the US Defense Information Systems Agency (“DISA”) (see contract synopsis, Annex 1) (the “Contract”). The Contract was for the supply of an “STM-16 from RAF Croughton, UK to Camp Lemonnier, DJ”. The contract value was “not to exceed US\$23,231,832”.

3.2. Further contract documents, obtained by Reprieve pursuant to a Freedom of Information request to DISA, explain that the purpose of the Contract is the “provision of permanent circuit” with the vendor to provide “extension of telecommunications service: all facilities between the vendor’s commercial communications interface point and termination location” (see “Circuit Demand”, Annex 2(a)). The “Circuit Demand” states that the “telecommunications provider service shall use different facilities, route, and submarine cable system, terrestrial fiber and path”. The services are required to be provided from 26 October 2012, to continue until 14 October 2017, unless the Contract is terminated sooner (see “Circuit Demand Modification 2”, Annex (2(c))).

3.3. STM-16 is a fibre-optic communication standard, enabling the passing of information between two points. The “termination locations” are RAF Croughton and Camp Lemonnier. RAF Croughton is located in Northamptonshire, and since January 1951 has served as a US Air Force communications base. It currently processes approximately one third of all US military communications in Europe.¹ Camp Lemonnier is a United States Naval Expeditionary Base located in Djibouti. It has been described by The Economist as “the most important base for drone operations outside the war zone of Afghanistan”, from where Predator drones take off “round the clock” on missions in nearby Yemen and Somalia.²

3.4. It is therefore of serious concern that BT has contracted to provide essential communications infrastructure between the two bases, which will almost certainly carry information for use in UAV operations outside declared war zones. Its apparent role in the drones programme, in the absence of any explanation by the company, constitutes a breach of the OECD Guidelines which requires immediate investigation by the National Contact Point.

4. Overview of targeted killing programme

4.1. Since at least 2004, the US Air Force and CIA have used weaponised UAVs to carry out “targeted killings” in pursuit of the so-called ‘War on Terror’.³ Drone strikes are being

¹ <http://usmilitary.about.com/od/airforcebaseprofiles/ss/Croughton.htm>

² <http://www.economist.com/news/international/21565614-america-uses-drones-lot-secret-and-largely-unencumbered-declared-rules-worries>

³ See generally Jane Mayer, The New Yorker, *The Predator War* (Oct. 26, 2009),

carried out, ostensibly to target terrorist suspects, in territories where no war has been declared, including in areas of Pakistan, Yemen and Somalia. This programme violates international law, as well as causing severe trauma to the affected populations, seriously impacting upon their human rights.

- 4.2. In the targeted killing programme, two types of UAV have primarily been used – the MQ-1 Predator and the MQ-9 Reaper. Manufactured by General Atomics Aeronautical Systems⁴, these UAVs may carry Hellfire AGM-114 missiles, which are launched from the drones. The missiles are “designed to inflict greater damage in multi-room structures, compared to the Hellfire’s standard or blast-fragmentation warheads,”⁵ and are “capable of defeating any known tank in the world today.”⁶

Drone strikes in Yemen

- 4.3. As reported by the Bureau of Investigative Journalism (the “BIJ”), the US government has conducted its ‘war on terror’ in Yemen since 2001, when Yemen’s President Saleh signed a \$400m deal with the Bush administration. As part of this, the US created a ‘counter-terrorism camp’ in Yemen run by the CIA, US Marines and Special Forces. 100 Army Special Force members were apparently inserted to train an anti-terrorism unit. The same deal reportedly also included the grant of permission by the Yemeni president to fly Predator drones in the country’s air space. The Yemen camp was reported to be backed up by Camp Lemonnier in Djibouti, which housed Predator drones.⁷ Among the forces inserted in Yemen alongside the trainers were members of a clandestine military intelligence unit within the Joint Special Operations Command (“JSOC”). While officially in Yemen as trainers, they also reportedly began to find and track al- Qaeda suspects.

- 4.4. Given that the drone strikes are shrouded in secrecy, it is difficult to determine the precise toll of casualties. Furthermore, distinctions between ‘civilians’ and ‘militants’ which are often referred to when documenting numbers killed in drone strikes are misleading and artificial. First, such terminology is somehow suggestive that the targeted killing of a “militant” is somehow lawful – even though this is clearly not the case. Further, it has been reported that the Obama administration considers “all military-age males [killed] (typically aged between 18 and 65) in a strike zone” to be “combatants . . . unless there is explicit intelligence posthumously proving them innocent”.⁸

- 4.5. According to the BIJ, there have been 46-56 confirmed US drone strikes in Yemen, killing up to 349 people. There have been a further 80-99 “possible” US drone strikes killing up to 455 people.

http://www.newyorker.com/reporting/2009/10/26/091026fa_fact_mayer.

⁴ <http://www.ga-asi.com/>

⁵ International Online Defense Magazine, *Hellfire II Missile System*, <http://defense-update.com/products/h/hellfire.htm>.

⁶ U.S. Navy Fact File, *AGM-114B/K/M Hellfire Missile*,

http://www.navy.mil/navydata/fact_display.asp?cid=2200&tid=400&ct=2.

⁷ <http://www.thebureauinvestigates.com/2012/03/29/yemen-reported-us-covert-actions-since-2001/>

⁸ http://www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&_r=0

The drones programme violates human rights

- 4.6. Aside from such extrajudicial killings, it is clear that the constant presence of US drones inflicts devastating human rights impacts for communities living in affected regions, due to their inability to protect themselves and their families from a strike, which could happen at any time.
- 4.7. Reprieve has several clients who have been impacted by drone strikes in Yemen, and whose testimony demonstrates the severity of the human rights violations caused.
- 4.8. In April 2013, Abdullah Saleh Rabeh, resident in Rada'a, Yemen, told Reprieve how in January 2011, he started noticing surveillance airplanes over his and neighboring villages:

"We had never experienced anything like this in the village before. The presence of the planes made all the villagers anxious, and especially frightened the young children.

- 4.9. On 2 September 2012, a drone strike occurred in Rada'a. Our client recounted the afternoon's events as follows:

"The afternoon of the strike, I was in Rada'a town when I heard an explosion in the distance. [one or two?] Everyone was shocked and disturbed, of course ...

...As quickly as I could, I took a bus with a friend of mine to the site of the attack to see how I could help.

When I arrived, the vehicle – which was the daily shuttle from Rada'a to Sabool – was still on fire. I saw people trapped in the vehicle burning – I think they were already dead, but either way they were beyond our help ...

... The shuttle driver also managed to open his door quickly and flee when the missile hit. The woman killed with her daughter was wedged next to the driver – they were trapped and couldn't escape.

Some of these injured were crawling away from the scene. I and other villagers helped to pull them away ...

... the injuries were severe: the clothes had fused to the survivors' skin. Some bits of skin had burned off – if you touched them in places it would have turned to dust. There was virtually nothing left.

- 4.10. Describing the effect of the strike on the community, Mr Rabeh continued:

"After the strike on September 2, 2012, villagers' unease with drones and planes turned to terror. We all lived in a state of fear for months.

These days, whenever my children see a plane they scream and run inside. Some women in our village suffered miscarriages after the strike.

The entire village has been affected by what happened to us – socially and economically. The worst off are the women who lost their husbands, some of whom have no other means of economic support. Many dependents of the strike victims were suddenly left without breadwinners. They struggle so much that it is hard to bear seeing them.

Now farmers too are often afraid to spend long periods exposed outside to work their land. I sell my produce locally, and even those journeys seem dangerous.”

4.11. Around the same time, Reprieve attorneys interviewed our client Faisal bin Ali bin Jaber, of Sana’a, Yemen, whose nephew and brother-in-law were killed in a drone strike on 29 August 2012 in their native village of Khashamir. He explained that following two successive strikes in August 2012, the community was in shock:

“After the second strike, people realized they were all under threat; even in villages, and even when innocent.

There are different phases that people went through after the strike. Immediately afterwards, many women in particular were in shock. For almost 20 days, I could not take my daughter (born 1986) out of the house because she was so afraid.

My brother is a heart surgeon based in Aden, but he was also in the village when the strike happened. It was the time of my son’s wedding. They were married on the 28th, and on the 29th, the drones hit. It helped a lot that he was there to care for people as everyone was in shock and he had medical training.

This was the most shocking thing for us: just one day before the strike, everyone was celebrating. We were dancing, and singing – including Waleed, my nephew. He used to love to dance. You could feel joy throughout the whole village. Salem’s father was celebrating and dancing too. The next day, he lost his son.”

4.12. Speaking about the effect on him personally, Mr Ali bin Jaber said:

“I spent around fifteen days in the village after the strike. Fear and sadness consumed us. We raised the issue to a number of officials including Hadramout’s governor. People felt helpless, they didn’t know who to speak to.

After a period of post-strike silence, in the wake of 2013, I was disheartened to learn that the drones are back over the Khashamir skies.

After my return to Sana’a, I was in a very bad psychological state for months and even now I cannot bear to go back to the village. I feel sometimes that I cannot laugh or smile like I used to at work.”

- 4.13. Ahmed Nasser Saleh, of Rada'a, explained how following a strike in which his father, mother and sister were killed:

"In the village, after the strike, there is a sense of deep sadness. So many of our loved ones were lost. You can feel it in the air here.

Everyone – children, women, even men – feel terror when they see or hear a plane. Sometimes we run; sometimes we panic and freeze on the spot.

It is very difficult to farm. When I see a plane, I sometimes feel I can't go to my lands. I also am afraid to go to Rada'a to sell the qat. Once the qat is picked, you really need to take it to market within six hours, so this is a huge economic problem."

- 4.14. In February, a team of Reprieve staff were accompanied in Yemen by Dr Peter Schaapveld, a clinical and forensic psychologist. Dr Schaapveld held clinics in the Adan region of Yemen, during which he examined 34 people.

- 4.15. Dr Schaapveld's full report is not yet available, but in March this year he presented his findings on the psychological impact of drone use in Yemen to the UK All Party Parliamentary Group on Drones (see news report at Annex 3). He noted the widespread incidence of post-traumatic stress disorder - 71 per cent were suffering from "full blown" post-traumatic stress disorder, 90 per cent "had symptoms" and "99 per cent, almost all of them" had psychological abnormalities.⁹ Even given the statistically small sample, these figures are striking and demonstrate the severity of the adverse impacts caused by US drones in Yemen. Dr Schaapveld was especially concerned about the impacts on children.

- 4.16. Numerous press articles and other reports have confirmed the occurrence of this type of adverse impact in Yemen. A recent study by Alkarama, a Swiss-based human rights organization, and HOOD, an organization of lawyers and activists in Yemen, found that:

*"This war of drones and aerial attacks are part of a strategy of terror, the primary victim of which is the civilian population that lives in fear, under permanent harassment night and day for months on end, not knowing when or where the next attack will come as drones buzz overhead. The consequences of the attacks go far beyond the deaths of individuals. Many have been seriously injured and traumatized for life, especially children affected by the attacks."*¹⁰

- 4.17. Further studies have highlighted the devastating impacts on the human rights of communities in other regions where US drones are used. "Living Under Drones", a study published by Stanford and NYU in September 2012, was based on interviews with

⁹ <http://www.channel4.com/news/drone-attacks-traumatising-a-generation-of-children>

¹⁰ http://en.alkarama.org/documents/ALK_USA-Yemen_Drones_SRCTwHR_4June2013_Final_EN.pdf

more than 60 people in North Waziristan, Pakistan - many of whom were survivors of strikes, with others having lost family members (Annex 4).¹¹

- 4.18. Living Under Drones reported that communities in North Waziristan are being terrorised by the constant presence of drones overhead, with as many as six of these hovering over a village at any one time. The researchers found that because of evidence that drones strike groups, people are afraid to gather in the normal way. Those interviewed stated that the widespread fear of drones has led some people to shy away from social gatherings, and inhibited their willingness to carry out day-to-day activities and important community functions.
- 4.19. Education is impacted - some of those injured in strikes reported reduced access to education and desire to learn because of the physical, emotional, and financial impacts of the strike. Some families have pulled their children out of school to take care of injured relatives or to compensate for the income lost after the death or injury of a relative. Others reported keeping their children at home due to the fear that they would be killed in a drone strike. These fears are not without a legitimate basis, as drones have reportedly struck schools in the past, resulting in the deaths of dozens of children.
- 4.20. Interviewees stated that the US drone campaign has undermined the cultural and religious practices in North Waziristan related to burial, and made family members afraid to attend funerals. Because drone strikes have targeted funerals and spaces where families have gathered to offer condolences to the deceased, they have inhibited the ability of families to hold dignified burials. Some said they had stayed away from funerals for fear of being targeted.
- 4.21. Perhaps even more terrifyingly, there is significant evidence that the US has repeatedly engaged in a practice sometimes referred to as “double tap” in which a targeted strike site is hit multiple times in quick succession. Evidence also indicates that such secondary strikes have killed and maimed rescuers coming to the aid of those injured in the first strike. Crucially, the threat of the “double tap” reportedly deters not only the spontaneous humanitarian instinct of neighbours and bystanders in the immediate vicinity of strikes, but also professional humanitarian workers providing emergency medical relief to the wounded. “Living Under Drones” reports that according to a health professional familiar with North Waziristan, one humanitarian organisation had a “policy to not go immediately to a reported drone strike because of follow-up strikes. There is a six hour mandatory delay”. According to the same source, therefore, it is “only the locals, the poor, who will pick up the bodies of loved ones”.¹²
- 4.22. The impact of drones on children’s rights, in particular, was recently highlighted in the Annual Report of the UN Secretary-General on Children and Armed Conflict (Annex 5).¹³ This report noted an “increasingly worrisome number of reports of child casualties” in

¹¹ International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at NYU School of Law, Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan (2012), available at <http://www.livingunderdrones.org/> (“Living Under Drones”).

¹² Living Under Drones, p. 76.

¹³ <http://childrenandarmedconflict.un.org/annual-report-of-the-secretary-general-on-children-and-armed-conflict/>

the course of drone strikes. It further reported that the mixed use of armed and surveillance drones has “resulted in permanent fear in some communities, affecting the psychosocial well-being of children and hindering the ability of such communities to protect their children”. In addition, the Secretary-General highlighted the impact on access to education, in some cases due to fear among children of drone strikes.

The targeted killing programme violates international law

- 4.23. US drone strikes carried out in areas where there is no declared war are patently unlawful. Article 2(4) of the UN Charter prohibits the threat or use of force by one state against another. Two exceptions to the article 2(4) prohibition are particularly relevant to the question of the legality of US targeted killings.
- 4.24. The first is when the use of force is carried out with the consent of the host state. Given that the US drone strikes fall far short of the international humanitarian and human rights law requirements for legality, no state consent could render them legitimate, particularly in the absence of a declared armed conflict.
- 4.25. The second possible exception to article 2(4) is when the use of force is in self-defence, in response to an armed attack or an imminent threat, and where the host state is unwilling or unable to take appropriate action. It has been argued on occasion that the US actions are taken in self-defence, either as a response to the attacks of September 11, or as anticipatory self-defence, to mitigate threats posed by non-state groups in the area. Legal experts, including the current UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, have questioned whether “killings carried out in 2012 can be justified as in response to events in 2001” noting that “some states seem to want to invent new laws to justify new practices”.¹⁴ “Anticipatory” self-defence has been offered as a narrow exception, which under customary international law may be invoked to prevent an attack that is “instant, overwhelming, and leaving no choice of means, and no moment of deliberation.” There is no publicly available evidence to support a claim that each of the US drone strikes meets these standards. Indeed, the recently published DoJ White Paper (Annex 6) clearly shows that the US has expanded this concept of imminence beyond recognition – saying that it “does not require that the US have clear evidence that a specific attack . . . will take place in the immediate future”.¹⁵
- 4.26. Separately from the question of whether US use of force violates the UN Charter, the legality of strikes against particular individuals turns on their compliance with international human rights law and/or international humanitarian law (the law of war).
- 4.27. Given that there is no declared armed conflict in Yemen, only international human rights law applies to determine whether specific killings are lawful. International human rights law permits the intentional use of lethal force when strictly necessary and proportionate. Thus, “targeted killings” as typically understood (intentional and premeditated killings) cannot be lawful under international human rights law, which allows intentional lethal force only when necessary to protect against a threat to life,

¹⁴ <http://www.guardian.co.uk/world/2012/jun/21/drone-strikes-international-law-un>

¹⁵ http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf

and where there are no other means, such as capture or non-lethal incapacitation, of preventing that threat to life. There is little public evidence that many of the targeted killings carried out fulfill this strict legal test.

4.28. Moreover, *even if there were* a declared armed conflict, such that international humanitarian law applied, the legality of any drone strike must still then be assessed in accordance with fundamental principles including distinction, proportionality, humanity, and military necessity. There is substantial evidence to suggest that these criteria are not met by drone strikes in Yemen – including the failure to distinguish between “civilian” and “militant” targets, the large number of people killed in strikes, and the timing of particular strikes, which as noted above do not appear to be in response to any particular threat.

4.29. The level of concern about the US use of drones is such that Ben Emmerson, the UN special rapporteur on human rights and counterterrorism, is currently investigating the legality and impacts of US targeted killings in Pakistan, Yemen and Somalia.¹⁶ As long ago as 2003, Asma Jahangir, then the UN Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, in the first report issued on US drone strikes outside the battlefield, described the November 2002 attack as “a truly disturbing development” and “a clear case of extrajudicial killing”.¹⁷

5. Reprieve’s correspondence with BT

5.1. Reprieve became aware of the existence of the Contract in late 2012. On 17 January 2013, Clive Stafford Smith (Reprieve’s Founder and Director) wrote to Sir Michael Rake, BT’s Chairman (Annex 7). In that letter, Mr Stafford Smith advised the company that:

“It would appear that weaponized Predator and Reaper drones based at Camp Lemonnier are used by the US to carry out its targeted killing programme in Yemen and Somalia. This programme, being pursued outside of war zones, violates international law and a number of internationally recognized human rights. Access by journalists to the camp is virtually prohibited, and the precise occurrences there are shrouded in secrecy – however, recent contracts demonstrate that the US plans to hugely increase its activities at the camp, with drones remaining a main feature of its counter-terror operations there”.

5.2. He continued:

“It has come to my attention that on 26 September 2012, BT entered was awarded a contract by the US Defense Information Systems Agency for the supply of “STM-16 from RAF Croughton to Camp Lemonnier” (Contract BTPW662739). Given the information in the public domain about the US activities at Camp Lemonnier, it seems highly likely that this contract is related to drones.

¹⁶ <http://www.thebureauinvestigates.com/2013/01/24/un-launches-major-investigation-into-civilian-drone-deaths/>

¹⁷ [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/46215e3ae5d1abe0c1256cdf005721d1/\\$FILE/G0310327.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/46215e3ae5d1abe0c1256cdf005721d1/$FILE/G0310327.pdf)

In light of this, I am writing to ask for clarification of BT's involvement with US counter-terror operations at Camp Lemonnier. In particular, please provide details of:

- 1. The background to Contract BTPW662739;*
- 2. BT's precise obligations pursuant to this contract;*
- 3. The status of the implementation of the contract or, if performance has not yet commenced, when it is envisaged that this will happen;*
- 4. BT's policy in relation to contracts for support of US counter-terror operations, in particular those related to the use of weaponized drones, including any risk assessment policy in respect of complicity in violations of international law."*

5.3. On 24 January, Prakash Mistry of BT's legal department replied to Reprieve's letter, stating that:

"BT does not disclose contractual matters such as those you have requested in your letter. BT considers that this is a matter for you to discuss with the agency themselves and that you should address your queries to them. BT has in any event forwarded a copy of your letter to the agency.

BT is a responsible business that complies with all its legal and statutory obligations. In addition BT recognizes the importance of Corporate Social Responsibility and that is why, social and environment responsibility is a central part of its business strategy."

5.4. This response (provided in full at Annex 8) completely fails to address the human rights violations raised, and (contrary to the OECD Guidelines, as further explained below) declines to explain how BT has taken precautionary measures to ensure it is not complicit in abuses associated with counter-terror measures.

5.5. Since we were surprised at this lack of concern demonstrated by BT about the human rights impacts to which the company is contributing, we gave the company another opportunity to respond and engage with Reprieve's queries. On 10 May, Reprieve emailed Ian Livingston the (now outgoing) CEO of BT, asking whether he would be willing to *"raise at BT board level a discussion about policy concerning contracts for supply of communications equipment connected with the US drones programme"*.

5.6. The email further noted:

"As you may be aware, Reprieve has been working to bring transparency to the US drones programme, and in its investigations learned about a contract between BT and the US Defense Information Systems Agency for communications equipment (an 'STM-16') between RAF Croughton and Camp Lemonnier in Djibouti. The latter is a US base from which we understand armed drones are covertly operated.

Given BT's commitment to responsible business, Reprieve is hopeful that the BT board might be willing to implement/review policy with respect to entry into contracts such as BTPW662739. We would be happy to provide any information that would be of assistance in: developing or revising such policy; and assessing international law implications in connection with such contracts."

5.7. Mr Livingston responded on the same day, simply stating *"BT have clear policies regarding responsible business and we are satisfied that our contracts are consistent with them"*.

5.8. He did not, notably, provide any information at all about how BT's responsible business policies operate in relation to US counter-terror operations, nor address our specific concerns in relation to contracts rendering BT party to violations of international law and human rights.

6. Breaches of the OECD Guidelines

6.1. That these unlawful "targeted killings" violate the right to life is obvious. Further, it is quite clear that the way that the US is using drones in non-war zones infringes numerous other internationally recognised human rights of those living in the affected areas. The rights which are being violated by the drones programme (as explained in Section III above) include:

- The right to freedom from torture, cruel, inhuman or degrading treatment (Universal Declaration of Human Rights ("UNDH"), Art 5);
- The right to freedom from arbitrary or unlawful interference with privacy, family and home, as well as the right to the protection of the law against such interference or attacks (UNDH, Art 12);
- The right to freedom of peaceful assembly and association (UNDH, Art 20);
- The right to rest and leisure (UNDH, Art 24);
- The right to a standard of living adequate for the health and well-being of himself and of his family (UNDH, Art 25);
- The right to education (UNDH, Art 26);
- The right to freely participate in the cultural life of the community (UNDH, Art 27).

6.2. Reprieve submits that BT has contributed to the large-scale human rights violations caused by the US use of drones in Yemen, as outlined above, and in so doing has breached the OECD Guidelines.

Chapter II, General Policies

6.3. BT is in breach of the requirement in paragraph A.2 to *"[r]espect the internationally recognized human rights of those affected by their activities."*

6.4. By contracting to provide communications infrastructure between RAF Croughton and Camp Lemonnier, BT has demonstrated a complete failure to respect the human rights

of those affected by US armed drones flown from Camp Lemonnier. As noted above, the loss of life and traumatization caused by these drones has been widely reported, as has the use of Camp Lemonnier as a base for drones carrying out missions over Yemen. There can be no doubt that BT's management would have been aware of the risk that the infrastructure used for US drone strikes was intended to facilitate communications supporting drone operations. In nonetheless entering into the Contract and continuing to provide this infrastructure, BT has demonstrated a complete lack of concern about these violations.

Chapter IV, Human Rights

6.5. Chapter IV elaborates on the general principles set out in Chapter II. This Chapter draws on the UN Framework for Business and Human Rights and is in line with the Guiding Principles for its Implementation (the "UNGPs").

6.6. Paragraph 2 of Chapter IV states that enterprises should:

"[w]ithin the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur."

6.7. As noted above, by entering into the Contract BT has clearly contributed to the adverse human rights impacts the US drones programme entails.

6.8. Paragraph 3 states that enterprises should:

"[s]eek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to these impacts."

6.9. It is therefore clear that businesses may not avoid responsibility for human rights violations simply because they do not directly carry these out through their own actions. The commentary to paragraph 3 explains that in order to meet the expectation in paragraph 3, an enterprise would need to influence the entity actually causing the adverse impact to prevent or mitigate that impact. "Business relationships" are said to include relationships with business partners, entities in its supply chain and any other non-State or State entity directly linked to its business operations, products or services.

6.10. Even if it were considered that BT is not contributing to the adverse impacts in Yemen, there can be no doubt that the effects outlined above are "directly linked to their business operations, products or services by a business relationship". BT has entered into a business relationship with DISA pursuant to which it provides communications infrastructure that appears to be essential for use in US drone operations. The company has declined to demonstrate any steps it has taken to prevent or mitigate the human rights violations this infrastructure supports, in which case we can only assume no such steps have been taken.

6.11. It is clear that policies alone are inadequate to fulfill the requirement in paragraph 3, but specific action is necessary to prevent or mitigate specific risks of adverse human rights impacts linked to BT's business. Simply referring to "*clear policies regarding responsible business*" and "*social and environment responsibility [as] a central part of its business strategy*" is insufficient to demonstrate that this responsibility has been carried out.

6.12. Pursuant to paragraph 5, enterprises should:

"Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts".

6.13. The commentary to paragraph 5 explains that this process entails "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed". Further, it is "an ongoing exercise, recognizing that human rights risks may change over time as the enterprise's operations and operating context evolve." It is also recommended that when enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, they should "have processes in place to enable remediation".

6.14. This paragraph draws on the human rights due diligence provisions of the UNGPs. The commentary to paragraph 17 of those Principles explains that in meeting the due diligence requirements, businesses should "*identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence*". It is indisputable that contracts with the US government for military purposes should be considered high-risk from a human rights perspective, and so should be prioritized for scrupulous due diligence.

6.15. As noted above, BT has flatly refused to explain what due diligence it has carried out in relation to the Contract, and the NCP should call upon the company to explain this.

6.16. Paragraph 6 states that enterprises should:

"Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts."

6.17. The commentary to this paragraph explains that when enterprises identify, through their human rights due diligence or other means, that they have caused or contributed to an adverse impact, they should have processes in place to enable remediation. Given that Reprieve has drawn the adverse impacts in Yemen to BT's attention, it should now take steps to remediate these effects, for instance by putting in place operational-level grievance mechanisms for the communities impacted by US drones.

7. Conclusion

Actions BT should take to resolve this problem

7.1. Reprieve submits that BT should:

- (i) Cease to provide services under the Contract;
- (ii) In the alternative, procure an amendment to the Contract such that BT's STM-16 may not be used for the transmission of any information supporting drone strikes in Yemen or any other territory where there is no declared armed conflict; and
- (iii) Provide Reprieve with clear evidence documenting:
 - (a) BT's policy in relation to contracts for support of US counter-terror operations, particularly those related to the use of weaponized drones, including any risk assessment policy in respect of complicity in violations of international law;
 - (b) The human rights due diligence carried out prior to entering into the Contract, as required by the OECD Guidelines;
 - (c) Any efforts made to seek to prevent or mitigate the adverse human rights impacts to which BT is contributing; and
- (iv) Put in place appropriate mechanisms to mitigate and remediate the human rights violations in Yemen to which it has contributed.

Objective in bringing the case

7.2. Reprieve's objectives in bringing this complaint are, first, to encourage BT to cease contributing to the adverse human rights impacts caused by the US drones programme by preventing its infrastructure being used in support of this programme and, second, to encourage the company to put in place adequate due diligence policies to ensure that such future contract opportunities receive full scrutiny and all possible precautions are in place to prevent BT from further contributing to violations of human rights.

7.3. We are aware that all the information we provide to the UK NCP will be shared with the company. We understand that the UK NCP's approach to resolving complaints is in the first instance to facilitate conciliation or mediation between the complainant and the company.

8. Supporting documentation

1. Synopsis of opportunity for contract BTPW662739 and award, also available at: <https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=bb6b01958cbe2c2150d56ff874d2dac4&cvview=1>

2. Further documents related to the Contract: (a) Circuit Demand; (b) Circuit Demand Modification 1; (c) Circuit Demand Modification 2.
3. Drone attacks “traumatizing a generation of children”, Channel 4 News, 5 March 2013.
4. *Living Under Drones*, Stanford/NYU Report (2012).
5. Annual Report of the UN Secretary-General on Children and Armed Conflict, 12 June 2013.
6. Department of Justice White Paper: “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa’ida or An Associated Force”.
7. Letter from Clive Stafford Smith to BT, 17 January 2013.
8. Letter from BT Legal to Reprieve, 24 January 2013.