

**EVIDENCE SUBMISSION BY REPRIEVE TO THE FOREIGN AFFAIRS COMMITTEE'S  
INQUIRY INTO THE FUTURE OF UK POLICY IN AFGHANISTAN (AFG0046)**

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*Reprieve is a legal action charity which seeks to uphold the rule of law and the rights of individuals around the world. Over the past 20 years Reprieve has provided legal and investigative support to hundreds of prisoners on death row; the families of people killed in lethal drone strikes; victims of torture and extraordinary rendition; and scores of prisoners in Guantanamo Bay. In June 2020 the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions cited our work in her annual report and a German court decision in the case of a Yemeni family we represent, referring to it as “watershed” in accountability with “critical findings”.*

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**Overview**

1. Reprieve welcomes the opportunity to submit evidence to the Foreign Affairs Committee’s inquiry into the withdrawal from Afghanistan.
2. This submission aims to address the Committee’s questions of what the withdrawal from Afghanistan means for future UK foreign policy, specifically relations with the US, and the humanitarian and human rights implications of the Taliban’s takeover.

**Future of UK Foreign Policy**

3. The Taliban’s takeover in Afghanistan carries profound implications for future UK foreign policy. In this submission, we will centre on two possible repercussions for the UK’s foreign relations.

*Future UK strikes in Afghanistan*

4. The first is that the United Kingdom may begin to take counterterrorism strikes in Afghanistan. In September 2021, Secretary of State for Defence, Ben Wallace, was asked whether he would be prepared to launch drone strikes in Afghanistan. He responded: *“I’ll do whatever I have to do to protect citizens’ lives and our interests and our allies, when we’re called upon to do so, wherever that may be.”*<sup>i</sup>
5. Parliamentary approval would be required for the UK to re-engage militarily in Afghanistan. However, the Defence Secretary suggested that the UK might conduct strikes under the guise of self-defence, thereby avoiding this requirement for Parliamentary approval: *“One of the options is to deploy anywhere in the world where there is an imminent threat to life, British life or our allies, where international law enables us to take action.”*<sup>ii</sup>
6. The Defence Secretary’s statements cast the Government’s powers to launch interventions around the world, without a concomitant duty to inform Parliament, extremely widely. The Joint Committee on Human Rights, as part of its 2016 investigation into the use of drone strikes for targeted killing, found that the then-Defence Secretary had shown in his evidence a *“misunderstanding of the legal frameworks that apply outside of armed conflict”*.<sup>iii</sup> There, the Committee determined that despite repeated requests for elucidation, the Government’s understanding of the requirement of ‘imminence’ under international law and the legal basis for the UK’s contribution to the use of lethal force outside armed conflict required *“urgent clarification”*.<sup>iv</sup>
7. In the intervening years, the Government has done little to clarify UK policy and instead maintained a position of ambiguity. The MoD has claimed that it has *“no guidance”* on the use of lethal force outside areas of armed conflict, but that it has provided documentation to the armed forces setting out *“in what circumstances and against whom the UK military may use force”*.<sup>v</sup>
8. It has also refused to release an unredacted version of the Joint Service Publication 900 (JSP900). JSP900 is the UK’s Targeting Policy, which Parliament has repeatedly requested and to which it has been repeatedly denied access.<sup>vi</sup> In May 2021, the MoD admitted that part of their refusal to disclose was based on the fact

that the UK's Targeting Policy incorporates portions of the US's own targeting policy. Given the controversial nature of the US's own targeting, evidenced by the recent Kabul strike that killed 10 civilians,<sup>vii</sup> the admission raises further questions about the UK's own policy, its support to and cooperation with the US, and the Government's own understandings of the legal frameworks by which it is bound.<sup>viii</sup>

9. A recent strike in Syria illustrates the consequences of the lack of transparency detailed above, and indicates the Government may be operating a policy on targeted killing, in spite of its assertions to the contrary.<sup>ix</sup> On 27 November 2021, the MOD reported on its website that they had "tracked" and "killed" an individual in a targeted Reaper drone strike in North Syria on 25 October.<sup>x</sup> This strike bears the hallmarks of a targeted killing, despite the Government's assurances that it does not maintain a targeted killing policy.<sup>xi</sup> Further, Parliament was not informed of the strike, either prospectively or retrospectively, in violation of the clear commitments from the Government that it would do so in the immediate aftermath of any such strike.<sup>xii</sup> The uncertainty regarding the existence of a targeted killing policy, and the Government's view that it need not inform Parliament of targeted killings, mean Parliamentary oversight of the military and foreign policy objectives in Afghanistan will be necessarily limited. Without clarification, the future of the UK's role in Afghanistan will remain unpredictable and will lack scrutiny.
10. Because the UK's formal involvement in armed conflict in Afghanistan has ceased, future strikes in the country will be strikes taken outside of an armed conflict and in areas where Parliament has not authorised military action. There is therefore an urgent need for clarity on the Government's legal frameworks for taking such strikes. Such clarity should start with the Government disclosing the JSP900 in full. This will provide much-needed transparency on the UK's own criteria for taking strikes and assure both Parliament and the public that any future strikes taken will be lawful. This is particularly urgent given the MoD's disclosures that its own targeting policy is based in part on the US's own controversial targeting policy. Such transparency is crucial for Parliament to provide adequate oversight of future operations and to avoid a scenario where the UK follows the US down the slippery slope of a so-called "targeted killing" programme.

#### *UK Support for Future US drone Strikes*

11. The second consequence of the Taliban takeover is that the US has indicated it will increasingly rely on drone strikes in the country to carry out counterterrorism operations. As President Biden put it on 31 August 2021, "we will maintain the fight against terrorism in Afghanistan and other countries. We just don't need to fight a ground war to do it. We have what's called over-the-horizon capabilities, which means we can strike terrorists and targets without American boots on the ground — or very few, if needed."<sup>xiii</sup>
12. This engages UK foreign policy as the UK has consistently provided support for the US in conducting lethal strikes. There is overwhelming evidence to suggest the UK has assisted the US's unlawful drone programme in Yemen, Pakistan and Somalia – countries in which the UK is not a party to an armed conflict. This support has come in the form of:
  - i. intelligence sharing;<sup>xiv</sup>
  - ii. physical participation in a "joint operations room" in Yemen which "identifies in advance the individuals that are 'going to be targeted'";<sup>xv</sup>
  - iii. the US' use of bases in the UK;<sup>xvi</sup> and
  - iv. embedding of UK personnel in US drone units.<sup>xvii</sup>
13. The full extent of the UK's support to the US is unclear, partly because the UK Government has not published the JSP900 Targeting Policy. The resultant risk is that, through drone strikes co-ordinated from UK bases, intelligence gathered by the UK's SIS or GCHQ, or by embedded forces, British forces will become intimately involved in President Biden's proposed expansion of "over-the-horizon" capabilities to Afghanistan, without consultation with or the knowledge of Parliament.

#### **Humanitarian and Human Rights Impact of Future Drone Strikes**

14. The fact that UK forces could be carried into an escalating use of drone strikes by the US in Afghanistan will cause significant, adverse humanitarian ripple effects, if prior drone campaigns are to provide any analogue.
15. For two decades, successive US administrations have used lethal force to target and kill suspected ‘terrorists’ outside of armed conflict. In 2009, under President Obama, a policy of ‘targeted killings’ was put in place. This policy led to a dramatic increase in the number of drone strikes and, correspondingly, the number of people killed.<sup>xviii</sup> Over the course of his two terms, President Obama authorised 551 strikes in Pakistan and Yemen, killing potentially as many as 4,481 people.<sup>xix</sup> President Trump expanded the programme and drastically reduced both safeguards and accountability.<sup>xx</sup>
16. Recent analysis conducted by the New York Times following released Pentagon files show the devastating humanitarian and human rights consequences of a targeted lethal force campaign. Analysis of 1,300 Pentagon reports of civilian casualties in strikes taken in Iraq and Syria between 2014 and 2019 indicated that the *“air war has been marked by deeply flawed intelligence, rushed and often imprecise targeting.”*<sup>xxi</sup> The consequence: *“the deaths of thousands of civilians, many of them children, a sharp contrast to the American government’s image of war waged by all-seeing drones and precision bombs.”*<sup>xxii</sup> The reports found that the US failed to do basic Google searches when assessing allegations of civilian harm, instead dismissing them as “non-credible”.<sup>xxiii</sup>
17. A strike in Hawija, Iraq demonstrates the danger for US allies of supporting US operations. In June 2015, in Hawija, Iraq, the Netherlands’ air force carried out a strike planned by US forces, killing 70 individuals, most of whom were displaced families fleeing violence in the war against ISIS. One woman, Khadija Yaseen, lost three grandchildren: 13-year-old Muhammad, 12-year-old Ahmed and a 3-year-old girl, Zahra.<sup>xxiv</sup> Disclosures show the US planners continually re-worked the civilian casualty estimates until they came up with zero, which was the only basis upon which the Netherlands were authorised to strike.<sup>xxv</sup> Victims sued the Dutch Government for its role in the strike.<sup>xxvi</sup> Without transparency on the UK’s own assistance to US strikes, and the rules that govern that assistance, the UK risks becoming implicated in similarly devastating human rights abuses.
18. The risks are even greater for UK strikes and UK support for US strikes in Afghanistan, where the lack of boots on the ground means intelligence will be even harder to come by. There have already been high-profile examples of the US causing significant civilian harm through drone strikes following the Taliban’s takeover. In one illustrative case in August 2021, the US killed 10 civilians in Kabul a drone strike on a car.<sup>xxvii</sup> The victims included seven children, the youngest of whom was just two years old.<sup>xxviii</sup> Zemari Ahmadi, the driver of the car, worked for a US agricultural NGO. He was hoping to be evacuated along with his family.<sup>xxix</sup> None of them victims had ties to ISIS in the Khorasan (ISIS-K), who had perpetrated a suicide bombing at Kabul airport days earlier.<sup>xxx</sup>
19. Despite this, in the days and weeks after the strike, the US continued to persist with the narrative that those killed were ISIS-K – even in the face of overwhelming evidence to the contrary. US General Frank McKenzie went so far as to call it a “righteous strike”.<sup>xxxi</sup> It was only when the *New York Times* published CCTV footage showing conclusively that Zemari had loaded water canisters into his car – not explosives – that the US apologised, calling the strike a “tragic mistake”.<sup>xxxii</sup> As yet, despite official promises, no compensation payments or non-monetary support has been provided to the family by the US Government.
20. The Taliban’s takeover of Afghanistan, and the resultant removal of UK and US troops, bases, and intelligence assets, will further lead to increased use of forms of intelligence that are more likely to lead to mistakenly targeted strikes, including signals intelligence. Signals intelligence (‘SIGINT’), indicates that communication between two devices (cell phones or computers) has taken place, along with limited other markers.
21. While the US has frequently relied on such technology to commit strikes – as General Michael Hayden, former CIA Director, stated “we kill people based on metadata”<sup>xxxiii</sup> – it does not indicate the nature of that communication, who is holding the device or is in close proximity, or whether they are engaged in fighting. As a former CIA officer put it, SIGINT “doesn’t tell you anything about context or your target’s plans and

intentions.”<sup>xxxiv</sup> The result is less accurate strikes and further civilian casualties. Reprieve is concerned the Taliban’s takeover, and the loss of UK and US intelligence assets, will lead to further civilian deaths caused by overreliance on metadata.

## Recommendations

22. In light of the concerns above, Reprieve recommends the Foreign Affairs Committee urges the UK Government to:

- i. Immediately clarify its policy on the use of drones outside armed conflicts to which it is a party, allowing public and Parliamentary scrutiny over any activity that would fall under this policy;
- ii. Immediately publish a full, unredacted current copy of the UK’s Targeting Policy (JSP900), so the public and Parliament can be assured that it does not contain loopholes that put the UK, and its personnel, at risk of assisting partner with unlawful strikes;
- iii. Commit to seeking Parliament’s consent prior to taking any future strikes in Afghanistan. In the rare instance where self-defence is needed, the Government must commit to notifying Parliament as soon as is reasonably practicable, and providing in full the evidence, decision-making process and legal advice underpinning the attack so that Parliament can carry out proper scrutiny.

23. For questions or further information, please contact Jennifer Gibson ([jennifer.gibson@reprieve.org.uk](mailto:jennifer.gibson@reprieve.org.uk)).

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<sup>i</sup> The Guardian, *UK would be prepared to launch Afghanistan drone strikes, says Wallace*, 9 September 2021, available at: <https://www.theguardian.com/politics/2021/sep/09/uk-would-be-prepared-to-launch-afghanistan-drone-strikes-says-wallace>.

<sup>ii</sup> Ibid.

<sup>iii</sup> Joint Committee on Human Rights, *The Government’s policy on the use of drones for targeted killing*, 10 May 2016, page 84, available at: <https://publications.parliament.uk/pa/jt201516/jtselect/jtrights/574/574.pdf>.

<sup>iv</sup> Ibid.

<sup>v</sup> References in correspondence on file with Reprieve, dated 15 May 2018.

<sup>vi</sup> The most recent request was made in February 2016 in the aftermath of the targeted killing of a British citizen at a time when Parliament had not authorized the use of force in Syria. The Government initially agreed to disclose the policy, but then in January 2017, in response to further requests for it to be released, switched positions and said it was no longer possible to disclose the policy. See, Question 2721, 25 February 2016, <https://questions-statements.parliament.uk/written-questions/detail/2016-02-19/27212> and Question 59422, 10 January 2017, <https://questions-statements.parliament.uk/written-questions/detail/2017-01-10/59422>.

<sup>vii</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>viii</sup> See, Financial Times, *UK faces legal challenge to detail policy on lethal drone strikes*, 21 May 2021, <https://www.ft.com/content/6174d579-4aa9-4cc9-a659-b94599833249>; Haroon Siddique, *MoD document approves British troops for illegal bombing, charity claims*, The Guardian, 19 May 2021, <https://www.theguardian.com/politics/2021/may/19/mod-document-approves-british-troops-for-bombing-charity-claims>.

<sup>ix</sup> Dan Sabbagh, *UK accused of ‘targeted killing’ after drone strike on arms dealer to IS*, The Guardian, 6 January 2021, <https://www.theguardian.com/world/2022/jan/06/uk-accused-of-targeted-killing-after-drone-strike-on-arms-dealer-to-is>.

<sup>x</sup> Dan Sabbagh, *UK accused of ‘targeted killing’ after drone strike on arms dealer to IS*, The Guardian, 6 January 2021, <https://www.theguardian.com/world/2022/jan/06/uk-accused-of-targeted-killing-after-drone-strike-on-arms-dealer-to-is>.

<sup>xi</sup> References in correspondence on file with Reprieve, dated 15 May 2018.

<sup>xii</sup> Question from David Anderson MP to Defence Secretary Michael Fallon, 10 February 2016, <https://questions-statements.parliament.uk/written-questions/detail/2016-02-02/25543>.

<sup>xiii</sup> Remarks by President Biden on the End of the War in Afghanistan, 31 August 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/>.

<sup>xiv</sup> The Sunday Times, *GCHQ finds al Qaeda for American strikes*, 25 July 2010, available at: <https://www.thetimes.co.uk/article/gchq-finds-al-qaeda-for-american-strikes-26rjwrgxq7n>; The Guardian, *GCHQ documents raise fresh questions over UK complicity in US drone strikes*, 24 June 2015, available at: <https://www.theguardian.com/uk-news/2015/jun/24/gchq-documents-raise-fresh-questions-over-uk-complicity-in-us-drone-strikes>.

<sup>xv</sup> Human Rights Watch, *A Wedding That Became a Funeral*, 19 February 2014, available at:

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<https://www.hrw.org/report/2014/02/19/wedding-became-funeral/us-drone-attack-marriage-procession-yemen>; Vice, *Britain's Covert War in Yemen: A VICE News Investigation*, 7 April 2016, available at: <https://news.vice.com/article/britains-covert-war-in-yemen-a-vice-news-investigation>; Vice, *Cash, Candy, and 'Collateral Damage': An Anatomy of a CIA-MI6 Drone Assassination*, 13 April 2016, available at: <https://news.vice.com/article/cash-candy-and-collateral-damage-an-anatomy-of-a-cia-mi6-drone-assassination-1>.

<sup>xvi</sup> The Intercept, *Inside Menwith Hill*, 6 September 2016, available at: <https://theintercept.com/2016/09/06/nsa-menwith-hill-targeted-killing-surveillance/>.

<sup>xvii</sup> BBC News, *Fallon denies MPs "kept in dark" about UK role in Syrian air strikes*, 20 July 2015, available at: <https://www.bbc.co.uk/news/uk-politics-33599610>; The Guardian, *MoD document approves British troops for illegal bombing, charity claims*, 19 May 2021, available at: <https://www.theguardian.com/politics/2021/may/19/mod-document-approves-british-troops-for-bombing-charity-claims>.

<sup>xviii</sup> The Bureau of Investigative Journalism, *Obama's Covert Drone War in Numbers: Ten Times More Strikes than Bush*, 17 January 2017, available at: <https://www.thebureauinvestigates.com/stories/2017-01-17/obamas-covert-drone-war-in-numbers-ten-times-more-strikes-than-bush>.

<sup>xix</sup> *ibid.*

<sup>xx</sup> Kelsey D Atherton, *Trump Inherited the Drone War but Ditched Accountability*, Foreign Policy, 22 May 2020, <https://foreignpolicy.com/2020/05/22/obama-drones-trump-killings-count/>.

<sup>xxi</sup> Azmat Khan, *The Human Toll of America's Air Wars*, The New York Times, 19 December 2021, [https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP\\_BANNER&block=storyline\\_menu\\_recirc&action=click&pgtype=Interactive&variant=0\\_Control&is\\_new=false](https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Interactive&variant=0_Control&is_new=false).

<sup>xxii</sup> Azmat Khan, *The Human Toll of America's Air Wars*, The New York Times, 19 December 2021, [https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP\\_BANNER&block=storyline\\_menu\\_recirc&action=click&pgtype=Interactive&variant=0\\_Control&is\\_new=false](https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Interactive&variant=0_Control&is_new=false).

<sup>xxiii</sup> Azmat Khan, Haley Willis, Christoph Koettl, Christian Triebert and Lila Hassan, *Documents Reveal Basic Flaws in Pentagon Dismissals of Civilian Casualty Claims*, The New York Times, 31 December 2021, <https://www.nytimes.com/2021/12/31/us/pentagon-airstrikes-syria-iraq.html>

<sup>xxiv</sup> Azmat Khan, *The Human Toll of America's Air Wars*, The New York Times, 19 December 2021, [https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP\\_BANNER&block=storyline\\_menu\\_recirc&action=click&pgtype=Interactive&variant=0\\_Control&is\\_new=false](https://www.nytimes.com/2021/12/19/magazine/victims-airstrikes-middle-east-civilians.html?name=styl%3Dcivilian-casualties&region=TOP_BANNER&block=storyline_menu_recirc&action=click&pgtype=Interactive&variant=0_Control&is_new=false).

<sup>xxv</sup> Azmat Khan, *Hidden Pentagon Records Reveal Patterns of Failure in Deadly Airstrikes*, The New York Times, 18 December 2021, <https://www.nytimes.com/interactive/2021/12/18/us/airstrikes-pentagon-records-civilian-deaths.html>.

<sup>xxvi</sup> Nuhanovic Foundation, *Nuhanovic Foundation supports request for information Hawija bombing*, 2020, <http://www.nuhanovicfoundation.org/en/litigation-projects/nuhanovic-foundation-supports-request-for-information-hawija-bombing/>.

<sup>xxvii</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>xxviii</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>xxix</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>xxx</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>xxxi</sup> Matthieu Aikins, The New York Times, *Times Investigation: In U.S. Drone Strike, Evidence Suggests no ISIS Bomb*, 10 September 2021, available at: <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html>

<sup>xxxii</sup> Reuters, *U.S. says Kabul drone strike killed 10 civilians, including children, in 'tragic mistake'*, 18 September 2021, available at: <https://www.reuters.com/world/asia-pacific/us-military-says-10-civilians-killed-kabul-drone-strike-last-month-2021-09-17/>

<sup>xxxiii</sup> See remarks at *The Johns Hopkins Foreign Affairs Symposium Presents: The Price of Privacy: Re-Evaluating the NSA*, available at: <https://www.youtube.com/watch?v=kV2HDM86Xgl>.

<sup>xxxiv</sup> <https://observer.com/2015/09/us-reliance-on-too-much-sigint-and-too-little-spycraft-is-dangerous-and-expensive/>

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