

United States Senate

WASHINGTON, DC 20510

March 8, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Secretary Austin,

We welcome your January 27th directive to the United States military to strengthen its efforts to prevent civilian deaths and to improve the way it investigates and acknowledges claims of civilian harm in U.S. combat operations. This announcement is an important acknowledgment of the U.S. military's significant shortcomings in how the Department of Defense investigates and responds to reports of civilian harm in Afghanistan, Iraq, Syria, and Yemen.

This review should include revisiting and thoroughly investigating credible reports of civilian harm, including those from Yemen. Only by gaining a more accurate picture of past incidents can the U.S. learn important lessons, institute needed structural reform, and begin providing redress to those harmed. We urge you to open new investigations into reports of civilian harm from U.S. military operations in Yemen raised by credible NGOs or external sources, to report publicly and transparently on your conclusions, and to take appropriate steps toward redress and accountability.

Evidence collected by researchers from Mwatana for Human Rights and the Columbia Law School Human Rights Clinic strongly indicates that 12 U.S. military operations between 2017 and 2019 tragically killed 38 civilians (including 13 children) and injured 7 more (including 6 children). The evidence is extensive - based on site visits, dozens of interviews, official government and medical records, photographs, and videos gathered by Mwatana researchers over a nearly four-year period in Yemen.

Despite this substantive evidence, U.S. Central Command (CENTCOM) acknowledged civilian deaths in only 2 of those 12 operations, and dismissed reports of more than two dozen other civilian deaths. Furthermore, CENTCOM did not acknowledge any civilian injuries from those 12 operations. For the civilian deaths acknowledged, the U.S. government has not apologized nor offered grieving families amends, including ex gratia payments authorized and appropriated by Congress, nor has it taken other steps towards accountability and redress. CENTCOM's internal review of these operations examined only internal military records and intelligence; there appear to be no interviews conducted to investigate these incidents.

We urge you to open new, fulsome investigations into these operations in Yemen, as well as any other operations that credible sources reported resulted in civilian harm. These investigations should include site visits and interviews with survivors and witnesses, whether conducted by the



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U.S. military or a partner in Yemen, and should review information from additional external sources. Additionally, we ask that you provide greater transparency into current military review processes, including how reports from credible NGOs or external sources are received and reviewed.

In 2020, the U.S. Department of Defense made zero ex gratia payments in any of the countries where it carried out operations, though Congress allocated over \$3 million for such payments. This suggests a blanket policy of denying ex gratia payments to the victims' family rather than an individualized evaluation process and exploration of how commanders could work within challenging circumstances to provide these payments and other amends to families who have suffered losses. With the resources appropriated and discretion available to U.S. commanders, the military should provide ex gratia payments where appropriate to impacted families and issue a formal public apology, in accordance with the families' preferences.

Finally, the Department of Defense must do more to show it takes the prospect of accountability for civilian deaths and injuries with the seriousness it deserves. Following the August 29th U.S. airstrike in Kabul, the March 2019 airstrike in Baghuz, and recent New York Times reporting on civilian harm in Iraq, Syria, and Afghanistan, internal military review processes have revealed serious gaps in how the Department has ensured accountability. Moreover, keeping these reviews away from the public and redacting findings of independent reviews undercuts efforts to prevent future harm. When there is little policy change or accountability for repeated mistakes this grave and this costly, it sends a message throughout the U.S. Armed Forces and the entire U.S. government that civilian deaths are the inevitable consequence of modern conflict, rather than avoidable and damaging failures of policy.

The consequences of U.S. military operations in Yemen have been deep and long-lasting for scores of Yemeni civilians. We look forward to learning how you will work to provide transparency, accountability, and justice for those harmed.

Sincerely,



Christopher S. Murphy
United States Senator



Elizabeth Warren
United States Senator



THE UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, DC 20301-2000

31 MAY 2022

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

I am responding on behalf of the Secretary of Defense to your March 8, 2022, letter regarding civilian harm that may have resulted from U.S. combat operations in Yemen and, more broadly, the Department's approach to mitigating and responding to civilian harm.

On January 27, 2022, Secretary Austin directed me to develop a Civilian Harm Mitigation and Response Action Plan (CHMR-AP). The CHMR-AP will outline the steps and resources necessary for the Department of Defense (DoD) to implement appropriate recommendations from recently completed studies of civilian harm sponsored by DoD, recent DoD Office of the Inspector General evaluations, and independent reviews Secretary Austin directed into strikes that that were believed to have resulted in civilian casualties. Although the team developing the CHMR-AP is not conducting investigations of specific civilian casualty incidents, many of the concerns highlighted in your letter are under consideration as part of that ongoing effort, including how the Department conducts assessments and investigations, and how the Department responds to incidents of civilian harm. In particular, improvements in battlespace awareness capabilities and Departmental reviews of reports of possible civilian casualties will help commanders identify instances of civilian casualties of which they might otherwise have been unaware.

DoD leaders share your belief in the importance of accountability, when appropriate, and transparency regarding civilian harm. The Department is publicly accountable for its operations, and we are taking steps to ensure that commanders and operators are well-supported with institutional resources, tools, and capabilities to improve how we mitigate and respond to civilian harm. Through the refinement of our assessment and investigation processes, DoD will have greater awareness of the causes of civilian harm and will be better positioned to take appropriate actions to improve how we mitigate such harm in the future.

As you noted in your letter, we received information from representatives of Mwatana for Human Rights (Mwatana) and the Columbia Law School Human Rights Clinic (Human Rights Clinic) regarding twelve incidents from 2017-2019 that these organizations believe resulted in civilian harm. U.S. Central Command has re-assessed each of these reported incidents, and determined that one additional civilian casualty resulted from a U.S. airstrike on January 22, 2019, in Al Bayda, Yemen, and that the information reported regarding a raid on January 29,

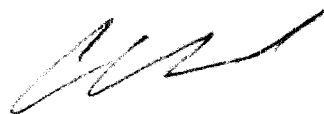


2017, in Al Bayda, Yemen is broadly consistent with U.S. Central Command's previous assessment of the number of civilian casualties. We appreciate the efforts of organizations like Mwatana and the Human Rights Clinic to provide DoD supplementary information for use in DoD assessments of potential civilian casualty incidents.

With the change in the nature and reduction of the number of U.S. military operations in recent years, and in particular since the withdrawal of U.S. forces from Afghanistan, U.S. units have less day-to-day contact with local populations and the number of civilian casualties resulting from such operations have decreased. As a result, there has been a corresponding reduction in the number of *ex gratia* payments offered. We welcome Congressional support for *ex gratia* payments and will continue to take steps to offer appropriate expressions of condolences or sympathy to civilians harmed by U.S. operations, and to improve our approach to responding to civilian harm.

I recognize your deep concern regarding the unintended outcomes of U.S. combat operations and for civilians affected by conflict, and I appreciate your continued support of our ongoing efforts to advance our capabilities to mitigate and respond to civilian harm. We look forward to briefing you on the results of the CHMR-AP upon its completion and to future opportunities to engage with you on these issues. I am sending an identical reply to Senator Murphy.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Kahl', written in a cursive style.

Colin H. Kahl, PhD



POLICY

UNDER SECRETARY OF DEFENSE
2000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2000

31 MAY 2022

The Honorable Christopher S. Murphy
United States Senate
Washington, DC 20510

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Colin H. Kahl, PhD