

May 2, 2019

The Honorable James Inhofe
Chairman, Armed Services Committee
United States Senate
Washington, DC 20510

The Honorable Adam Smith
Chairman, Armed Services Committee
United States House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Ranking Member, Armed Services Committee
United States Senate
Washington, DC 20510

The Honorable Mac Thornberry
Ranking Member, Armed Services Committee
United States House of Representatives
Washington, DC 20515

Dear Messrs. Chairmen and Ranking Members:

We, the undersigned human rights, civil liberties, transparency, and faith-based organizations, write to urge you to strengthen oversight, transparency, and accountability surrounding U.S. lethal strikes and resulting civilian casualties. We commend your successes in enacting critical safeguards in the 2018 and 2019 National Defense Authorization Acts. But dangerous gaps in transparency and accountability remain, and we hope that through both legislation and oversight, Congress can fill those gaps.

Transparency around the use of lethal force is essential to assessing the lawfulness of operations and providing accountability and redress for civilian victims of U.S. strikes, including any potential violations of international law. Transparency also helps governments identify and address civilian harm. It enables the public to be informed about some of the most important policy choices the government makes in its name – ones that involve life and death decisions. While transparency can enhance the legitimacy of government actions, secrecy, by contrast, heightens existing concerns and creates new ones.

Over the last two years, Congress has made considerable progress, on a bipartisan basis, in enhancing transparency and accountability for the use of lethal force and resulting civilian casualties. The Department of Defense has also demonstrated a commitment to addressing these issues, including by conducting an internal study on civilian casualty-related policies and continuing to report to Congress and the public on strikes that cause civilian casualties, as required by law.

While we welcome this progress and acknowledge the latest report that was released today, we urge Congress to build on these advances through legislation and oversight. The 2018 and 2019 National Defense Authorization Acts require the Department of Defense to report annually on U.S. military operations that it believes have killed or injured civilians, including, among other details, the date and location of such strikes and the number of combatants and civilians killed or injured in each such strike.

While these reporting requirements are critically important, gaps remain. For example, the existing requirements do not include the total number of U.S. government strikes, nor the number of civilians or combatants killed or injured in strikes that may be conducted by non-

military entities like the Central Intelligence Agency. These critical pieces of information are essential to understanding the full scope and impact of lethal operations being conducted by the United States. Legislation requiring this information is essential to ensuring that both Congress and the public may fully assess the policies, practices, and human and national security consequences of U.S. lethal strikes.

Congress should act to strengthen existing statutorily required reporting requirements by:

- Requiring annual reporting on the total number of operations inside “declared theaters of active armed conflict” as well as the total number of operations outside “declared theaters of active armed conflict” conducted by the United States, including by both military and non-military government entities;
- Requiring public acknowledgement of each and every operation and its specific location conducted by the Department of Defense;
- Amending the required annual report to Congress to include all U.S. government operations that result in civilian casualties, broken down by date, location, and other key information;
- Requiring the annual report to include an explanation of any discrepancies between U.S. government reporting and independent reporting;
- Eliminating the expiration date for the civilian casualties reporting requirements to ensure that all future civilian casualties are reported;
- Requiring public transparency regarding the scope of military force, including the names of all groups the United States is using force against, the list of all countries where the United States is using lethal force, and the list of all countries or areas designated as “areas of active hostilities, or “declared theaters of active armed conflict;”
- Requiring public transparency regarding any changes that have been made to the 2013 lethal targeting policy known as the Presidential Policy Guidance;
- Requiring public reporting on the criteria for designating an individual as a “combatant” or otherwise lawful target, or as a “civilian” both during the targeting process and for purposes of civilian casualties reporting;
- Requiring the release of an annual public report on any changes to the legal and policy framework guiding the United States’ use of lethal force and related national security operations;
- Requiring the public release of all guidance on the standards for civilian casualty assessments and investigations, including all means made available for impacted civilians to report civilian harm and the standard for deeming independent reporting credible;
- Requiring reporting on the number of instances in which compensation or condolence payments were paid to those injured or families of people killed in strikes, together with the amounts paid. Case-specific information should be publicly released specifying the amount and the reason for the payment, where the recipients of the payment agree to public disclosure and such disclosure is not assessed to be a security risk to the recipient or their families;
- Requiring the public release of the results of civilian casualty assessments and investigations into specific operations involving possible civilian casualties, subject only to redactions where families of those killed or those injured have

requested privacy or to ensure their physical safety, or only as strictly necessary for legitimate national security reasons.

Congress should also carefully assess whether consolidating lethal force authority within the Department of Defense would improve transparency, accountability, and oversight of the use of lethal force by the United States and enable intelligence agencies to focus on their core mission.

Congress plays an indispensable role in ensuring that lethal force is only used lawfully. Enacting statutory requirements to build on the transparency progress of the last two years will ensure that Congress receives the information it needs to conduct robust oversight, ensure civilians are adequately protected, the public is thoroughly informed, and ensure that U.S. policies comply with the law on the use of lethal force.

Thank you for your consideration.

Sincerely,

American Civil Liberties Union
Amnesty International USA
Center for American Progress
Center for Civilians in Conflict
Coalition for Peace Action, Princeton, NJ
Friends Committee on National Legislation
Government Information Watch
Human Rights Clinic (Columbia Law School)
Human Rights First
Human Rights Watch
Interfaith Network on Drone Warfare
Open The Government
Win Without War