

August 19, 2019

Chairman James M. Inhofe
Senate Committee on Armed Services
205 Russell Senate Office Building
Washington, DC 20510

Chairman Adam Smith
House Armed Services Committee
2264 Rayburn House Office Building
Washington, DC 20515

Ranking Member Jack Reed
Senate Committee on Armed Services
728 Hart Senate Office Building
Washington, DC 20510

Ranking Member Mac Thornberry
House Armed Services Committee
2208 Rayburn House Office Building
Washington, DC 2051

Dear Chairman Inhofe, Chairman Smith, and Ranking Member Reed, and Ranking Member Thornberry:

We, the undersigned human rights, civil liberties, transparency, and faith-based organizations, write to urge you to support measures introduced in the House and Senate versions of the Fiscal Year 2020 NDAA that would strengthen, clarify, and supplement transparency and oversight requirements related to U.S. lethal strikes and resulting civilian casualties without leading to the disclosure of properly classified information or imposing overly burdensome or unnecessary requirements.

Over the last two years, Congress has made considerable progress, on a bipartisan and bicameral basis, in enhancing transparency and oversight regarding the use of lethal force and resulting civilian casualties. But problematic gaps remain, and several measures introduced in both the Senate and House versions of the Fiscal Year 2020 NDAA would help address many of these gaps. Through these measures, Congress will be able to conduct more effective oversight of the policies, practices, and human and national security consequences of U.S. military operations. In addition to robust Congressional oversight, public transparency around the use of lethal force is critical to independent scrutiny of casualty assessments, assessing the lawfulness of operations, providing redress for victims and their family members, and ensuring accountability for any violations of the law. And, critically, transparency 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. Ultimately, such transparency can enhance the legitimacy of government actions. Unwarranted secrecy, by contrast, heightens existing concerns and creates new ones.

Conferees to the Fiscal Year 2020 NDAA should ensure that the final bill includes provisions that address the following critical issues:

- **Reporting All U.S. Government Strikes and Casualties Outside of “Areas of Active Hostilities”:** The NDAA should include a requirement to report the total number of lethal strikes conducted by the United States government determined by the Executive Branch to fall outside of “areas of active hostilities” and the number of casualties that result from such strikes. Such a requirement, currently addressed by H.R.2500 Section 1072, would

help fill a major transparency gap in existing statutory-reporting requirements that was previously filled by executive order.

- **Ensuring timely reporting of any circumstance in which U.S. forces become involved in the conduct of hostilities:**¹ The U.S. Congress, and the American public, should be aware of any circumstances in which the U.S. military becomes involved in the conduct of hostilities. H.R.2500 Section 1270U requires an unclassified report, which may include a classified annex, to the defense and foreign affairs/foreign relations committees within 48 hours of any incident in which U.S. forces are involved in an attack or hostilities unless the incident is already subject to Congressional reporting requirements.
- **Stronger Reporting on the Legal and Policy Basis for the Use of Military Force :** Under current law (Section 1264 of the FY2018 NDAA), the Executive Branch must report to Congress within 30 days on any changes to the legal and policy framework for the use of military force that was previously released to both Congress and the public by the last two administrations. H.R.2500 Section 1262 would clarify and strengthen this ongoing reporting requirement by requiring an annual update on any changes; requiring the unclassified report to be provided to the public; clarifying that the reports required by this section must include all changes, including listing any new forces or groups that the administration considers covered by the 2001 AUMF; and requiring an explanation of the criteria for designating individuals as targetable.
- **Improving DOD civilian casualties policy, and refining the accuracy of DoD civilian casualties reporting:** Although prior year NDAA's have done much to encourage improvements to Department of Defense policies and practices to prevent and account for civilian casualties, this year's NDAA provides an opportunity to strengthen existing statutes and to close remaining gaps in several ways:
 - By extending and strengthening the existing annual report on civilian casualties (S. 1790, Section 1053 and H.R. 2500 Section 1063);
 - By ensuring that the Department of Defense and its military components take effective steps to facilitate receipt of information from outside organizations and witnesses (H.R. 2500, Sections 1063 and 1087);
 - By extending authority for the payment of ex gratia, and by ensuring that the Department is providing greater clarity with respect to the provision of Congressionally authorized ex gratia payments to survivors (H.R. 2500, Section 1215);

¹ Because of varying organizational mandates, not all of the undersigned organizations take a position on this provision.

- By strengthening and enhancing the capacity of DoD to publicly report more accurate estimates of civilian casualties that occur during its operations (H.R. 2500, Section 1063);
 - By enabling the Department to improve its own approach to civilian casualties by assessing the resources required to adequately implement the Department's civilian casualties policy (S. 1790 Section 922); and
 - By requiring an independent study by a Federally Funded Research and Development Center to clearly identify the reasons for discrepancies between public and government estimates as well as the principal causes of civilian casualties (H.R. 2500, Section 1087).
- **Civilian Casualties and U.S. Security Cooperation with KSA and Nigeria:** Two provisions would address gaps in reporting related to civilian casualties caused by the US-supported Saudi- and Emirati- led coalition in Yemen (H.R. 2500 Section 1270M), and a need to ensure that the Nigerian military is taking steps to mitigate harm to civilians with the delivery of U.S.-sold attack aircraft (H.R. 2500 Section 1270E).

Sincerely,

American Civil Liberties Union
American-Arab Anti-Discrimination Committee
Amnesty International USA
Campaign for Accountability
Center for Civilians in Conflict
Coalition for Peace Action
Defending Rights & Dissent
Foreign Policy for America
Friends Committee on National Legislation
Government Information Watch
Human Rights First
Human Rights Watch
Interfaith Network on Drone Warfare
National Religious Campaign Against Torture
Open the Government
Peace Action
R Street Institute
September 11th Families for Peaceful Tomorrows
The United Methodist Church- General Board of Church and Society
Win Without War