

November 30, 2021

The Honorable Jack Reed
Chairman
Senate Committee on Armed Services
Washington, DC 20510

The Honorable Adam Smith
Chairman
House Committee on Armed Services
Washington, DC 20515

The Honorable James Inhofe
Ranking Member
Senate Committee on Armed Services
Washington, DC 20510

The Honorable Mike Rogers
Ranking Member
House Committee on Armed Services
Washington, DC 20515

We, the undersigned humanitarian, human rights, protection of civilians, peacebuilding, and government accountability organizations, write to request urgent congressional oversight of U.S. civilian harm policies and adherence to international humanitarian law in light of recent reporting that the U.S. military hid the consequences of an airstrike in Baghuz, Syria that may have killed dozens of civilians and was flagged as a possible war crime by at least one Defense Department lawyer.¹ This reporting came on the heels of the August 29 drone strike in Kabul, Afghanistan that killed 10 civilians, including an aid worker and seven children, and a subsequent investigation by the Air Force Inspector General whose main findings of error, confirmation bias, and communication breakdowns are not new but reflect a failure to implement lessons learned from twenty years of repeated civilian harm without meaningful investigations, acknowledgement, or accountability. We request urgent and sustained congressional action to address and investigate these specific civilian harm incidents as well as the systemic shortcomings of U.S. protection of civilians policies more broadly.

Over the years, many of our organizations have worked to engage the Department of Defense to improve its policies for preventing civilian harm and investigating, acknowledging, and providing compensation and amends for harm when it occurs. We have repeatedly provided concrete recommendations on ways to address well-documented shortcomings, including prioritizing the protection of civilians in operational planning and addressing confirmation bias; improving civilian harm tracking and investigations through better engagement with civil society organizations and civilian survivors; offering amends for harm in accordance with the preferences and needs of survivors, including the regular utilization of *ex gratia* payments authorized by Congress; and learning from civilian harm trends to improve future policy and practice. Many of our organizations also developed comprehensive guidance for a model Department of Defense Instruction on Civilian Harm, a policy required pursuant to Section 936 of the 2019 National Defense Authorization Act that has yet to be released.² Despite years of good-faith engagement, we have seen little to no progress on implementing many of these recommendations.

The *New York Times* reporting on the 2019 Baghuz strike and the alleged cover-up of a possible war crime has also raised serious concerns about the U.S. military's commitment to accountability and

¹ Dave Philipps and Eric Schmitt, "How the U.S. Hid an Airstrike That Killed Dozens of Civilians in Syria," *The New York Times*, November 13, 2021. [\[link\]](#)

² NGO Recommendations to DoD Policy on Civilian Harm, "Civil Society Guidance for a Model Policy," *InterAction*, March 12, 2020. [\[link\]](#)

adherence to international humanitarian law, including the duty to investigate possible war crimes and hold responsible individuals to account. We also note with concern the reported lack of congressional investigation or oversight regarding this strike. While the revelations around the Baghuz strike are particularly egregious, they illustrate longstanding problems with the U.S. military's interpretations of its law of armed conflict obligations, commitment to accountability, and response to civilian casualties that demand urgent oversight. The United States' adherence to international humanitarian law is also a prerequisite for U.S. credibility in pressing its allies, security partners, and other states to uphold their legal obligations in armed conflict and prioritize the protection of civilians.

We therefore respectfully ask your committees to:

- Hold immediate, public hearings on the civilian harm incidents in Baghuz, Syria in 2019, and Kabul, Afghanistan in 2021, to include Secretary of Defense Lloyd James Austin III, Under Secretary of Defense Colin Kahl, U.S. Central Command Commander General Kenneth F. McKenzie, Jr., and other officials who exercise or exercised authority over these operations and held responsibility for any subsequent investigations;
- Hold hearings on Department of Defense civilian harm policies and practices, including: examining the Department's adherence to international humanitarian law, and its investigations of and accountability for suspected violations; the effectiveness and shortcomings of Defense Department policies to prevent civilian harm; the effectiveness and shortcomings of Defense Department policies for responding to civilian harm, including thorough investigations, public acknowledgement of harm, and compensation and amends; the Department's failure to learn from civilian casualties in the context of twenty years of repeated harm; and progress towards the DoD Instruction on Civilian Harm required by Congress and how that policy will address systemic shortcomings; and
- Conduct or commission an in-depth investigation into civilian harm from U.S. operations over twenty years of war and lethal strikes and the effectiveness of U.S. civilian harm policies, to include public findings, conclusions, and recommendations regarding:
 - The short- and long-term impact of U.S. and coalition operations and lethal force operations on civilian populations, including civilian casualties and other humanitarian consequences;
 - Adherence to international humanitarian law, international human rights law, and U.S. law, including the Uniform Code of Military Justice, both in preventing and responding to potential violations;
 - The effectiveness of DoD policies and practices designed to prevent civilian harm;
 - Transparency about civilian harm incidents, including whether specific civilian harm incidents were concealed and an inquiry into persistent disparities between annual civilian casualties reports from the DoD and credible civil society organizations;
 - Response to civilian harm incidents, including assessments, investigations, acknowledgement, and amends and redress, including condolence payments and other mechanisms;
 - The adequacy of whistle-blower provisions to protect reporting to Congress of civilian harm incidents, including potential violations of international humanitarian law, and prevent cover-ups of any such incidents; and

- Processes for meaningfully engaging with conflict-affected civilians and civil society organizations, in the United States and abroad, on civilian harm issues in countries where the United States uses force.

Accountability and transparency are foundational to democratic governance and legitimacy, and the protection of civilians is a moral, ethical, legal, and humanitarian imperative. We urge you to take urgent action to prevent and address civilian harm.

Respectfully,

Airwars
American Civil Liberties Union
Amnesty International USA
CARE USA
Center for Civilians in Conflict (CIVIC)
Center for Victims of Torture
Columbia Law School Human Rights Institute
Friends Committee on National Legislation (FCNL)
Government Information Watch
Human Rights First
Human Rights Watch
InterAction
International Rescue Committee
Life for Relief and Development
Norwegian Refugee Council USA
Oxfam America
PAX
Quincy Institute for Responsible Statecraft
Repeive
Saferworld (Washington Office)
Save the Children US
September 11th Families for Peaceful Tomorrows
Syria Justice and Accountability Center (SJAC)
Win Without War