

**Congress of the United States**  
Washington, DC 20510

June 30, 2021

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

Dear Secretary Austin,

We are writing regarding the Department of Defense's (DoD, or the Department) June 2021 report to Congress on civilian casualties. As in past years, the report appears to significantly undercount civilian casualties. The Department reported 23 civilians killed and 10 civilians injured as a result of U.S. military operations last year, but estimates from credible civilian casualty monitors and the United Nations suggest that number is almost five times higher.<sup>1</sup> The report also revealed that the Department made zero *ex gratia* payments to grieving civilians last year despite authorization and funding from Congress and the feasibility of reaching survivors in most cases.<sup>2</sup> This is unacceptable and not how we uphold our nation's values and advance our interests overseas. We urge you to take a more serious look at both of these issues.

As a first step, we request that you review why these significant discrepancies in civilian casualty counts persist, and take steps to ensure that U.S. military investigations into civilian casualties give greater weight to external sources of information rather than relying solely on its own internal records and sources when assessing third party reports of civilian harm. This is especially important when the military can confirm its role in an operation based on the location and time of an external report of civilian casualties, but cannot independently confirm civilian death or injury without a more thorough investigation. Using the same sources of information that were used to plan the strike or raid and to verify its results without seeking information from witnesses or survivors of attacks or by visiting the site of strikes cannot give a clear and accurate account of the civilian casualties.

The Department's report also appears to defy the congressional requirement to report on civilian casualties "that were confirmed, *or reasonably suspected*, to have resulted in civilian casualties."<sup>3</sup> By only reporting on civilian casualties that the Department has been able to assess

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<sup>1</sup> Airwars, "Pentagon annual report declares 85 civilian deaths in recent US actions" June 2, 2021, <https://airwars.org/news-and-investigations/pentagon-annual-report-declares-85-civilian-deaths-in-recent-us-actions/>

<sup>2</sup> Department of Defense, "Annual Report on Civilian Casualties In Connection With United States Military Operations in 2020," June 2, 2021, <https://media.defense.gov/2021/Jun/02/2002732834/-1/-1/0/ANNUAL-REPORT-ON-CIVILIAN-CASUALTIES-IN-CONNECTION-WITH-UNITED-STATES-MILITARY-OPERATIONS-IN-2020.PDF>

<sup>3</sup> National Defense Authorization Act for Fiscal Year 2018 (Public Law 115-91), Section 1057, "Annual Report on Civilian Casualties in Connection With United States Military Operations," December 12, 2017, <https://www.congress.gov/bill/115th-congress/house-bill/2810/text>

as “credible”, the DoD ignores the large number of cases that are prematurely dismissed due to an overly high burden of proof.<sup>4</sup>

The report also said the Department offered zero *ex gratia* payments in 2020. This is despite repeated authorization and funding from Congress, the congressionally mandated development of a new interim policy on *ex gratia*, and the large number of cases over many years where the Department has confirmed civilian casualties and has a means of contacting survivors. It's especially striking this year, given that the DoD could have used its \$3 million allocation to offer *ex gratia* to every single civilian confirmed harmed in 2020, with significant funding to spare. We would appreciate understanding why zero *ex gratia* payments were made last year despite these facts, as well as the steps you plan to take to improve the Department's use of *ex gratia* funding, facilitate the receipt of *ex gratia* requests from civilians, and, more broadly, improve the U.S. military's response to civilian harm.

In June 2020, we introduced the *Protection of Civilians in Military Operations Act*, bicameral legislation that would enhance reporting on civilian casualties resulting from U.S. military operations, improve investigations into civilian casualties, and strengthen resources for the Department's policies and practices relating to civilian casualty prevention and responses.<sup>5</sup> You do not have to wait for this legislation to pass to impose these new requirements for DoD to uphold its responsibilities addressing civilian casualties.

You should adopt all relevant provisions of this legislation, specifically: (1) to include a list of each advise, assist, accompany, and enable (A3E) mission during which civilian casualties or human rights abuses by foreign partner forces were observed or later reported include in your annual civilian casualties report; (2) require U.S. military commanders to select an officer from outside their unit or chain of command to conduct an investigation into civilian casualties arising from that unit's or command's military operations; (3) require each commander of a geographic combatant command to establish an uninterrupted line of communication between his or her command and the Chief of Mission (or the Chief's designee) in any country in which a command is conducting military operations, in order to field and coordinate reports of civilian casualties resulting from U.S. military operations undertaken by a command in a given country; and (4) establish, and annually update, a central, searchable, and publicly accessible database for all DoD reports of investigations into the civilian casualties resulting from U.S. military operations, and the results of such investigations.

We need to openly consider all the costs, benefits, and consequences of military action, and that includes doing everything we can to prevent and respond to civilian harm. Strengthening investigations, accurately and transparently reporting on civilian harm, expressing condolences for harm when it happens, and learning from these incidents to prevent harm in the future are all


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<sup>4</sup> Department of Defense, “Annual Report on Civilian Casualties In Connection With United States Military Operations in 2020,” June 2, 2021, <https://media.defense.gov/2021/Jun/02/2002732834/-1/-1/0/ANNUAL-REPORT-ON-CIVILIAN-CASUALTIES-IN-CONNECTION-WITH-UNITED-STATES-MILITARY-OPERATIONS-IN-2020.PDF>


<sup>5</sup> Elizabeth Warren, United States Senator For Massachusetts, Senator Warren, “Senator Warren and Rep. Khanna Introduce the Protection of Civilians in Military Operations Act” June 10, 2020, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-rep-khanna-introduce-the-protection-of-civilians-in-military-operations-act>

essential steps that reinforce the importance of protecting civilians as a national security priority and as a moral and ethical imperative.

Sincerely,



Elizabeth Warren  
United States Senator



Ro Khanna  
Member of Congress