

**Statement of Center for Civilians in Conflict (CIVIC)
on
“‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20 Years of U.S.
Drone Strikes”**

**Before the Senate Judiciary Committee
February 9, 2022**

Center for Civilians in Conflict (CIVIC) thanks the Senate Judiciary Committee for the opportunity to submit this statement for the record for the hearing, “‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20 Years of U.S. Drone Strikes.”

CIVIC is an international organization dedicated to promoting the protection of civilians in conflict. CIVIC envisions a world in which no civilian is harmed in conflict. Our mission is to support communities affected by conflict in their quest for protection and strengthen the resolve and capacity of armed actors to prevent and respond to civilian harm.

CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Honoring Marla’s legacy, CIVIC has kept an unflinching focus on the protection of civilians in conflict. Today, CIVIC has a presence in conflict zones and key capitals throughout the world where we collaborate with civilians to bring their protection concerns directly to those in power, engage with armed actors to reduce the harm they cause to civilian populations, and advise governments and multinational bodies on how to make life-saving and lasting policy changes. At CIVIC, we believe civilians are not “collateral damage” and civilian harm is not an unavoidable consequence of conflict — civilian harm can and must be prevented.

I. Systemic Shortcomings in U.S. Prevention and Mitigation of Civilian Harm

This hearing comes at a crucial inflection point for U.S. civilian harm policies and practices. In September 2021, the world watched as it was revealed that the August 29 drone strike that U.S. officials originally touted as a “righteous” success in fact killed 10 civilians, including aid worker Zemari Ahmadi and seven children.¹ Over the next few months, investigations from *The New York Times* would reveal how a secret special operations cell repeatedly sidestepped safeguards and killed civilians during the counter-ISIS campaign, including the cover-up of a 2019 airstrike in Baghuz, Syria that killed dozens of civilians and was flagged as a possible war crime by at least one Defense Department lawyer.² These revelations join two decades of evidence illustrating what CIVIC and our partners have long documented: that for far too long and despite its own rhetoric to the contrary, the United States has often failed to live up to its

¹ Eric Schmitt and Helene Cooper, “Pentagon acknowledges Aug. 29 drone strike in Afghanistan was a tragic mistake that killed 10 civilians,” *The New York Times*, September 17, 2021 [\[link\]](#).

² Dave Philipps, Eric Schmitt and Mark Mazzetti, “Civilian Deaths Mounted as Secret Unit Pounded ISIS,” *The New York Times*, December 12, 2021 [\[link\]](#); 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 [\[link\]](#).

legal and moral commitments to the protection of civilians, with devastating results for civilians and no meaningful accountability.

Since our founding, CIVIC has worked to engage the Executive Branch to improve its policies for preventing civilian harm and investigating, acknowledging, and providing amends for harm when it occurs. We and other civil society organizations have repeatedly documented shortcomings in U.S. policy and practice and provided concrete recommendations on ways to address them, 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.³ We and other civilian protection, humanitarian, and human rights organizations also developed comprehensive guidance for a model Department of Defense Instruction on Civilian Harm, the policy required pursuant to Section 936 of the 2019 National Defense Authorization Act that has yet to be released.⁴ Yet despite years of good-faith engagement, we have seen little to no progress on sustainably implementing many of these recommendations.

This failure to learn from past harms is not limited to civil society recommendations, but is also reflected in unfulfilled recommendations from the Defense Department's own studies. A 2013 Joint Staff study, for example, identified misidentification of a target as the "primary cause of [civilian casualties] in Afghanistan," particularly due to "perceived hostile intent" from individuals who were later revealed to be civilians.⁵ Eight years later, the Air Force Inspector General investigation into the August 29, 2021 Kabul strike would make the same finding: that confirmation bias played a critical role in the wrongful targeting and death of aid worker Zemari Ahmadi.⁶ A recently released RAND Report also found that the majority of recommendations made in the 2018 Joint Staff review were either not yet implemented or only partially

³ CIVIC's public analysis and recommendations to the U.S. government include: "Exception(s) to the Rule(s): Civilian Harm, Oversight, and Accountability in the Shadow Wars," *Center for Civilians in Conflict, Center for International Policy, and Stimson Center*, November 19, 2020 [\[link\]](#); "Civil Society Guidance for a Model DoD Policy on Civilian Harm," *CIVIC and NGO Partners*, March 12, 2020 [\[link\]](#); "In Search of Answers: U.S. Military Investigations and Civilian Harm," *Center for Civilians in Conflict and Columbia Law School Human Rights Institute*, February 13, 2020 [\[link\]](#); "The Sum Of All Parts: Reducing Civilian Harm in Multinational Coalition Operations," *Center for Civilians in Conflict*, January 23, 2019 [\[link\]](#); "The Protection of Civilians in US Partnered Operations," *Center for Civilians in Conflict, InterAction, and Center for Strategic & International Studies*, October 2018 [\[link\]](#); "Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan," *Center for Civilians in Conflict*, May 19, 2014 [\[link\]](#); "The Civilian Impact of Drones: Unexamined Costs, Unanswered Questions," *Center for Civilians in Conflict and Columbia Law School Human Rights Clinic*, September 11, 2012 [\[link\]](#); "Civilian Harm and Conflict in Northwest Pakistan," *Center for Civilians in Conflict*, October 20, 2010 [\[link\]](#); "New Findings on International Military Responses to Civilian Casualties," *Center for Civilians in Conflict*, April 12, 2010 [\[link\]](#); "Losing the People: The Costs and Consequences of Civilian Suffering in Afghanistan," *Center for Civilians in Conflict*, February 18, 2009 [\[link\]](#).

⁴ "Civil Society Guidance for a Model DoD Policy on Civilian Harm," *InterAction Protection of Civilians Working Group Members*, March 12, 2020 [\[link\]](#).

⁵ Joint and Coalition Operational Analysis (JCOA), "Reducing and Mitigating Civilian Casualties: Enduring Lessons," April 12, 2013. [\[link\]](#)

⁶ "Air Force Inspector General's findings of errant drone strike in Kabul on Aug. 29, 2021," *The Washington Post*, November 3, 2021 [\[link\]](#).

implemented.⁷ In short, over twenty years of repeated civilian harm, the U.S. government has consistently failed to adopt life-saving solutions well within its grasp.

On December 1, 2021, in response to these longstanding policy flaws, CIVIC and 20 other organizations sent a letter to Defense Secretary Lloyd Austin urging him to account for and reckon with the civilian harm of the last twenty years and finally implement structural changes to prioritize civilian protection.⁸ CIVIC and 24 organizations have also called on Congress to exert oversight over U.S. civilian harm policies, including by calling for officials to testify on U.S. civilian harm policies and by conducting or commissioning an in-depth investigation into civilian harm from U.S. operations over twenty years of war and lethal strikes.⁹

II. Civilian Harm from U.S. Lethal Strikes Outside Recognized Battlefields

Since the attacks of 9/11, successive presidents have now claimed the unilateral power to authorize secret killing outside any recognized battlefield.¹⁰ This lethal strikes program – also referred to as the “targeted killing” program – has undermined the rule of law and devastated civilian communities in multiple parts of the world. This harm has included thousands of civilian casualties¹¹ as well as significant psychological trauma. As one Yemeni father told Mwatana for Human Rights, “My six-year-old son wanted to go to the bathroom but then returned without going. When I asked him the reason, he said, ‘I don’t want you all to die without me if the drone hits.’”¹²

The rules for how to conduct these strikes have changed slightly from administration to administration: for example, the Obama administration’s Presidential Policy Guidance (PPG) contained a few meaningful civilian protection safeguards, such as a preference for capture and a requirement of near certainty that no civilians would be harmed in the “areas outside of active hostilities” where the policy applied, while the Trump administration’s Principles, Standards, and Procedures weakened these safeguards.¹³ Yet across each administration, civilian casualties have

⁷ Michael J. McNerney, Gabrielle Tarini, Karen M. Sudkamp, Larry Lewis, Michelle Grisé, and Pauline Moore, “U.S. Department of Defense Civilian Casualty Policies and Procedures,” *RAND Corporation*, 2021 [\[link\]](#).

⁸ “NGO Letter to US Secretary of Defense Demands Accountability and Reform After 20 Years of Civilian Harm,” *Center for Civilians in Conflict*, December 1, 2021 [\[link\]](#). Note: On January 27, 2022, Secretary of Defense Lloyd J. Austin III issued a directive mandating certain civilian harm mitigation steps, including a new action plan, the creation of a civilian protection “center of excellence,” and the completion of the long-awaited Department of Defense Instruction on Civilian Harm. These steps are welcome, but their impact and specific resulting actions remain to be seen. We continue to urge the systemic reforms needed to address the longstanding issues raised in this letter.

⁹ “24 NGOs Call for Urgent Congressional Oversight Over U.S. Civilian Harm Policies,” *Center for Civilians in Conflict*, November 30, 2021 [\[link\]](#).

¹⁰ See Rita Siemion, Hina Shamsi, Daniel R. Mahanty, Heather Brandon-Smith, Priyanka Motaparthy and Matt Hawthorne, “Toward a New Approach to National and Human Security: End Unlawful, Secret, and Unaccountable Use of Lethal Force,” *Just Security*, September 11, 2020 [\[link\]](#).

¹¹ Imogen Piper and Joe Dyke, “Tens of thousands of civilians likely killed by US in ‘Forever Wars,’” *Airwars*, September 6, 2021 [\[link\]](#).

¹² Mwatana for Human Rights, “Death Falling from the Sky: Civilian Harm from the United States’ Use of Lethal Force in Yemen,” February 23, 2021 [\[link\]](#).

¹³ Hina Shamsi, “Trump’s Secret Rules for Drone Strikes and Presidents’ Unchecked License to Kill,” *Just Security*, May 3, 2021 [\[link\]](#).

been a persistent reality of the U.S. lethal strikes program, often without transparency or accountability.

Today, in line with his stated commitments to end U.S. forever wars, promote racial justice, and center human rights in U.S. foreign policy, President Biden has an opportunity and responsibility to end this harmful and unaccountable program. In June 2021, CIVIC joined 112 other diverse organizations from the United States and around the world in calling for an end to this program.¹⁴ In January 2022, 50 U.S. Senators and Representatives, including members of the Senate Judiciary Committee, urged President Biden to overhaul U.S. counterterrorism strategy and targeting criteria for drone strikes, citing grave concerns about “repeated civilian casualties arising from secretive and unaccountable lethal operations.”¹⁵ We applaud their leadership and urge lawmakers to continue to exert oversight and call for an end to the harmful program.

III. Responding to Civilian Harm with Acknowledgement, Amends, and Accountability

Over the last two decades, the U.S. government has not only failed to meaningfully and sustainably improve how it prevents civilian harm, but has also demonstrated consistent flaws in how it assesses, investigates, acknowledges, and offers amends for harm.

For example, the U.S. military significantly undercounts civilian casualties in its annual reporting, and there exists a persistent gap between the numbers the Executive Branch reports and the numbers coming out of credible civil society observers as well as the United Nations. Several factors contribute to these underestimates. A study by CIVIC and Columbia Law School Human Rights Clinic that reviewed over 220 administrative investigations into civilian harm found that the U.S. military tends to rely solely on its own internal records and sources when assessing civilian harm, and rarely seeks information from witnesses or survivors of attacks or visits the site of strikes.¹⁶ We also found the U.S. military to be highly skeptical of external sources of information, such as reports from civil society and the media, despite that fact that those groups often undertake in-depth investigations using rigorous methodologies – including survivor interviews, site visits, and background documentation – and therefore have access to information that the Department of Defense lacks. Recent investigative reporting by *The New York Times* also found that the U.S. military repeatedly prematurely dismissed claims of civilian casualties based on flawed reviews of evidence, for example by failing to conduct simple internet searches.¹⁷ As a result, thousands of instances of civilian harm have likely gone unacknowledged.

The U.S. government has also regularly failed to offer amends, the practice of recognizing and/or providing assistance to civilians that have been harmed in war due to the presence, activities, and

¹⁴ “110+ Organizations to Biden: End U.S. Program Of Lethal Strikes Abroad,” *American Civil Liberties Union*, June 30, 2021 [\[link\]](#).

¹⁵ Catie Edmondson, “Calling Civilian Casualties a ‘Failure,’ Democrats Urge Biden to Do Better,” *The New York Times*, January 20, 2022 [\[link\]](#).

¹⁶ “In Search of Answers: U.S. Military Investigations and Civilian Harm,” *Center for Civilians in Conflict and Columbia Law School Human Rights Institute*, February 13, 2020 [\[link\]](#).

¹⁷ Azmat Khan, Haley Willis, Christoph Koettl, Christiaan Triebert and Lila Hassan, “Documents Reveal Basic Flaws in Pentagon Dismissals of Civilian Casualty Claims,” *The New York Times*, December 31, 2021 [\[link\]](#).

operations of armed actors.¹⁸ Amends can take a wide variety of forms, ideally based on victims’ or survivors’ preferences and needs, and as deemed appropriate within the local culture, religion, and tradition. These include public or private acknowledgments of harm, formal apologies and explanations, and/or monetary or material assistance provided to an individual, family, or community. Amends can play an important role in expressing contrition and recognizing the agency and dignity of civilian victims; however, none of these practices can replace the lives of lost loved ones, and financial remuneration must never be understood as attempting to put a monetary value on life. *Ex gratia* payments are one form of monetary amends. In the 2020 National Defense Authorization Act (NDAA), Congress authorized \$3 million in annual funding for *ex gratia* payments for “damage, personal injury, or death that is incident to the use of force by the United States Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition,” with no geographic limitations.¹⁹ Yet in the Defense Department’s 2020 civilian casualties report to Congress, the Department confirmed that it did not offer or make any *ex gratia* payments during 2020.²⁰ This is despite the fact that Congress has repeatedly authorized funding for such payments, and given the large number of cases where the Department has confirmed civilian casualties and has the information necessary to contact survivors.

Finally, recent reporting has underscored longstanding shortcomings in the Executive Branch’s interpretations of its international humanitarian law (IHL) obligations. For example, *The New York Times* reported a series of secretive Special Operations strikes that apparently circumvented legal and policy civilian protection safeguards and raised alarm among Defense Department and Central Intelligence Agency (CIA) personnel, as well as U.S. military officials’ attempts to conceal a possible war crime after the 2019 Baghuz strike.²¹ If true, this report raises grave concerns about the U.S. military’s commitment to accountability and adherence to IHL, including the duty to investigate potential war crimes and hold responsible individuals to account.

Importantly, civilians that have been killed or injured in covert strikes carried about by the CIA virtually never receive investigations, acknowledgement, amends, or justice.²²

IV. Conclusion

After two decades of repeated civilian harm with little to no acknowledgement, amends, accountability, or learning, CIVIC urges Congress to use its oversight and legislative powers to chart a new path forward by:

¹⁸ See Madison Hunke, “Making Amends: A Guide to US Law and Policy on Post-Harm Amends,” *Center for Civilians in Conflict*, January 7, 2021 [[link](#)].

¹⁹ National Defense Authorization Act for Fiscal Year 2020, S.1790, 116th Cong. §1213 (2019).

²⁰ U.S. Department of Defense, “Annual Report on Civilian Casualties In Connection With United States Military Operations in 2020,” June 2, 2021 [[link](#)].

²¹ Dave Philipps, Eric Schmitt and Mark Mazzetti, “Civilian Deaths Mounted as Secret Unit Pounded ISIS,” *The New York Times*, December 12, 2021 [[link](#)]; 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](#)].

²² “Exception(s) to the Rule(s): Civilian Harm, Oversight, and Accountability in the Shadow Wars,” *Center for Civilians in Conflict, Center for International Policy, and Stimson Center*, November 19, 2020 [[link](#)].

- Demanding an end to the U.S. program of lethal strikes outside recognized war zones;
- Holding public hearings on U.S. civilian harm policies and practices to examine Executive Branch adherence to international humanitarian law, including investigations of and accountability for suspected violations; the effectiveness and shortcomings of Executive Branch policies to prevent civilian harm; the effectiveness and shortcomings of Executive Branch policies for responding to civilian harm, including thorough investigations, public acknowledgement of harm, and compensation and amends; the Executive Branch's failure to learn from civilian casualties in the context of twenty years of repeated harm; and progress towards the Department of Defense Instruction on Civilian Harm required by Congress and how that policy will address systemic shortcomings; and
- Conducting or commissioning 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 Executive Branch 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 Executive Branch 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.