

United States Senate

WASHINGTON, DC 20510

March 8, 2022

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

Secretary Austin,

We welcome your January 27th directive to the United States military to strengthen its efforts to prevent civilian deaths and to improve the way it investigates and acknowledges claims of civilian harm in U.S. combat operations. This announcement is an important acknowledgment of the U.S. military's significant shortcomings in how the Department of Defense investigates and responds to reports of civilian harm in Afghanistan, Iraq, Syria, and Yemen.

This review should include revisiting and thoroughly investigating credible reports of civilian harm, including those from Yemen. Only by gaining a more accurate picture of past incidents can the U.S. learn important lessons, institute needed structural reform, and begin providing redress to those harmed. We urge you to open new investigations into reports of civilian harm from U.S. military operations in Yemen raised by credible NGOs or external sources, to report publicly and transparently on your conclusions, and to take appropriate steps toward redress and accountability.

Evidence collected by researchers from Mwatana for Human Rights and the Columbia Law School Human Rights Clinic strongly indicates that 12 U.S. military operations between 2017 and 2019 tragically killed 38 civilians (including 13 children) and injured 7 more (including 6 children). The evidence is extensive - based on site visits, dozens of interviews, official government and medical records, photographs, and videos gathered by Mwatana researchers over a nearly four-year period in Yemen.

Despite this substantive evidence, U.S. Central Command (CENTCOM) acknowledged civilian deaths in only 2 of those 12 operations, and dismissed reports of more than two dozen other civilian deaths. Furthermore, CENTCOM did not acknowledge any civilian injuries from those 12 operations. For the civilian deaths acknowledged, the U.S. government has not apologized nor offered grieving families amends, including ex gratia payments authorized and appropriated by Congress, nor has it taken other steps towards accountability and redress. CENTCOM's internal review of these operations examined only internal military records and intelligence; there appear to be no interviews conducted to investigate these incidents.

We urge you to open new, fulsome investigations into these operations in Yemen, as well as any other operations that credible sources reported resulted in civilian harm. These investigations should include site visits and interviews with survivors and witnesses, whether conducted by the

U.S. military or a partner in Yemen, and should review information from additional external sources. Additionally, we ask that you provide greater transparency into current military review processes, including how reports from credible NGOs or external sources are received and reviewed.

In 2020, the U.S. Department of Defense made zero ex gratia payments in any of the countries where it carried out operations, though Congress allocated over \$3 million for such payments. This suggests a blanket policy of denying ex gratia payments to the victims' family rather than an individualized evaluation process and exploration of how commanders could work within challenging circumstances to provide these payments and other amends to families who have suffered losses. With the resources appropriated and discretion available to U.S. commanders, the military should provide ex gratia payments where appropriate to impacted families and issue a formal public apology, in accordance with the families' preferences.

Finally, the Department of Defense must do more to show it takes the prospect of accountability for civilian deaths and injuries with the seriousness it deserves. Following the August 29th U.S. airstrike in Kabul, the March 2019 airstrike in Baghuz, and recent New York Times reporting on civilian harm in Iraq, Syria, and Afghanistan, internal military review processes have revealed serious gaps in how the Department has ensured accountability. Moreover, keeping these reviews away from the public and redacting findings of independent reviews undercuts efforts to prevent future harm. When there is little policy change or accountability for repeated mistakes this grave and this costly, it sends a message throughout the U.S. Armed Forces and the entire U.S. government that civilian deaths are the inevitable consequence of modern conflict, rather than avoidable and damaging failures of policy.

The consequences of U.S. military operations in Yemen have been deep and long-lasting for scores of Yemeni civilians. We look forward to learning how you will work to provide transparency, accountability, and justice for those harmed.

Sincerely,



Christopher S. Murphy
United States Senator



Elizabeth Warren
United States Senator