



Mwatana
for Human Rights



COLUMBIA LAW SCHOOL

HUMAN RIGHTS CLINIC

November 30, 2021

The Honorable Lloyd Austin III
Secretary of Defense
U.S. Department of Defense
1400 Defense Pentagon
Washington, D.C. 20301

Re: Accountability for civilian deaths in Yemen resulting from U.S. military operations

Secretary Austin,

We are writing to you following the tragic August 29th U.S. airstrike in Kabul, Afghanistan that killed 10 civilians, including 7 children, as well as the November 13th *New York Times* investigation into civilian deaths in Baghuz, Syria. We believe that the U.S. military's response to civilian deaths in Afghanistan, Syria, and also in Yemen, show significant shortcomings in how the Department of Defense investigates and responds to reports of civilian harm.

Following the August 29th strike, the Pentagon initially insisted that the operation legitimately killed only military targets. However, following detailed external investigations, based on witness interviews and other evidence, you acknowledged civilian deaths and made a formal, public apology. We believe these steps to be the minimum appropriate response following the tragic civilian deaths. While those families continue to seek, and deserve, additional measures, Yemeni civilians killed and injured by the U.S. military have not received even this response.

Meanwhile, military officers and at least one military lawyer raised serious concerns that U.S. airstrikes in Baghuz, Syria, killed a large number of civilians, including women and children, and that the strikes were a potential war crime. However, the *New York Times* reported that the Department of Defense never seriously investigated the strike, and indeed that efforts to prompt more detailed investigations were ignored, leading to serious failures of accountability.¹

¹ Dave Phillips and Eric Schmitt, "How the U.S. Hid an Airstrike that Killed Dozens of Civilians in Syria," *The New York Times*, November 13, 2021.

Based on these events, and the potential continuation of U.S. drone strikes in Yemen under the Biden Administration, we seek urgent review and follow up action regarding Yemeni civilian harm caused by U.S. military operations.

Our organizations, Mwatana for Human Rights and the Columbia Law School Human Rights Clinic, previously submitted reports of civilian harm in 12 U.S. military operations that occurred between 2017 and 2019. Evidence collected by Mwatana's researchers strongly indicates that U.S. military operations tragically killed 38 civilians, and injured 7 more, including 13 children killed and 6 injured. Our evidence also shows that the operations caused other civilian harm, including damage to civilian homes and other property essential for their livelihoods, as well as long-lasting psychological harm. Finally, we found that some strikes killed or injured members of the Yemeni army, a force allied with the U.S. government.

In a written response, on April 20, 2021 U.S. Central Command (CENTCOM) acknowledged just one civilian death resulting from a January 22, 2019 drone strike and reiterated its prior acknowledgment of 12 civilian deaths.² No civilian injuries were acknowledged in the 10 strikes and two ground raids documented. To date, the U.S. government has not apologized and has not offered grieving families amends, including *ex gratia* payments, for the lives it has acknowledged taking in error, nor has it taken other steps towards accountability and redress.

We ask you to take the following steps:

- 1. Issue a public apology for civilian lives the U.S. military has already acknowledged taking in Yemen**

In your public statement on September 17th, you acknowledged U.S. responsibility for civilian deaths in the August 29th strike in Kabul, Afghanistan. You offered your deepest condolences to the surviving family members, referred to Mr. Zemari Ahmadi by his name, and clearly stated that there was no connection between him and ISIS-Khorasan, as the U.S. military initially claimed. This type of clear, unequivocal acknowledgment and apology that refers to those harmed by name and acknowledges their civilian status is deeply important to family members of all those killed in U.S. operations, whether they be in Afghanistan or Yemen.

Where the U.S. has acknowledged the death of Yemeni civilians, it did not identify any of the civilians killed by name, age, or gender. No formal apology was issued for the 12 civilian casualties that U.S. Central Command (CENTCOM) acknowledged as a result of the January 29, 2017 raid in Al Bayda, Yemen.

² Response from U.S. CENTCOM to Mwatana and the Columbia Human Rights Clinic, April 20, 2021, available at: https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/centcom_mwatana_response_4-20-2021.pdf

In response to our organizations' submissions, CENTCOM acknowledged mistakenly killing a Yemeni civilian as follows:

“USCENTCOM acknowledges one civilian casualty in a strike on January 22, 2019, in Al Bayda, Yemen. The command determined that condolence payments were not appropriate.”

There was no apology or acknowledgment of the victim. We believe the civilian whose death CENTCOM admitted was Saleh Al Qaisi, a 67-year-old civilian man visiting his family in Yemen at the time of the strike. He worked in Saudi Arabia to support his extended family and had five sons and one daughter.

We believe that Yemeni lives, and Yemeni families, deserve acknowledgment, recognition for their loss, and apology.

We ask that you issue a meaningful apology and acknowledgement to families whose loved ones the U.S. military has already admitted to harming in Yemen.

2. Open new investigations into the impact of U.S. operations in Yemen, including reports of civilian harm provided by our organizations and others

Evidence we previously submitted on 12 U.S. military operations that occurred in Yemen between 2017 and 2019 strongly indicates that U.S. military operations tragically killed 38 civilians and injured 7 more. Our submissions, which totaled more than 150 pages, were based on a significant body of evidence, including 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.

Upon initial review, CENTCOM acknowledged only one additional civilian death outside of the 12 previously acknowledged. The command acknowledged no injuries from these 12 incidents. In its response, CENTCOM stated that in the remaining incidents “U.S. forces successfully struck or raided a valid Al Qaeda target.”

Following the August 29th Kabul airstrike, U.S. commanders deemed the mission successful in striking an ISIS-K target, and reported no civilian casualties. Yet detailed ground investigations by news outlets, including verification with Zemari Ahmadi's employer, a visit to his home, which was targeted in the incident, and interviews with members of his community clearly established that he was a civilian engaging in civilian activities that were gravely misinterpreted

by the U.S. military. Only after a subsequent review of these detailed facts from the ground did the Department of Defense acknowledge its error.

Similarly, we believe there is a need to open new investigations into the civilian harm reports we provided, based on Mwatana's detailed investigations in Yemen. As we previously noted in our public response to CENTCOM's initial findings, we believe the written response CENTCOM shared did not provide adequate information to address the serious findings we reported.³ Further, the steps CENTCOM described were inadequate measures to assess civilian harm accurately. In particular, CENTCOM noted that their review only looked at military records and intelligence; there appear to be no interviews conducted to investigate these incidents. Therefore, we ask that you open new investigations into these reports, which should include interviews with survivors and witnesses, whether conducted by the U.S. military or a partner in Yemen. We also recommend the Department of Defense ensure that any investigation has access to sufficient resources, including adequate personnel, to meaningfully seek, receive, and evaluate all relevant information.

3. Provide greater transparency, including more detailed information, regarding U.S. military strikes that led to civilian casualties in Yemen

In our organizations' November 4, 2020 submission to CENTCOM, we requested more information pertaining to 12 military operations carried out by U.S. military forces in Yemen between 2017 and 2019.⁴ Despite the severe impacts of these operations, CENTCOM chose not to answer the majority of our questions with information specific to each incident.

The following questions we previously posed remain unanswered, and we ask for answers as part of a broader Department of Defense commitment to transparency.

For each incident we reported, we asked:

1. What is your assessment of the total number of people killed and injured in each operation? How did the U.S. military classify each of the people killed or injured: as civilians or combatants? Does the U.S. acknowledge killing children and women in this incident? If so, how many? How did the U.S. classify the status of these children and women?

³ U.S. Military Admits Killed Civilian in Yemen after NGO Investigations, but Refuses to Provide Remedy, Mwatana for Human Rights and Columbia Law School Human Rights Clinic press release, June 3, 2021, available at: <https://mwatana.org/en/us-military-admits-killed-civilian-in-yemen/>.

⁴ Correspondence between Mwatana and the Columbia Law School Human Rights Clinic, and U.S. CENTCOM, is available as appendices in *Death Falling from the Sky: Civilian Harm From the United States' Use of Lethal Force in Yemen*, February 23, 2021, available at: <https://mwatana.org/en/death-falling-from-the-sky/>

2. What steps did U.S. forces take before and during this specific incident to mitigate civilian harm? Did U.S. forces incorporate an assessment before conducting the operation as to whether capture of any identified target was feasible?
3. What type of investigation was carried out to ensure U.S. military action complied with international law? What steps were taken to gather information, what were the results and what steps were taken, if any, to discipline or hold accountable individuals found to have violated rules of engagement or international laws and standards in these operations?

In addition, we would appreciate understanding:

4. What additional information did you consider apart from internal military sources, if any, when evaluating whether civilian harm occurred?
- 4. Make amends including *ex gratia* payments, or reparations where appropriate, to survivors and victims’ surviving family members; ensure accountability for civilian harm caused in violation of international humanitarian law and international human rights law.**

Given the discretion U.S. commanders have to provide *ex gratia* payments where appropriate, we ask you to address the harms caused by U.S. military operations in Yemen by making *ex gratia* payments to impacted families, as authorized by the U.S. Congress, as well as other appropriate amends in accordance with the families’ preferences. Such measures should not preclude possible subsequent reparation payments following any legal investigations.

In its April 2021 letter, CENTCOM indicated that it would not provide any condolence payment to the families of those impacted by U.S. military operations in Yemen.⁵ CENTCOM representatives implied that the command would not provide condolence payments for the civilian harm out of concern that this would benefit “foreign terrorist organizations.” However, there was no explanation or evidence to suggest why condolence payments to civilian families would support terrorism. Similarly, the U.S. said it would not provide amends for deaths that occurred during the January 2017 raid “in part” due to civilians’ presence at an “Al Qaeda compound.” However, Mwatana visited the village where the raid occurred two days afterward. Rather than an “Al Qaeda compound,” Mwatana found destroyed homes, traumatized villagers, and families who described being asleep in their homes, in the middle of the night, when the raid

⁵ Response from U.S. CENTCOM to Mwatana and the Columbia Human Rights Clinic, April 20, 2021, available at: https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/centcom_mwatana_response_4-20-2021.pdf

began. Additionally, a May 2017 raid on the Al Athal village of the Al Jubah district of the Marib governorate resulted in the death of five civilians.

In 2020, the U.S. Department of Defense made zero *ex gratia* payments in any of the countries where it carried out operations. This suggests a sweeping 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 suffered these losses.

We ask that you, and those under your command, do your utmost to make amends to families of those killed by U.S. military operations in Yemen, as well as injured survivors.

Finally, the Department of Defense should 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, an internal military review failed to recommend accountability measures or broader reforms. The recent *New York Times* report on civilian deaths in Baghuz, Syria indicates serious gaps in how the Department has ensured accountability. These events have raised serious concerns that there may be significant shortcomings in how the military responded to reports of civilian harm from Yemen, as well.

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,

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