

Military Assessments, Investigations, and Tracking of Civilian Harm

NGO Recommendations for DoD Policy on Civilian Harm

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Summary

The act of investigating civilian harm carries significant value for civilians, the public, and for the military itself. Seen from the perspective of the civilians who have lost loved ones or suffered other forms of harm, a military investigation that establishes how somebody died or was injured, or merely acknowledges their death or injury at all, can partially restore agency and dignity to survivors and those who would otherwise remain anonymous or uncounted. Families of civilians killed in alleged U.S. strikes repeatedly tell human rights investigators that they want to be treated with dignity, and to receive acknowledgment and recognition of the harm they have suffered. An investigation can also lead to some form of remedy for those injured or left behind, in the form of material remuneration or even an apology - whether death occurred as a result of otherwise lawful military action, or not. The act of seriously investigating civilian casualties and other civilian harm can enhance public perceptions of legitimacy and accountability for harm incurred by a military, even when an investigation yields an inconclusive result. For military commanders, an investigation can help to ensure order and discipline, and provide operational insights in order to take appropriate remedial action, to include preventing mistakes from recurring – or to exonerate the innocent of wrongdoing. (Investigations into wrongdoing are also required as a matter of military law and regulation.)

This paper provides recommendations that are grounded in the objectives of ensuring proper recourse for civilians and their communities, and preventing civilian harm by understanding how and when it happens; but does so on the basis of the assumption that the military itself may find value in an effective investigations process for its own reasons. While the paper offers no position on the “duty” to investigate under international law; its position is that the military should, at minimum, assess each reported case of civilian harm.

Note on the U.S. Military’s Investigative Process

For purposes of discussion, this paper considers that a U.S. military inquiry into civilian harm, to include civilian casualties and other forms of harm,¹ broadly comprises four main process stages:

1. **Discovery and Reporting:** The discovery and reporting of harm, usually recorded or documented through one or more forms of internal or external reporting protocols;
2. **Assessment:** A preliminary inquiry or assessment of the known facts to determine if further investigation or action is needed (e.g. a Civilian Casualty Assessment Report or Preliminary Inquiry);
3. **Investigation:** A more formal investigation, commonly an administrative investigation and, occasionally, a criminal inquiry; and
4. **Outcome:** The conclusion and outcome, including determination and fulfillment of the most appropriate next steps based on the findings of the investigation, e.g. to remedy harm, to make operational

¹ Recommendations compiled by Daniel R. Mahanty, Director of U.S. Program, Center for Civilians in Conflict (CIVIC), drawing on findings from a joint study with Columbia Law School Human Rights Institute (HRI), and informed by ongoing NGO dialogue with counterparts at the U.S. Department of Defense (DoD). These recommendations were submitted to DoD in November 2019. The final report from the CIVIC-Columbia HRI study, “[In Search of Answers: U.S. Military Investigations and Civilian Harm](#),” was published in February 2020.

adjustments, to analyze for tracking purposes, and/or to incorporate lessons learned.

Each stage is important to the next, and for assessing the character and outcome of the process as a whole. However, not every inquiry will cover each stage. For example, not all inquiries will include a more formal investigation and may instead proceed from the preliminary assessment of facts directly to the acknowledgement of harm. Importantly, an effective policy will ensure that each phase of the process is well-planned and adequately resourced.

While military regulations establish some basic requirements and guidelines for investigations, they are largely conducted according to unit-specific Standard Operating Procedures (SOPs) or a commander's specific orders. Some elements of investigations are mandatory, while others may derive from sources of guidance or practice that may be discretionary. A commander may choose to initiate an investigation following or on the basis of an initial report, a preliminary inquiry, or a completed assessment. The nature of some incidents may determine the kind of investigation required. For example, an incident involving a potential violation of criminal law will often trigger a mandatory criminal investigation. However, absent suggested criminal conduct, U.S. military procedures afford a wide degree of latitude to commanders in determining what types of incidents to investigate and how. Commanders "have inherent authority to investigate any matter under their responsibility, unless otherwise prohibited or limited, if undertaken for the purpose of furthering the good order and discipline of their command."²

Administrative investigations are the primary investigative tool available to U.S. commanders, and commanders have commonly turned to them to look into many different incidents and issues.³ Army regulations provide guidelines for the kinds of incidents that may be investigated using the administrative investigation process. Because of its flexibility, the army's administrative investigation, known by its short-hand moniker "AR 15-6," has been used across operational theaters as the process of choice for investigating a range of incidents and for multiple purposes, to include civilian casualties. Since 2014, however, the military has more commonly employed an "assessment" stage as a process step for specific operational task forces in at least two areas of operations: Operation Inherent Resolve (OIR) operations in Iraq and Syria, and across AFRICOM as a whole. Such assessments replace certain functions of the preliminary inquiry, or even the investigation, and are meant to provide an initial appraisal of information and fact-gathering short of a full formal administrative and/or criminal investigation. These assessments very rarely proceed to an administrative investigation.

Civilian Harm Tracking vs. Investigations

Often times, assessments and investigations may complement the process of Civilian Casualty (CIVCAS) Tracking, sometimes called Civilian Harm Tracking, which is defined as an internal process through which a military or peacekeeping operation gathers and analyzes data on civilian harm in its area of responsibility (i.e. caused by its operations or by others) and then uses that data to improve operations and properly respond to civilian harm. This is different from civilian casualty recording undertaken by NGOs and other outside organizations. Civilian harm tracking enables a force to take steps to better prevent, mitigate, respond to, and learn from civilian harm.

There is no one "ideal" operational model for tracking civilian harm. CIVCAS Tracking may take place as one

² U.S. Army Course on Administrative Investigations, Overview, p. 1.

³ There is no DoD-wide joint publication on administrative investigations, except for DoD Instruction 6055.7 which deals with accidents, including friendly fire, aircraft accidents, and accidental injuries to DoD personnel. Each of the major branches of the U.S. military has a service regulation and procedures governing the administrative investigation. Administrative investigations overseen and conducted by Navy personnel (including the Marines) are conducted pursuant to the Manual of the Judge Advocate General, or "JAGMAN," often through a "Command Investigation." The Air Force, unlike the Army and Navy, does not maintain a general regulation or instruction laying down procedures for administrative investigations, but rather Air Force Instruction 90-301 states that commanders should use the inherent authority of command to authorize administrative inquiries.

function within a team charged with civilian harm tracking and response, such as a “Tracking, Analysis and Response Cell,” or in support of a team at a higher level of headquarters that also coordinates a broader range of activities related to prevention and response (sometimes called a Civilian Casualties Mitigation Team or CCMT). Tracking may also be conducted by a dedicated team or cell, sometimes called a Civilian Casualty Tracking Cell – or even by one individual – which performs a narrower range of activities related to tracking, and learning from incidents of harm, whereas other operational components retain the lead on other aspects of response and prevention, using the information provided by the tracking cell. Tracking can be done by a team of representatives from different operational functions within a force headquarters that do not sit together as a unit and are brought together when incidents of civilian harm occur. This may be the case in operations with low operational tempo or few reports of civilian harm.

Civilian casualty tracking does not obviate the need to ensure that reports of civilian casualties are reported to the commander, and where necessary, investigated by competent investigative bodies; nor does it need to, or should it, serve every function of response (e.g. administering condolence options).

Recommendations

1. Civilian Casualty Assessment Reports (CCARs) vs. AR 15-6: Ensure that the CCAR process (when used in lieu of an investigation) includes witness interviews, direct engagement with victims, disclosure of results and serves to inform lessons-learned that would otherwise be gained through administrative investigations.

The CCAR was developed to allow the military to process civilian casualty allegations occurring in greater numbers, from a diverse array of external sources, and at a higher tempo. The CCAR process does, at minimum, ensure that each internal and external claim of civilian casualties is reported through internal channels and assessed, i.e. no report is dismissed without, at minimum, a basic assessment. (Concerns related to the considerable threshold of proof required to assess external reports as “credible” have been relayed often and in detail.) But CCARs cannot replace certain functions of a more formal investigation, such as a detailed description of “what happened” during an incident (i.e. they are by nature less thorough), nor do they include any after-action recommendations, possibly making near term corrections or the identification of lessons learned less likely. Most problematically, as currently designed, the CCAR offers no real opportunity to victims to participate in the investigative process, or to be informed of the results of an investigation, other than possibly having harm acknowledged through the periodic disclosure of civilian casualty estimates (such as the monthly report in OIR or the annual report to Congress). Even so, nothing inherent to the CCAR should limit the ability of the military to provide a response in a confirmed civilian casualties incident provided certain procedural steps are incorporated, such as witness interviews and the release of results.

| Civilian Casualty Assessments vs. AR 15-6 investigations | |
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| CCARs | AR 15-6 |
| Less formalized process with lower level of quality assurance, although guided by standard operating procedures | More formalized as a process, with army regulation governing its conduct and standardized procedures |
| Quicker process, more adaptable to higher tempo situations, and potentially quicker release of information | Slower, but more deliberate process |
| No requirement for formal appointment order for investigating officer; often conducted by standing cell or unit | Appointment order provides additional, standardized or customized guidance to investigator |
| Focused on factual findings, no specific requirement for after-action recommendations | Includes not just findings but recommendations for after-action |
| Less well-suited to lessons learned | Possibly better suited to lessons learned and future civilian harm mitigation |
| Little valuable detail for survivors other than basic acknowledgement of harm | May contain important facts and details that are important to family members and other survivors |

2. Ensure the availability of adequate complaints mechanisms, and that the complaints mechanism is seen as a critical component of an effective investigations process

The U.S. military, working with other civilian government agencies and local governments, should take the appropriate measures to ensure that an effective complaints mechanism for reporting claims of civilian harm exists in all operational contexts, and takes into account the security, privacy, and cultural concerns that may affect the complaints process.⁴ The military should proactively engage with other militaries (particularly in multi-national operations), UN bodies, international monitors, NGOs and other civil society organizations, and the media to ensure channels for receiving and analyzing reports of civilian casualties are open and active.⁵ The availability of reporting channels is especially important in air-intensive campaigns or in cases of drone strikes, where direct channels for civilians to directly report harm to the government may be less available or where reporting is complicated by security or access concerns. At present, avenues for direct engagement between civilians and the military are extremely limited in Iraq and Syria, greatly reduced in Afghanistan, and are effectively non-existent in Yemen and Somalia. Moreover, the nature of multinational coalition operations makes attribution for an airstrike to any one nation, and therefore making a complaint, all the more difficult.⁶

⁴ ICRC and Geneva Academy, “[Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice](#),” September 2019, Guideline 5, Commentary 98: “Procedures and channels of communication that ensure the safety, security, and privacy of complainants should be established. Challenges such as language barriers, and other social and cultural factors that may affect the ability of individuals or bodies to bring an allegation should be anticipated, with possible solutions provided. The sharing of good practices between units, services, and militaries is valuable in this regard.”

⁵ Ibid, Guideline 5, Commentary 100.

⁶ Sue Eedle et al., “[Civilian Deaths in the Anti-ISIS Bombing Campaigns 2014–2015](#),” *Minority Rights Group International*, November 2015, p. 3, 13. See also: Ole Solvang et al., “[All Feasible Precautions? Civilian Casualties in Anti-ISIS Coalition Airstrikes in Syria](#),” *Human Rights Watch*, 24 September 2017, p. 17.

3. Recognize shortcomings in relying on internal records during the assessment and investigation, and endeavor to facilitate receipt of external information from a diverse array of sources (including by releasing strike data)

Advancements in technology have enabled military viewers to see highly magnified images, even from high altitudes. Yet overhead surveillance, while an important resource for identifying harm, is nonetheless subject to significant limitations, including the inability to see from different angles or to assess damage below an opaque surface like a collapsed roof. An internal U.S. government study revealed how initial air battle damage assessments (BDA) in Afghanistan failed to identify civilian casualties in 90% (19 out of 21) of cases. Civilian casualties were only subsequently identified through ground force investigations.⁷ Overhead imagery by itself can tell very little about the identity or combatant status of an individual on the ground who has been killed or injured without corroborating evidence, exacerbating concerns about the risk of positive identification errors. Even so, in OIR the U.S.-led Coalition relied almost exclusively on remote analysis such as post-strike video assessment.⁸ Consequently, across operations where this is the case, the military may not identify, and thus neither report nor investigate, a number of civilian casualties and other civilian harm incidents.

External reports and sources may bring new details to light when the U.S. military does not have access to a strike site, or where its own logs do not record a strike at the site of the incident. External reporting, particularly when it comes directly from civilians, may also provide crucial information about the status of the individual or individuals harmed, e.g. that they were a civilian, or of the site targeted, e.g. that it was a protected civilian object such as a place of worship or a house. As such, remote analysis should be supplemented during assessments and investigations by placing greater value on external information and by taking additional investigative steps, such as conducting outreach to humanitarian and human rights organizations and attempting to interview witnesses or survivors who are willing to do so. Releasing geo-locational data about operations (as has been the case in OIR) will also enable external sources to be more effective in providing useful information about civilian casualties and other civilian harm to the U.S. military.

4. Endeavor to conduct witness interviews during assessments and investigations, where necessary overcoming obstacles to conventional forms of communication

Interviews with survivors and witnesses of civilian harm incidents can be crucial to assessing a civilian casualty/harm allegation or as a form of evidence during an investigation. Testimony from civilian witnesses, obtained through interviews, can help establish the facts and circumstances of a civilian harm incident during an assessment or an investigation. Interviews can help identify a victim, or help establish an individual's status, i.e., whether they were a civilian, a civilian directly participating in hostilities, or a combatant. Interviews can also help assess other forms of civilian harm, such as damage to or destruction of a civilian object.

Unlike site visits, interviews can be conducted without needing to physically travel to the site of a civilian casualty/harm incident, but other barriers to communication, such as language or technology, may nonetheless create challenges for interviewing civilians. It may also be difficult to communicate with civilians due both to a lack of connections to the civilian population or security concerns, particularly when witnesses are located in remote or hostile environments. Importantly, civilian witnesses, already in grave danger by virtue of living in a conflict zone,

⁷ Christopher D. Kolenda et al., "[The Strategic Costs of Civilian Harm: Applying Lessons from Afghanistan to Current and Future Conflicts](#)," *Open Society Foundations*, June 2016, p. 54, citing an unpublished study carried out by Dr. Larry Lewis.

⁸ Samuel Oakford et al., "[Death in the City: High Levels of Civilian Harm in Modern Urban Warfare Resulting from Significant Explosive Weapons Use](#)," *Airwars*, May 2018.

may similarly be placed at even greater risk if they are seen speaking with the U.S. military.⁹ Given these difficulties, the U.S. military may seek to obtain information about an allegation or report of civilian harm from other sources. One alternative method may be speaking by phone, a process specifically envisaged in Army Regulation 15-6,¹⁰ although even the use of phones can be dangerous in places like parts of Somalia, where Al Shabaab reportedly monitors the use of cellular communications.

In spite of the risks and challenges, witnesses in many conflict areas have expressed the desire to bring information to the U.S. government for its consideration in the assessment and investigation of civilian casualties claims, and the government should endeavor to make sure they can be heard. Options for conducting interviews in difficult contexts include conducting interviews in discrete locations, working with willing third-party researchers who can more safely reach and speak with witnesses, bringing witnesses to another site, and conducting interviews by video link or other form of secure communication. Moreover, the need for such options should be anticipated and prepared during pre-operation planning stages.¹¹

5. Establish and clarify parameters for conducting site visits

Given the known gaps of conducting assessments on the basis of overhead surveillance, site visits may enable a more accurate and complete record of findings and facts about a specific incident. Personnel conducting a site may discover casualties or substantiate a claim of civilian harm, where a building has been damaged or destroyed and there is uncertainty as to who was in the building at the time of the attack, and who else might be impacted by the strike and its aftermath. Site visits may be necessary during an investigation for securing or collecting physical evidence, taking measurements, or taking photographs or video that can help to determine the facts of an incident, the extent of harm, whether or not any violation of law or regulation occurred, and any lessons that can be drawn or patterns discovered. Although security and resource constraints must be taken into consideration, the military should clarify in Command-specific SOPs the parameters within which a site visit will be conducted, and what resources will be made available to do so. These parameters may be based on the potential value of obtaining forensic or photographic evidence from a site needed to fully investigate; the accessibility of a site; or the existence of contradictory, but compelling, accounts or records (e.g. NGO reports or investigations). Of note, of the over 220 publicly available AR 15-6 that CIVIC and Columbia Law School reviewed that covered the period from 2003-2014, civilian casualties were substantiated and acknowledged in 80% without a site visit. In these cases, the lack of a site visit did not prevent the U.S. military from finding there was sufficient evidence to recognize that troops did cause civilian harm.

6. Systematize collection and dissemination of lessons learned during, and after operations, and institute civilian harm tracking and analysis to address patterns

Investigations into civilian harm can help identify gaps, good practices, and lessons learned in civilian harm prevention and mitigation, ultimately serving to prevent such incidents from recurring in the future. However, even when investigations identify specific lessons, challenges remain in ensuring that these lessons are fed back into the planning and conduct of concurrent and future operations, both within and across theaters. A 2011 review of the Joint Center for Operational Analysis (JCOA) examined the institutionalization of CIVCAS lessons learned by the U.S. military into Afghanistan.¹² It found that, while units did learn and adapt to their operating environments, “their

⁹ ATP 3.07.06, para. 5-84.

¹⁰ Army Regulation 15-6, 5-2.

¹¹ Sarah Knuckey et al., “[Pentagon Admits Major Investigation Flaw: They Rarely Talk to Air Strike Witnesses or Victims](#),” *Just Security*, 29 June 2017.

¹² U.S. Joint Forces Command, Joint Center for Operational Analysis, “[Adaptive Learning for Afghanistan: Final Recommendations](#),” 10 February 2011.

experiences, best practices, and lessons were not always shared within theater.”¹³ It concludes that “lessons learned organizations did not appear to make a significant contribution to in-theater adaptation.”¹⁴ Moreover, although many template appointment orders include instructions to include any recommendations for tactical adjustments or course-corrections, individual investigating officers may not be able to identify patterns of harm. As such, the military should ensure that each campaign or operation includes the capability to track and analyze incidents of harm, while also commissioning or conducting periodic independent reviews and analyses. Civilian harm tracking and analysis should include not only civilian casualty incidents but also damage to and destruction of civilian objects and with a view to understanding its direct and indirect impacts.

7. Ensure that commander’s intent to report and investigate all civilian casualties, and the purpose of investigations is clear

“Commander’s intent” is important to establishing a uniform understanding within a unit of how information about civilian casualties should be reported and investigated. Commanders may formally clarify their intent by issuing specific orders, directives, or instructions that clarify the degree to which they place priority on reporting and investigating civilian casualties and other civilian harm incidents. Conversely, the “normalization” of civilian harm within a command environment may actually stifle internal reporting or the initiation of investigations. Commanders may be able to manage the tension between the perception of investigations as a “witch hunt” and their value to operations by demonstrating fairness and equanimity in the process or by emphasizing the value of investigations to learning. At the same time, while characterizing the value of investigations in terms that appeal to those inside the military may increase the likelihood of investigations, overstating the extent to which the explicit purpose of investigations is to exonerate soldiers may create the risk of shifting the result of investigations too far away from accountability. Commanders should also control for the risk of bias by appointing investigating officers with no relationship to the incidents under investigation, and/or ensuring that assessment teams and officers are not involved with the operations themselves.

8. Following up and responding to investigations

The benefits of conducting an assessment or an investigation will fall short as long as nothing results that benefits those harmed. When possible, assessments or investigations that result in findings of civilian harm should be connected to condolence options, to include basic acknowledgements and apologies, and the results should be disclosed to the appropriate parties.

9. Ensure that investigating officers (IOs) are appropriately trained to investigate civilian harm, and ensure that civilian casualties cells are adequately resourced with technical expertise and resources

Civilian casualty “cells” that conduct assessments and IOs carrying out 15-6 investigations into civilian harm do not always have experience in, or specific skills for, conducting investigations – let alone investigations into civilian harm specifically. Effective assessments or investigations may require language skills or specialized technical skills such as imagery analysis or geospatial analysis. Although commanders may face resource constraints, the Pentagon should anticipate and plan for the need to have experienced staff who can conduct effective investigations. Although public affairs remains an important component of an effective civilian harm response, assessments and investigations should not be managed or overseen by public affairs offices. More broadly, ensure resources for tracking, assessment and investigations are allocated and these capacities are stood up from earliest stages of planning.

¹³ Ibid, p. 5.

¹⁴ Ibid, p. 5.

10. Voluntarily disclose the status, results, and reports of assessments and investigations in real time in local languages

Transparency of process, and regular updates on the progress of an investigation can be important for impacted individuals, families, and communities, and it may be appropriate to disclose more information to those particularly impacted than might be possible to release to the public at large. More broadly, transparency to the public about investigative or assessment steps taken and the results of investigations, including civilian casualty counts and levels of certainty, is important for the U.S. military's legitimacy and external accountability, and can help to show how seriously it takes reports and allegations of civilian harm. Conversely, the inevitable discovery of efforts to cover up incidents may lead to further mistrust, both on the part of local populations and the broader international community. Currently, requests through the Freedom of Information Act (FOIA) which represent the primary mechanism through which the military releases information about specific investigations are subject to extensive delays.

11. Ensure internal and external interoperability of the investigations process

In most operations, the military is likely to work with other stakeholders, to include partner militaries or other U.S. government agencies. Military leadership should ensure that protocols for responding to civilian casualties and other civilian harm incidents, to include investigations, are developed within partnership and coalition arrangements, and should also ensure that the role of U.S. agencies in the investigative process (e.g. arranging witness interviews or contacting survivors) is addressed in procedure.

References and further reading on Military Assessments, Investigations, and Tracking of Civilian Harm

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