

U.S. DEPARTMENT OF DEFENSE POLICY ON CIVILIAN HARM

Civil Society Guidance for a Model Policy

March 2020

This paper sets out priorities and expectations from humanitarian and human rights non-governmental organizations for the forthcoming U.S. Department of Defense (DoD) policy on civilian harm and sets forth critical elements of a comprehensive policy on civilian harm in U.S. military operations and security partnerships.¹ This paper is supplemented by detailed recommendations on the critical requirements highlighted herein.²

DoD's practices to minimize civilian harm have improved over time, thanks to hard work within the Pentagon and Commands, Congressional oversight, investigative media reports, and civil society advocacy. We have seen improvements to aggregated public reporting of the Department's own estimates of civilian harm; greater detail in public reporting from certain components and operations; and initiative to undertake internal reviews of process and practice concerning civilian harm. Even so, there remains too little willingness to engage with external sources of information and reporting, and even less so directly with affected civilians, on cases of civilian harm. In addition, even when the U.S. military establishes good practice — for example, to minimize, track, and respond to civilian harm — there have been limited efforts to sustain, systematize, and replicate that good practice over time and across operational theaters.

The forthcoming DOD Instruction (DOD-I) presents a unique opportunity to affirm and strengthen the U.S. military's commitment to minimize and account for civilian harm, its implementation of its obligations under international humanitarian law (also known as the law of armed conflict), its willingness to rectify shortcomings in current policies and operations, and its interest in demonstrably and continually taking practical steps to ensure the protection of civilians in all phases of military operations.

Overarching Requirements

It is critical that the DOD-I include an overarching message — for U.S. military forces and for the public — that taking precautions to minimize harm to civilians is a legal obligation and that minimizing and responding to harm caused by U.S. military operations is a priority and an honorable, independently worthwhile objective among other U.S. policy goals. It can do so by ensuring the following:

1. **Clear Intent** that policy, strategic, legal, and institutional interests are served by minimizing civilian harm in U.S. military operations and security partnerships, a commitment to effectively respond to civilian harm where it occurs, and taking comprehensive steps to ensure the protection of civilians in armed conflict;
2. **Clear Roles and Responsibilities** and delegation of them, as well as clear scope of application to all DoD personnel;

¹ The development of comprehensive DoD policy on civilian harm is pursuant to Section 936 of the FY19 National Defense Authorization Act (NDAA) enacted by Congress in 2018.

² See InterAction, "[Civil Society Guidance for a Model Policy: DOD Policy on Civilian Harm.](#)"

3. **Clear Definitions** such as “civilian” and “non-combatant,” consistent with the law of armed conflict, to reduce the likelihood that the spirit of the policy will be undermined by semantics or inconsistent interpretation;
4. **A Higher Standard Through Uniformity (with Adaptability)**, reflecting consistent, systematically applied, and uniform guidance or protocols that elevate the overall performance of each military component, while allowing flexibility to actively encourage military forces to pioneer approaches that improve overall outcomes for civilians;
5. **Recognized Value of External Sources**, including affected communities, the media, humanitarian and human rights organizations, and international organizations, and the importance of creating effective communication channels with these external sources;
6. **Candid Assessment of Resource Requirements**, so that the policy can be comprehensively and robustly carried out without resource constraints, including for example with regard to skills requirements for staffing offices and cells charged with civilian harm tracking and analysis, engagement with outside parties, and ensuring systematic lessons learned exercises;
7. **Key Considerations for Standard Operating Procedures** (required or suggested elements) to ensure consistency in implementing the DOD-I while enabling operation-specific flexibility in the application of its requirements.

Minimizing and Mitigating Harm Across Military Operations

The **optimal DOD-I** should set forth an explicit objective of minimizing civilian harm, including direct harm resulting from hostilities as well as direct and indirect harm arising from damage to civilian property and assets, public services, and critical infrastructure. It should make explicit the critical role and supporting functions of civilian objects for civilian populations. It should delineate steps to anticipate potential harm and spare civilian lives and objects throughout military planning and decision-making processes.³ At minimum, the Policy should include the following elements:

1. **Protection of civilians and civilian objects in planning and preparation:** Set forth an explicit objective of minimizing civilian harm. This objective will differentiate it from procedures that currently exist. The DOD-I should systematize and reinforce measures to minimize and mitigate civilian harm in military decision-making and operational planning. This should include specific guidance to both minimize and mitigate physical harm during and from hostilities as well as harm resulting from disruptions to or the destruction of civilian objects, including critical infrastructure systems, public services, and private property. Minimizing civilian harm should be an objective across all conflicts regardless of type, duration, and level of intensity. Steps to minimize harm should include avoiding the use of indiscriminate weapons and munitions, precautions in attack, as well as well-informed analysis, strong preparation, and a command environment which prioritizes minimizing civilian harm.

³ See NGO Recommendations for DoD Policy on Civilian Harm, “[Protection of Civilian Objects including Critical Infrastructure in U.S. Military Operations](#)” and NGO Recommendations for DoD Policy on Civilian Harm, “[Displacement and the Protection of Civilians in U.S. Military and Partnered Operations](#).”

2. **Analysis of civilian patterns of life and civilian objects:** Take steps to more systematically integrate into operations and targeting decisions accurate analysis of civilian pattern of life, segments of society that are particularly vulnerable, as well as the presence of civilian objects critical to civilian life, including but not limited to medical care and educational facilities. In urban settings, the interconnected character of urban systems and knock-on effects of the destruction of critical infrastructure systems should be taken into account. The Policy should call attention to the possibility of errors, including positive identification errors, and to steps commanders can take to reduce their prevalence.
3. **Timely, adaptive responses by US and partner forces to civilian harm escalations:** Given the often significant lag between allegations and assessments, commanders should ensure timely information feedback loops on civilian harm in ongoing operations, including dynamic strikes, and timely responses to local escalations in credibly reported civilian harm claims, adapting tactics (and strategies) where necessary to minimize harm and the suffering of civilian populations.
4. **Anticipating the risk of forced displacement as a civilian harm:** Ensure that strategy, planning, targeting processes, and training anticipate and take steps to avoid causing the displacement of civilian populations, unless strictly necessary for their safety, anticipate the additional risks associated with forced displacement, and act to ensure that any population movements are undertaken in a safe and orderly manner.
5. **Adaptation of training and professional military education:** Delegate responsible offices and components requirements to ensure measures to minimize civilian harm and undertake post-harm response are included in training and education for all levels of military personnel and civilian staff.

Partnered Operations and Security Assistance

As the U.S. is likely to conduct military operations jointly with other security forces for the foreseeable future, the DOD-I should address civilian harm arising from, or incidental to, U.S. military security cooperation, assistance, and other partnerships with State military forces and non-State armed groups. From the onset of a security partnership, and throughout the course of the partnership, the U.S. military should take the necessary steps to integrate the protection of civilians, including the promotion of human rights, in all settings and at all levels of engagement with partner forces. While the DOD-I may not necessarily address all policy and operational risks from a U.S. government perspective, DoD's role to help anticipate and avoid civilian harm, through its security partnerships should be explicitly stated. The **optimal policy** should provide meaningful guidance to program managers that design, implement, and monitor U.S. military partnerships.⁴ At minimum, the DOD-I should include the following elements:

1. **Risk assessment and management:** Emphasize the value of conducting risk assessments of partner capabilities and intentions in relation to compliance with international humanitarian law, the promotion of human rights, and the protection of civilians, before and during security cooperation activities. Risk assessments should account not only for the conduct of hostilities but abuses such as gender-based violence and other forms of violence and coercion of civilian populations. The DOD-I should clearly

⁴ See NGO Recommendations for DoD Policy on Civilian Harm, "[U.S. Partnered Operations and the Protection of Civilians.](#)"

delegate the development of risk assessment criteria and mitigation plans to the most relevant components and program managers, for example, within Defense Security Cooperation Agency (DSCA) and Special Operations Command, and also require consultation with relevant experts and counterparts at the State Department. The Policy should clearly require reporting suspected or alleged civilian harm to the appropriate command authorities.

2. **Corresponding measures to minimize civilian harm:** Emphasize that any U.S. support to a partner or coalition should be accompanied by a corresponding package of measures, including training, coaching, and mentoring, to ensure partner force capabilities for and commitment to the protection of civilians and the necessary strategies and tools to minimize harm and address abuses. The U.S. military should also constantly monitor partner conduct and capabilities with respect to the protection of civilians to ensure the continued appropriateness of U.S. support, and be willing to modify, reduce, or end support when the risk of civilian harm is too high.
3. **“Interoperable” means of minimizing civilian harm and responses to harm:** Include guidance for developing complementary and compatible means of minimizing, tracking, investigating, and responding to allegations of harm with partners, to include post-harm response and including efforts to acknowledge harm and compensate survivors for their losses, for example, through condolences and other forms of amends, and to redress violations of the laws of war.
4. **Transparency in partnerships:** Establish parameters for clear communication to the U.S. and host-nation public on the nature, purpose, and scope of security partnerships, and ways the U.S. is ensuring the protection of civilians in the course of its partnership activities.

Two-Way Exchange of Information with Third Parties

The DOD-I should include a requirement to facilitate the receipt, exchange, or provision of information related to civilian harm to outside parties, including affected civilians, local civil society, non-governmental organizations, and the media. The DOD-I should clarify the policy, strategic, and operational benefits of a two-way exchange of information on civilian harm. While establishing the exchange of information as a uniform expectation across all U.S. military operations, the policy should also note the benefits of developing customized and context-specific channels and means most suited to fulfilling the purpose of dialogue and information exchange.

The **optimal policy** will recognize engagement with international and local non-governmental organizations and United Nations entities on issues of civilian harm, as well as with affected communities, as an invaluable, critical, and normal feature of the Department and its military operations.⁵ At minimum, the Policy should include:

1. **Recognition of the value of external information:** Emphasize the probative value of information on civilian harm deriving from sources outside of the U.S. government, including for tracking, investigating, and responding to civilian harm, as well as operational and institutional learning.

⁵ See NGO Recommendations for DoD Policy on Civilian Harm, “[DoD Engagement with Humanitarian and Human Rights Organizations on Civilian Harm in U.S. Military Operations](#).”

2. **Acknowledgment of the risk of bias:** Caution commanders and other personnel against relying exclusively on internal sources and ensure proactive measures to avoid bias in intelligence-gathering and fact-finding processes.
3. **Expectation of engagement:** Expect that commanders and their delegated personnel will establish contact and communication with willing groups and individuals within their area of operations that may have, or could facilitate access to, information about civilian harm and for the purpose of establishing deconfliction arrangements to safeguard humanitarian operations.
4. **Minimizing and managing the risks of displacement:** Clarify the need for robust engagement with humanitarian and human rights organizations as well as civilian populations during planning and throughout the duration of hostilities to inform steps to minimize forced displacement and civilian harm during displacement, protect voluntary population movements, and develop contingency options.

Assessing and Investigating Harm

The DOD-I should emphasize and provide detailed guidance for assessing and investigating both internal and external reports of harm.⁶ At minimum, the Policy should include:

1. **Uniform expectations for reporting and response:** Clarify that any and all allegations of civilian casualties or other harm will be internally reported to an official in a position of command authority or their delegate, and assessed for purposes of further action.
2. **Proactive consultation with outside sources:** Establish the expectation that the assessment and investigative process around civilian harm will actively seek and consider outside sources of information. Thorough assessments and investigations should include engaging with affected civilians, non-governmental organizations, United Nations entities and other sources, as well as site visits, where warranted, to evaluate the facts of a report through interviews and other channels of communication. Ensure that assessments and investigations are reopened if and when credible additional information has been received.
3. **Transparency:** Establish parameters for publicly sharing information about the assessment and investigations process, as well as enable outside parties to seek information about the status of specific cases of civilian harm, including their outcomes.

Condolence Response and Redress

The DOD-I should recognize condolence response as critical to civilian harm mitigation. Such response should be without prejudice to the rights of victims of violations of international humanitarian law to full reparation. Acknowledgment of harm should be considered a bare minimum requirement across theaters and contexts. An **optimal policy** should offer guidance for developing consistent (but contextually

⁶ See NGO Recommendations for DoD Policy on Civilian Harm, "[Military Assessments, Investigations, and Tracking of Civilian Harm](#)."

appropriate and culturally sensitive) condolence options for every operation.⁷ Additionally, in the case of violations of international humanitarian and human rights law, a means of access to redress should be provided. At minimum, the Policy should include:

1. **A comprehensive and flexible framework of condolence response:** Lay out a range of possible condolence options not limited to financial remuneration or payment, such as public or private recognition or acknowledgment of harm to those affected, explanation or formal apologies, livelihood assistance, community-level support, restoration of damaged property or public infrastructure, and other tailored offerings or expressions of regret or contrition.
2. **A mechanism for offering financial payments and in-kind amends:** Although condolence response need not be limited to *ex gratia* payments, these payments may be suitable under certain circumstances depending on the desires, needs, and concerns of those affected. The DOD-I should ensure that components have the administrative processes and resources in place to report on, receive, catalogue, manage, investigate, and act on claims of civilian harm.
3. **Redress and reparations:** Establish the means for timely and comprehensive redress and, where appropriate, reparations for loss or injury caused in the case of violations of international humanitarian law and human rights law.

Learning and Good Practice

The **optimal policy** should include lessons learned as a feature in each of the main sections. The DOD-I should establish the expectation of commanders' and headquarters' offices that the Department will regularly and systematically take steps to understand the causes of civilian harm and means of minimizing civilian harm in its operations and security partnerships. At minimum, the Policy should include:

1. **Integrating and applying lessons learned:** Ensure that collateral damage estimations, pattern of life analysis, battle damage assessments, and investigations are regularly carried out and their findings are applied to inform planning and targeting processes. The capabilities and competencies of personnel charged with civilian harm mitigation tasks should be continually assessed and cultivated.
2. **Periodic Internal Evaluation:** Require periodic and regular evaluation of policies and procedures, using both internal and independent sources of oversight and evaluation.
3. **Replicating and sustaining good practice:** Ensure the regular distillation of good practice in civilian harm minimization, mitigation, and response and ensure it is continually rolled out across military commands, missions, joint task forces, coalitions, and security partnerships.

⁷ See NGO Recommendations for DoD Policy on Civilian Harm, "[The U.S. Military Post-Harm Amends Policy and Programs: Key considerations and NGO recommendations.](#)"

The following organizations have signed on to this document:

