

Civilian harm tracking and investigation

Challenges and opportunities identified in
contemporary literature

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This year, the U.S. Department of Defense issued a [memorandum](#) declaring its commitment to adopt higher standards for the investigation of alleged U.S. military-caused civilian casualties, to transparently acknowledge those allegations found to be true, and to continuously seek to develop practices that reduce the likelihood of civilian casualties in future operations. This move was instigated and welcomed by a [consortium of NGOs](#) that had worked for years towards higher civilian harm tracking and investigation standards in the U.S. context. Working towards a similar process in the Netherlands, the Protection of Civilians team at PAX recently concluded an exploratory review of the literature on civilian harm tracking and investigation by military forces to map existing tools and mechanisms, and to identify both weaknesses and best practice examples.

We found that, while there is some track record of good practice and lessons learned, **the overall state of civilian harm tracking and investigation practices is compromised by three interrelated challenges:**

- A lack of universally adopted policies and standardized operational practices hampers effectiveness of civilian harm tracking.
- Contemporary warfare's increasing 'remoteness' presents new challenges that have yet to be addressed.
- A lack of transparency around the processing of civilian harm claims – characteristic of many militaries – further aggravates these shortcomings.

Looking ahead to plan our team's engagement on this issue for the coming years, these findings – discussed in more detail below – help us identify opportunities and priorities for our contribution to more effective protection of civilians in practice.

Inconsistencies in the absence of standards

A recurrent finding concerns the lack of standardized approaches to civilian harm tracking and investigation processes. In a [comprehensive review](#) of U.S. military practices, CIVIC found that there were significant differences in how (well) investigations into alleged civilian harm incidents were handled or even in whether an incident was investigated at all. Such inconsistencies can be attributed to the absence of standardized practices or an

institutionalized policy that deals with civilian harm tracking and investigation. The U.S. case is illustrative: While its military personnel is obliged to report on incidents that possibly constitute violations of international humanitarian law, there are no military-wide regulations concerning other incidents in which civilians may have been harmed. Instead, individual commanders have considerable autonomy in setting reporting requirements for their subordinates; in other words, in determining in which cases subordinates are or are not obliged to officially report on incidents where they witnessed or suspected that civilians were harmed by U.S. military action. Unsurprisingly, this has led to remarkable differences in reporting across the U.S. military.

The U.S. case does not, however, stand alone: A [NUPI analysis](#) of AMISOM's¹ Civilian Casualty Tracking, Analysis and Response Cell (CCTARC) found that data on civilian harm incidents supplied by AMISOM Sector Commanders to its tracking cell could be limited and variable in detail depending on which sectors had provided the information. Similarly, [research](#) into the International Coalition against ISIS' civilian casualty assessment process by the NGO Airwars found that this process was 'opaque' and 'ad hoc' and, alarmingly, that more than half of all alleged incidents was not investigated at all for no clear reason.

Increasingly remote warfare

The current trend towards increasingly 'remote' warfare impacts civilian harm tracking and investigation practices as well. The majority of the literature surveyed made reference to ISAF² as a best practice example of civilian harm tracking and mitigation. ISAF set up a Civilian Casualty Tracking Cell (CCTC), later followed by the establishment of a Civilian Casualty Mitigation Team (CCMT): Information on ISAF-caused civilian harm incidents was fed into these structures, which analyzed the data for trends, based on which the CCMT made recommendations for strategic and procedural changes. [Keenan](#) notes that this led to a documented decrease of ISAF-caused casualties among the Afghan civilian population. By systematically analyzing harm from own action, ISAF troops could change their conduct to lower such harm, for instance by ceasing to use "night raids when possible" as these were found to disproportionately "terrify, anger and kill/injure Afghans".³

However, developments in weapons systems and new methods of warfare since Afghanistan are rapidly changing how we fight wars, with a general move toward long-distance warfare dominated by drone- and airstrikes. The International Coalition against ISIS, for instance, predominantly relied on the method of aerial bombardment that excluded the kind of on-the-ground presence that ISAF had. CIVIC ([2019](#), 2020), Airwars and the [Open Society Foundations](#) all found that this severely weakens civilian harm tracking and investigation efforts: In the absence of a field presence, the Coalition has assessed its civilian harm using overhead

surveillance like post-strike video analyses. This, rather than conducting field research, risks missing important evidence of civilian harm, such as weapon fragments and forensic evidence, which is needed to properly investigate such claims. As reflected in the following statement of a NATO official: “You cannot determine from the air alone the effect on civilians on the ground.”⁴ Overhead surveillance, for instance, would be unable to track damage below a solid surface like a collapsed building and, consequently, may overlook civilian casualties buried under the rubble. Perhaps not surprisingly, Airwars found that structural shortcomings such as these have led to significant underreporting of civilian casualty incidents by the Coalition.

The above moreover fits a larger trend, observed by CIVIC (2020) and Airwars, among many militaries to rely largely – sometimes exclusively – on internal sources to investigate civilian harm incidents, even though observations by civil society organizations in the field or interviews with key civilian witnesses may be essential, or at the very least helpful, to a fair and comprehensive investigation.

A deliberately created ‘fog of war’

A third shortcoming is the troubling lack of transparency in logging and reporting on civilian harm incidents, as also elaborated upon in our [blog](#) on the Dutch airstrike on Hawija in 2015 and the Dutch government’s subsequent reporting to parliament. Of particular concern here is the reluctance – or even refusal – of military actors to improve the process of verifying alleged civilian harm incidents. As both CIVIC (2020) and Airwars point out – in relation to the U.S. military and the Coalition against ISIS respectively – it is unclear on what grounds militaries dismiss certain allegations of civilian harm incidents as ‘non-credible’, with the effect that these incidents are not being subjected to further investigation. There appear to be several, intertwined procedural problems at play here: Evidence supporting these ‘non-credible’ assessments are not shared publicly; but when they are, it seems key witnesses or non-military sources are often not consulted; categorizations used to determine credibility are too narrowly formulated; and assessments are usually conducted within a mere 24-48 hours, raising questions about their rigor. Airwars found that a classification as ‘non-credible’ does not necessarily mean that a military has been definitively cleared of having caused particular civilian harm; rather, it often indicates that a military found too little evidence to properly investigate an allegation. The following statement by Airwars’ director is illustrative:

[A]fter a member of Iraq’s parliament warned in January 2015 that internally displaced civilians had been killed by airstrikes near Mosul, the coalition dismissed the report the following day, noting that there was ‘insufficient information to determine time and

location of the incident.’ Yet the Iraqi lawmaker who issued the warning told my organization that his office was never contacted for more information.⁵

This overall tendency towards ambiguity seems particularly prevalent in military coalition structures, which CIVIC (2019) found may “disincentivize transparency by enabling states to attribute civilian harm to the coalition as a whole, obscuring state responsibility through the premise of collective action.”⁶ The fact that it took the Netherlands almost five years to acknowledge its role in the 2015 mass civilian casualty incident in Hawija is a case in point, and unfortunately just one of several tragic examples.

The way forward

While the shortcomings discussed above are systemic and persistent, considerable and do not do the victims of military action justice, there are several positive developments in this area that point towards a willingness among military actors to evaluate, learn and apply lessons. Promising steps are taken in the previously mentioned process in the U.S. and in comparable efforts in the UK, but also by learning from the continued deployment of a civilian harm tracking cell in AMISOM. Yet, overall, this review of the literature demonstrates that there is both a need and an opportunity to do better. **Answering to the three prioritized challenges mentioned above, we identify several areas in which civilian harm tracking and investigation practices can be significantly enhanced:**

- Quality and consistency of civilian harm tracking efforts can be improved by standardizing and institutionalizing civilian harm tracking and investigation practices.
- In addition, tracking and investigative efforts can benefit from systematic integration of external sources of information, including routine consultation of key witnesses and non-military actors.
- Finally, military actors should embrace steps to achieve a high level of transparency on all incidents involving civilian harm and on related investigations to rebuild a high standard of [parliamentary and public oversight](#) and to best meet victims’ needs.

In the coming years, the Protection of Civilians team will therefore direct its activities towards advocating higher civilian harm tracking, investigation and (public) reporting practice standards in the Dutch and international context. We will moreover continue to map and research the direct and indirect, short-term and long-term, negative effects of military action on civilians, and use our findings in our lobby and advocacy activities, and in our training of security actors. While many of the trends described in this piece are worrisome, we take note

of the current opportunities to develop more effective civilian harm tracking practices that will create new abilities for security actors to advance the protection of civilians in practice.

These observations are based on an exploratory review of existing literature on civilian harm tracking tools and investigation mechanisms employed by militaries. The results of this review and the underlying literature can be found on our website <https://protectionofcivilians.org> under 'publications', topic 'civilian harm'. Please note that, because of the salience of this topic and continuous developments therein, the literature study is an ongoing process.

Endnotes

¹ African Union Mission to Somalia.

² International Security Assistance Force, a NATO-led mission in Afghanistan from 2001-14.

³ Keenan, M. (2013). Operationalizing Civilian Protection in Mali: The Case for a Civilian Casualty Tracking, Analysis, and Response Cell. *Stability: International Journal of Security and Development*, 2(2):21, p. 4.

⁴ Remote Control & Airwars (2016). *Limited accountability: A transparency audit of the Coalition air war against so-called Islamic State*, p. 6.

⁵ Remote Control & Airwars (2016), p. 8.

⁶ CIVIC (2019). *The Sum of All Parts: Reducing Civilian Harm in Multinational Coalition Operations*, p. 2.



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