



THE DUTCH MOD ANNOUNCES POLICY CHANGES REGARDING CIVILIAN HARM: A POSITIVE DEVELOPMENT BUT SHORTCOMINGS REMAIN

The Dutch Minister of Defence recently announced new policy steps to deal with civilian harm during Dutch military deployment after [a series of consultations](#) with a consortium of civil society organisations and academic institutions. While presenting a marked improvement, our consortium has concerns regarding several pressing loopholes and missed opportunities in this new policy.

On April 7 2022, Dutch Minister of Defence Kaja Ollongren sent a [letter to Parliament](#) introducing the steps she wants her Ministry to take in the short and (medium) long term regarding civilian casualties during military deployment under Article 100 of the Dutch Constitution. These steps go beyond transparent reporting alone: they also involve strengthening internal (military) procedures, decision-making processes, monitoring, evaluation and accountability. The Minister furthermore expresses the ambition for continuous development in all these areas. These commitments are a welcome development after shortcomings by the ministry in this area have come to light in the past years through reporting on civilian harm events in [Hawija](#) (Iraq) and [Chora](#) (Afghanistan).

The Minister's letter further makes reference to the role our organisations (together referred to as 'the Consortium') have played in bringing about these policy changes. Through a series of seminars and discussions, the Consortium has provided input and advice regarding civilian harm transparency and mitigation policies and practices. The newly announced proposals are based in part on these discussions.

General appreciation

We appreciate the ambition shown and the concrete steps announced by the Minister. For the past two years, we have valued the opportunity to share our expertise on civilian harm monitoring and mitigation, and on government transparency

and parliamentary oversight, with the Ministry of Defence. We recognise many of the proposed steps from these conversations and we believe they are important first steps in the right direction. We further value the Minister's suggestion for continued engagement on this topic in the near future. Yet, to make a lasting positive impact, more needs to be done to address pressing loopholes and missed opportunities. In various ways, the plans laid out in the letter fall short of the [advice](#) provided earlier by our Consortium.

Short-term steps: strengths and weaknesses

Step 1 in the letter to Parliament involves adding paragraphs about civilian harm to future Article 100 letters to Parliament in which the government explains its intention to contribute to international military missions and operations. The Minister proposes to henceforth add paragraphs to the letter, which describe:

- factors that can negatively impact the risk of civilian harm during operations, and how these risks may be mitigated;
- the Dutch information position and handling of decision making where it concerns the possible occurrence of civilian harm from own arms deployment;
- any future coalition's compensation and transparency regimes, as well as possible additional Dutch regimes;
- the level of transparency that the government expects to achieve.

These are important additions to the pre-deployment decision making process in the Netherlands: they encourage a fair and open political debate about the risk of civilian harm *prior* to deployment, and clarify what information on civilian harm will (not) be shared. At the same time, **the Ministry neglects to formulate minimal thresholds for transparency that the Netherlands will always apply and that a proposed new coalition or partnered deployment must meet if it seeks Dutch participation.** The risk being that the Netherlands will again enter into a military partnership or coalition that falls short where it concerns transparent reporting on civilian harm to the Parliament and public (see step 2).

Step 2 sets out the ambition to “communicate in advance about the degree of transparency concerning Dutch arms deployment in missions.” This is an important step for our Consortium as it addresses the failure of the Netherlands and its coalition partners to apply minimal transparency during recent deployments, including, notably, Operation Inherent Resolve (OIR). Yet, **this proposal does not prevent that rules set by a future coalition can still override Dutch ambitions for transparent reporting.** This may again lead to a situation as observed in OIR, where the Netherlands argued that Coalition agreements prevented the release of data (while the Coalition argued it was up to the individual nations to decide). We strongly believe the Netherlands must close this loophole before entering or continuing in coalition warfare.

In **step 3**, the Ministry commits to a periodic review of the level of transparency applied, during and after deployment. Positively, this can prevent unnecessary classification of information regarding civilian harm. We further understand the stated need to determine the level of transparency possible in accordance with personnel, operational and national security. **We see, however, no safeguards or assurances to prevent the withholding of information that is important for affected civilians and democratic oversight for public release, by referring to these three security factors.** We therefore propose that decision making regarding transparency should be done by an independent actor or committee, so there can be no ambiguity about who will have the final say.

We appreciate **steps 4 and 5**, on the importance of the subject of civilian casualties in the evaluation of missions and on the general involvement of the Ministry of Defence in policy making on the protection of the civilians in armed conflict. But the impact of missions on civilian casualties can only be evaluated and mitigated if the Netherlands commits to building capacity to monitor and transparently report on civilian harm themselves and/or shares data about their targets with third parties to help them do so (see next section).

Long-term steps: missed opportunities

Beyond immediate changes, the letter introduces a number of ambitions that are to be developed further. We recognise the importance of all stated ambitions included here, but it is worrying that some of the steps are characterised as medium to long-term steps, rather than being prioritised as short-term ambitions. **It should be an immediate priority of the Ministry to henceforth share information regarding arms deployment and possible civilian harm incidents according to open data standards.** This would enable us, as researchers and monitoring organisations, to exercise democratic oversight. **It should also be an immediate priority to build internal capacity to monitor, investigate and respond to civilian harm allegations.** Not prioritising either will leave the Netherlands in a situation where very little knowledge can be created about the impact of its military actions on civilian populations. Without this information, transparent reporting to the parliament and evaluating civilian harm throughout and at the end of missions will remain out of reach, with the prospect of ‘Hawija’ happening again still firmly in place.

Overall, we hope the letter will give a new strength to Dutch mitigation of civilian harm and transparency in reporting on civilian harm from military action. We commend the Dutch Ministry of Defence for its ambitions on this topic and its openness to engage with civil society. We eagerly await the implementation of the announced steps, and will be monitoring it closely.

Airwars, Intimacies of Remote Warfare, Open State Foundation & PAX