

June 29, 2023

Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Re: Department of Defense Response to Civilian Harm Report from Syria

Dear Secretary Austin,

We write to express our continued and serious concern following credible independent reports that a civilian man was killed in a U.S. military strike on May 3, 2023, in Idlib, Syria. Our organizations ask how we are in the position that, once more, significant evidence indicates the Department of Defense carried out a lethal strike that killed a civilian, in the name of fighting terrorism. In this case, a *Washington Post* investigation indicates that a man initially described as a “senior al Qaeda leader” appears to have instead been a civilian who posed no threat to the United States.¹ According to the *Post*’s reporting, the man killed in this strike was Lotfi Hassan Misto, a 56-year-old shepherd, former bricklayer, and father of ten.

We welcome reports² that the Department has opened a formal Army Regulation 15-6 investigation into the incident, though we believe facts warranted opening this investigation more quickly. How the Department of Defense handles this incident presents a litmus test for the seriousness of the Department’s intent to reform how it responds to civilian harm. This case should be investigated according to commitments laid out in the Civilian Harm Mitigation and Response Action Plan (CHMR-AP), even if new Department-wide investigation procedures are yet to be defined.³ We therefore make the following requests:

Ensure a robust investigation that meets the standards we have recommended over nearly two decades.⁴ This requires proactively consulting, and giving significant weight to, external reporting, including media reports, statements from witnesses and survivors, and NGO reporting – particularly when these external sources provide original interviews, photographs or video, or other data from the location that the U.S. government lacks.

¹ Omar Nezhat, Meg Kelly, Alex Horton and Imogen Piper, “U.S. Officials Walk Back Claim Strike Killed Senior Al Qaeda Leader,” *Washington Post*, May 18, 2023. [\[link\]](#)

² Oren Liebermann, “US set to launch formal investigation into disputed Syria drone strike after reports it killed a civilian, defense officials say,” *CNN*, June 14, 2023. [\[link\]](#)

³ According to the Civilian Harm Mitigation and Response Action Plan, the forthcoming Department of Defense Instruction on Civilian Harm (DoD-I) will establish Department-wide policies and a standardized process for civilian harm assessments and investigations. While the DoD-I has yet to be released, the Department can and should proactively undertake the steps laid out in this letter for this and other investigations in the interim.

⁴ Civil Society Guidance for a Model DoD Policy on Civilian Harm, “Military Assessments, Investigations, and Tracking of Civilian Harm,” *InterAction Protection of Civilians Working Group*, March 12, 2020. [\[link\]](#)

We also urge the Department to refrain from further harmful statements about the individual killed, until you have verified the facts in question. As in the case of the tragic August 29 drone strike in Kabul that killed ten civilians, including seven children, U.S. military assertions about the status of those killed, and claims that they were connected with violent extremist organizations, have been deeply harmful to impacted civilians.

Commit to transparency by publicly releasing the investigation. We ask that you publicly release the full investigation and its findings. Public institutions can only be held to account when external parties, including the general public, can review and independently assess their actions. Investigation results should only be redacted to protect the privacy and security of individuals, and narrowly to protect national security. Those who appear to have been harmed by this strike, as well as the public at large, have a right to the truth, including what happened, why the man killed was targeted, whether wrongdoing was found, any disciplinary measures or prosecutions that will result, and what steps will be taken to prevent this from happening in the future.

Make amends and ensure accountability. If the Department finds a civilian was killed, we ask that you provide acknowledgement and amends in consultation with his family or representatives, as envisioned by your new plan to improve civilian harm response. If desired by the family, this should include an offer of an *ex gratia* payment. Additionally, we urge you to ensure individual and institutional accountability if the investigation finds that wrongdoing, including violations of international humanitarian law as well as non-criminal disregard for policy or guidance, occurred. Accountability should also involve the steps the Department will take to learn from this tragic incident and ensure non-repetition in the future.

Clarify the Department's position on presumption of civilian status. The U.S. military has consistently failed to ensure that in cases of doubt about the status of a target, including in the absence of clear evidence they are directly participating in hostilities, a person is presumed to be a civilian, as set out under customary international humanitarian law. We understand that you are currently reviewing the Department's Law of War Manual to correct an inaccurate position on presumption of civilian status, and ask that you ensure civil society and external expert consultations are part of this review.⁵

Civilian deaths are not unfortunate anomalies, but rather a systemic problem requiring committed leadership and accountability. The May 3 strike in Idlib, Syria demonstrates that more must be done to address years of systematic misidentification of targets, confirmation bias in the targeting process, and a widespread absence of transparency and accountability. We hope that the CHMR-AP will provide the structural changes that are sorely needed, both in how the Department prevents and responds to civilian harm. How the Department replies to the May 3

⁵ Senator Dick Durbin and Congresswoman Sara Jacobs, Letter to U.S. Department of Defense General Counsel Caroline Krass, February 14, 2023. [\[link\]](#); Ryan Goodman, "Clear Error in the Defense Department's Law of War Manual: On Presumptions of Civilian Status," *Just Security*, February 9, 2022. [\[link\]](#)

strike will be a test of this commitment, and we urge you to set a precedent that the Department can build upon as you develop new policies and standards in responding to civilian harm.

Signed,

Airwars

Amnesty International USA

Center for Civilians in Conflict (CIVIC)

Center for Constitutional Rights

Center for International Policy

Center for Victims of Torture

Columbia Law School Human Rights Institute

Demand Progress Education Fund

Friends Committee on National Legislation

Government Information Watch

Human Rights First

Human Rights Watch

Humanity & Inclusion

InterAction

PAX

Reprieve US

September 11 Families for Peaceful Tomorrows

Syria Justice and Accountability Center

Veterans for American Ideals

Win Without War

Zomia Center