



Looking back to look forward

Recommendations to improve the protection of civilians in Dutch military operations

Since 2020, our consortium of academic and civil society organisations has regularly engaged with the Netherlands Ministry of Defence (MoD), aiming to improve Dutch policy and practice on the prevention, reduction and response to civilian harm resulting from Dutch military operations. This 'Roadmap Process' intensified over the course of 2023-24 with a series of technical exchanges related to Protection of Civilians (PoC) and Civilian Harm Mitigation and Response (CHMR). This document lays out the recommendations resulting from these discussions. They are primarily intended for the Netherlands MoD, which is expected to put forward its own advice for policy initiatives to the Minister of Defence later this year, but should also encourage other states and security actors to take steps to improve protection outcomes.

The need for engagement arose in 2020, shortly after the news broke that the Netherlands was responsible for two 2015 airstrikes on [Mosul](#) and [Hawija](#), Iraq, that caused respectively 4 and at least 85 civilian casualties and resulted in widespread material damages and other negative impacts, many of which [reverberate](#) to this day. It took the Netherlands over four years to [acknowledge](#) both the Hawija and Mosul incidents, which indicates significant shortcomings regarding transparency and accountability. In response to five Parliamentary debates and three votes of no confidence, the then-Minister of Defence ordered a review of the MoD's CHMR policies and practices, which also marked the start of the Roadmap Process.

Roadmap Process and milestones

This process entailed a series of exchanges between the MoD and our civil society consortium – with expertise in PoC, CHMR, monitoring and transparency, accountability, legality and legitimacy. The first phase concluded in 2021, when our consortium published a first set of [recommendations](#). Subsequently in 2022, outgoing Minister of Defence Ollongren announced the '[10-step policy plan](#)' to improve Dutch practices around preventing, minimising and responding to civilian harm caused by Dutch military operations. This represented a crucial step in the right direction. So far, it has led to the creation of an MoD-internal PoC task force, the Parliament has been informed about potential civilian harm risks related to two new Dutch military deployments through Article 100 letters, and 2023 [media reporting](#) on another likely Dutch civilian harm event in Mosul in 2016, triggered the MoD's new transparency and investigation procedures.

Remaining gaps

As the MoD looked to implement its 10-step policy plan, it again sought the advice of our organisations, which represents a positive example of constructive engagement between civil society and security and defence actors. The second phase of our exchanges under the Roadmap process have focused on CHMR areas where we see a continued need for improvement. These principally concern enhancing Dutch capabilities to track and investigate direct and reverberating civilian harm; institutionalising meaningful responses to harm where it occurs; and informing the Parliament about the risks to civilian harm in all its military contributions, not just those covered by Article 100 letters. After the Netherlands signed the [Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas](#) in November 2022, our engagement also focused on the interpretation and implementation of this declaration. **Our input on remaining gaps in Dutch policy and practice are reflected in our recommendations, which we hope the MoD will swiftly translate into corresponding policy changes.**

Overview of our recommendations

1. Establish an accessible and up-to-date **webpage** on the Netherlands' approach to Protection of Civilians (PoC) and Civilian Harm Mitigation (CHMR).
2. Develop and publish a clear, **government-wide description** of the roles and responsibilities for PoC and CHMR across different Ministries and departments.
3. Institutionalise **formal engagement** between the Ministry of Defence and academic institutions and civil society on pressing issues pertaining to CHMR.
4. Adopt, publish, and operationalize **a broadened understanding of civilian harm** that goes beyond civilian casualties.
5. Ensure that CHMR standards are adapted, applied, and approached as a key factor across **the spectrum of operations**.
6. Implement the **Political Declaration** on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas without delay and in the strongest possible way.
7. Publish, to the greatest extent possible, the **CHM baseline study** and potential subsequent study findings to ensure transparency.
8. Further develop and implement knowledge about protecting civilians and mitigating and responding to harm in the operational domain and in the **training** of the Armed Forces.
9. In all coalition contexts, push for **coalition-wide standards** regarding CHMR efforts and formulate minimum requirements regarding CHMR efforts that are a prerequisite to Dutch participation.
10. In cases where Dutch military action or military support to allies is not covered by Article 100, **standardise informing Parliament** about the potential civilian harm this may cause.
11. Release **detailed statistics** at least monthly on lethal force practices.
12. As committed to in December 2023, establish an accessible **civilian harm reporting mechanism**, and sufficiently promote its existence.
13. Create and sufficiently resource an operational **CHM Cell** that tracks, investigates and analyses information about potential civilian harm caused by Dutch use of force.
14. Publish **clear guidance**, including minimum information requirements and required procedures, for an incident of potential civilian harm to trigger an assessment and an investigation.
15. Establish **a formal procedure for communication** with alleged victims of Dutch use of force and/or their relatives.
16. Institutionalise timely, context-appropriate and adequate **responses** to cases where the Netherlands is found to have caused civilian harm.

Our recommendations to the MoD

Recommendation 1: Establish an accessible and up-to-date website page on the Netherlands' approach to Protection of Civilians (PoC) and Civilian Harm Mitigation and Response (CHMR). This would include all relevant policy documents such as Letters to Parliament and Article-100 Letters, a glossary of important terms, and important military guidance documents like the *Handleiding Humanitair Oorlogsrecht* (forthcoming).

Existing good practice:

- The US DoD website has a section dedicated to Civilian Harm Mitigation and Response, which offers a helpful overview of relevant US policy, reports, and guidance on this topic.
- The UK provides a useful overview in their Joint Service Publication 985 on Human Security of all other Joint Service Publications that relate to the topic.

Recommendation 2: Develop and publish a clear, government-wide description of the roles and responsibilities for PoC and CHMR across different Ministries and departments, and include this in the above website.

Existing good practice: The US' Department of Defense Instruction (DoD-I) on Civilian Harm Mitigation and Response in Chapter 2 provides a detailed overview of the various entities responsible for the implementation of specific components of the DoD-I.

Recommendation 3: Institutionalise formal engagement between the Ministry of Defence and academics and civil society on pressing issues pertaining to CHMR through regular planned exchanges and the creation of channels – additional to the civilian harm reporting mechanism – through which urgent issues can be addressed.

Existing good practices:

- The Roadmap Process itself is a good practice example of regular engagement between the MoD and civil society actors on current practice, gaps, and recommendations on CHMR, requiring formalisation.
- The US DOD has established both formal and informal channels to regularly coordinate with civil society on policy creation and implementation. This includes email addresses specifically used for this purpose, regular meetings with senior officials on CHMR, and other channels through which organisations can raise urgent questions and concerns. This has further been codified in recent policy commitments like the US DoD-I Instruction on CHMR.

Recommendation 4: Adopt, publish, and operationalize a broadened understanding of civilian harm that goes beyond civilian casualties alone to also include a range of reverberating effects from the use of force.

Existing good practice: The US DoD-I on CHMR offers a broad definition of civilian harm: "Civilian casualties and damage to or destruction of civilian objects (which do not constitute military objectives under the law of war) resulting from military operations. As a matter of DoD policy, other adverse effects on the civilian population and the personnel, organizations, resources, infrastructure, essential services, and systems on which civilian life depends resulting from military operations are also considered in CHMR efforts to the extent practicable."

Recommendation 5: Ensure that CHMR standards are adapted, applied, and approached as a key factor across the spectrum of missions and operations, from military support to crisis response and territorial defence, and those conducted individually and in coalitions.

Recommendation 6: Implement the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas without delay and in the strongest possible way to protect civilians against the harm caused by this practice, including by placing limits on the use of explosive weapons in populated areas. Actively promote the declaration and its commitments, striving for universalization of its norm.

Recommendation 7: Publish, to the greatest extent possible, the CHM baseline study and potential subsequent study findings to encourage similar learning processes by other militaries and institutions, facilitate engagement with external organisations, and to ensure transparency.

Recommendation 8: Further develop and implement knowledge about protecting civilians and mitigating and responding to harm in the operational domain and in the individual education and collective training of the Armed Forces. Develop military training modules, education curricula and scenario exercises with clear PoC and CHMR elements, and establish CHMR-oriented career tracks within the military.

Existing good practice: *The United States' Civilian Harm Mitigation and Response Action Plan, Objective 3, outlines clear requirements with regards to developing guidance for CHMR and incorporating this in military training and exercises, in addition to strategy and doctrine. The action plan further requests DoD to establish CHMR-oriented career tracks.*

Recommendation 9: In all coalition contexts, push for coalition-wide standards regarding CHMR efforts and formulate minimum requirements regarding CHMR efforts that are a prerequisite to Dutch participation. These should include clear standards in the areas of information access and -sharing, agreed targeting thresholds and processes, and agreed investigation and response processes, and should be described in the Article-100 Letters.

Recommendation 10: In cases where Dutch military action or military support to allies (i.e., training of foreign forces, intelligence provision, contribution of own forces or equipment) is not covered by Article 100, standardise informing Parliament about the potential civilian harm this may cause, as well as corresponding reporting and response mechanisms put in place.

Recommendation 11: Release detailed statistics at least monthly on lethal force practices, including data on the number of weapons releases, broken down by geographic location; weapons platforms; and type of munition utilised in strikes. Publish this information as open data that is technologically, legally, and substantively ready for reuse by monitoring organisations, NGOs, media and others, to ensure accountability. When operating within coalitions, encourage other coalition members to do the same. In exceptional cases and with the consent of Parliament, establish sunset clauses for information being withheld.

Recommendation 12: As committed to in December 2023, establish an accessible civilian harm reporting mechanism. Ensure that (1) it is available in relevant languages; (2) it is part of a broader approach to CHMR (i.e, contributes to tracking, investigation and response activities); (3) it is clear to users how their information will be processed, what information they (at minimum) need to provide, and what follow-up can be expected and within what period of time; and (4) the form is tailored to the conflict context. Once a reporting mechanism has become functional, ensure that a) aggregate data is published on a regular basis on its use (e.g., the number of claims received, the number of claims that have led to an assessment and/or investigation) and b) its existence is sufficiently promoted among intended users.

Recommendation 13: Create and sufficiently resource an operational CHM Cell that is deployed to the AOR to track, investigate and analyse information about potential civilian harm caused by Dutch use of force during participation in military missions, with the intent to inform operational changes that reduce civilian harm and to recommend (the Commander and/or MoD) how to respond to civilian harm that has occurred, thereby contributing positively to military-strategic objectives. This should include analysis of direct, indirect and reverberating harm to civilians, to ensure there is accountability to those harmed, and to learn lessons to improve civilian harm mitigation in future conflicts.

Existing good practice:

- *The ISAF Civilian Casualty Tracking Cell, later Civilian Casualty Mitigation Team*
- *The AMISOM Civilian Casualty Tracking, Analysis and Response Cell*
- *The Armed Forces of Ukraine Civilian Casualty Tracking Provisional Group*
- *The G-5 Sahel Civilian Casualties Identification, Tracking and Analysis Cell*

Recommendation 13a: The Cell combines open source information, external sources, and military intelligence with field investigations where possible – or in cases where the latter is not considered possible – it describes how it seeks to address any resulting evidentiary gaps. The cell can operate independently as well as contribute to potential coalition-wide tracking efforts and mechanisms, and it will proactively attempt to deconflict its own civilian casualty counts with those of other partners (e.g., UN Missions, monitoring organisations).

Recommendation 13b: Build a centralised repository for data related to CHMR, including incident-specific information requirements. The system should be set up to process civilian harm reports at scale, and not treat incidents as one-off events. Data systems should at minimum include 1) digitised and standardised fields from after action reports and other relevant incident-specific internal data; 2) unique reference codes per harm incident to facilitate report tracking; 3) connection/integration of tracking cell data with coalition partners; and 4) built-in transparency ‘test’ functions to facilitate public reporting.

Recommendation 13c: Set up an information-sharing mechanism between the CHM Cell and the MoD PoC team.

Recommendation 14: Publish clear guidance, including minimum information requirements and required procedures, for an incident of potential civilian harm to trigger an assessment and an investigation. In reporting to Parliament about completed assessments and investigations, make clear – to the degree possible – what methodology was used to reach the conclusion.

Recommendation 14a: If and when the Parliamentary Defence Commission is informed confidentially of an investigation into potential civilian harm caused by Dutch use of force, also release a public letter to clarify when a confidential process has been started and ended.

Recommendation 14b: Publish regular (monthly) reports on civilian harm reports from past and current missions. The publications include the status of the civilian harm report in line with agreed and published assessment and investigation outcomes (e.g., 'confirmed', 'unconfirmed' and 'non-credible'), and include the numbers of those killed and injured by location, sex, age, any other vulnerability characteristics, and the identity of the casualties. If reporting is delayed for any reason, data still needs to be released within a timeframe that is meaningful for victims and their families. These reports and civilian casualty statistics always and consistently feed into yearly and end operation evaluations. Yearly and end operation evaluations also reflect on the civilian harm caused by partners in operations.

Recommendation 15: Establish a formal procedure for communication with alleged victims of Dutch use of force and/or their relatives. Communication should at least take place when launching an investigation and when the investigation is concluded, regardless of the outcome of the investigation.

Recommendation 16: Institutionalise timely, context-appropriate and adequate responses to cases where the Netherlands is found to have caused civilian harm by developing and overview of, and guidance regarding available and appropriate response options, for instance by establishing a national fund for ex gratia payments.

Existing good practice: Where it concerns reserving funds for the eventuality of civilian harm from own actions, the US fund (as per the *National Defense Authorization Act 2020*, section 1312, p. 1076) is a good example, even though there are shortcomings with regards to the eligibility criteria employed by the US.

