

**Written Questions for the Record – Ms. Radhya al-Mutawakel**  
**Submitted by Senator Patrick Leahy**  
**February 16, 2022**

1. By all objective accounts, the U.S. military has failed to acknowledge the full civilian toll of its actions abroad. There are a number of reasons for this. Some stem from flawed methodologies, such as failing to conduct on-site investigations. Some are caused by questionable delegations of responsibility, like having a unit responsible for a lethal strike investigate its own actions.
  - a. **From a human rights perspective, why is it important for the U.S. government to accurately acknowledge the number of civilian casualties caused by our actions, and what could the Department of Defense do to improve the way it tracks the number of civilian casualties it causes?**

The United States has been using lethal force in Yemen for nearly two decades. These operations, in which people are targeted and killed, began under the Bush Administration, dramatically expanded during the Obama Administration, and expanded yet further during the Trump Administration. Yet regardless of which president or party has controlled the White House, the United States has never fully investigated the civilian cost of its operations in Yemen, has never taken sufficient steps to review the efficacy of these operations, and has never provided civilian victims the acknowledgment, apology, and reparations they are owed.

U.S. lethal operations have caused deep and long-lasting harms, from killing beloved family and community members, to damaging civilian property essential for livelihoods, to causing long term health effects, including psychological harms in communities impacted by these operations. In 12 US operations Mwatana investigated, the civilians killed played important roles in their families and their communities. Two of the men killed were teachers. One was described as “beloved” by his students. The other kept teaching even after civil servant salaries in Yemen stopped. Others killed by US operations included university students, beekeepers, fishermen, drivers, laborers and housewives.

One survivor of a U.S. air strike told Mwatana that, while he had recovered physically, he continued to feel helpless and depressed a year and a half after the strike injured him and killed his younger cousin. A parent explained how children have continuing anxiety after US attacks and can be afraid to be alone: “My six-year-old son wanted to go to the bathroom but then returned without going. When I asked him the reason, he said, ‘I don’t want you all to die without me if the drone hits.’”

Yet the U.S. has never taken the steps necessary to understand the true civilian toll and the long-term impact of its operations. From a human rights perspective, the United States is failing to meet its obligations to investigate credible allegations of international law violations, to hold individuals who are responsible for violations to account, and to provide prompt and adequate reparations to civilian victims.

In order to more accurately track and understand the number of civilian casualties it causes, the U.S. military should investigate reports of civilian harm by carefully considering external sources, including reports by civil society, witnesses, family members and survivors. It should conduct its own thorough, independent investigations. To ensure a full and meaningful transformation of US policy on Yemen that protects the right to life, including Yemenis’ right to life, the US should conduct a full review regarding the impact of its operations in Yemen. This review should examine the lawfulness and civilian impact of each operation undertaken since the United States began using lethal force in Yemen nearly two decades ago, and take a hard look at whether these operations have been at all effective in making anyone safer. After this review, the US should acknowledge each instance of civilian harm and the wider impact on the

communities subjected to these operations, work to provide reparations, condolence payments, and other forms of amends, and ensure accountability where required.

2. You noted in your testimony that the U.S. often fails to pay remands or make apologies for civilian casualties. In the letter from U.S. Central Command, they state that U.S. law prohibits payment in scenarios when “the deceased’s surviving family members or close associates may have ties to terrorist organizations.”

**a. What impact would providing reparations, in the form of *ex gratia* payments, or formal apologies have on the victims of drone strikes?**

It is important to note that US *ex gratia payments*, which are provided on a discretionary basis, are not reparations, which are an important form of accountability. International human rights law requires states to provide effective remedies for violations of the right to life, including reparations. Reparations can take the form of compensation, restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations. The duty to provide reparations applies both to violations of international humanitarian law and to international human rights law. Civilians in Yemen have been demanding justice, including reparations, for nearly two decades.

*Ex gratia* payments and other forms of amends can still be extremely important for victims and their families. After US attacks, wounded survivors are often in need of medical treatment. Mwatana documented wounded survivors, including children, in need of medical assistance for injuries sustained during US attacks. *Ex gratia* payments could help victims’ fund that help.

US operations often lead to significant adverse economic effects for families. Most areas targeted by US drone and ground raids in Yemen are exceptionally poor with almost no access to basic services. Extended civilian families often depend on a single breadwinner. In many cases documented by Mwatana, civilian men killed by US strikes left behind large families that relied on their incomes.

In almost all US operations documented by Mwatana between 2017 and 2019, the US destroyed important civilian property, including vehicles, homes, and livestock. For example, a 2018 US strike destroyed the only vehicle that a displaced family owned; the family had used the vehicle to transport water, food, fuel and other essential goods. Two men who worked in the honey trade, for which Yemen is famous, owned dozens of beehives. Both men’s families relied on the income from the honey they sold. A US airstrike in 2017 killed the two men, burned most of their beehives, and scattered the rest. Most families, in the US or Yemen, would suffer significant financial hardship if their car, home or source of livelihood was suddenly destroyed. Many of these families were already struggling to make ends meet. Vehicles and homes are very difficult to replace. *Ex gratia* payments, while often far less than the long-term economic costs families in Yemen bear as a result of US strikes, can be an important form of assistance to these families.

In almost all of the interviews Mwatana conducted with the families of the victims of U.S. attacks, family members expressed their demand for proper investigations, for truth, for justice, and for redress. In a number of interviews, survivors and victims’ families said that the U.S.’s failure to credibly investigate the civilian harm resulting from its attacks, to acknowledge and apologize for that harm, and to ensure accountability had made them feel ignored and as if their lives and those of their loved ones did not matter to the world.

In some cases, survivors and their family members noted that it was not just the absence of justice and reparation that multiplied the harm done to them, but the continuing (mistaken) claim by the United States

that they or their loved ones were associated with armed groups. Often, after attacks, the United States publishes a statement claiming it was targeting AQAP or other groups. Without a subsequent acknowledgment and apology that the US, in fact, got it wrong, survivors and relatives of those killed are publicly linked to armed groups— groups with whom they might have no relation whatsoever. In Yemen, it can be extremely dangerous to even be perceived as aligned with certain groups.

In many cases, survivors and family members remained shocked and confused. They said they were surprised that their areas were attacked and that until now they could find no logical explanation for those attacks. The belief that the US strikes randomly, at civilians and combatants alike, and will not acknowledge or correct after its attacks contributes to widespread feelings of uncertainty, distrust and anger at the US. In a few cases, local communities organized public protests after attacks. People told Mwatana that continued US strikes on civilians increased their frustration and diminished their sense of safety, and left them with the impression that the US was indifferent toward civilian lives. After a 2019 strike killed a civilian man, family members told Mwatana, “We are desperate in trying to get our voices heard. We are being killed in cold blood.” These strikes also undermine belief in the Yemeni state, with people expressing anger at the Yemeni government for failing to stop these attacks and that they were losing faith that the current government had any intention of meeting its obligations to its citizens.

In its responses to Mwatana and the Columbia Law School Human Rights Clinic, even where the US acknowledged civilian deaths, it did not apologize nor identify any of the civilians killed by name, age or gender. The responses to Mwatana and the Clinic only mentioned civilian deaths, not civilian injuries, trauma, property damage, or the long-term harm of being attacked and falsely accused of being a terrorist. While the US Defense Department’s latest annual civilian casualty report mentioned civilian injuries, it did so by stating that the US military had assessed no civilian injuries in Yemen, including in the 2017 raid in Yakla, in which Mwatana documented multiple children injured.

**b. In your own research and analysis, how do you ensure that the victims or their family members do not have ties to terrorist organizations?**

Mwatana’s reporting adopts a conservative approach in that it only counts people as civilians in instances where Mwatana found no credible indication of any association with an armed group or armed force. Mwatana included individuals in its civilian tally where researchers were able to collect the person’s name, age, and other information indicating their civilian status—for example interviews with family members about their lives, their occupations, and their roles in their communities, or examining documents relating to witness accounts. Where Mwatana found any information indicating a person might be associated with an armed group or armed force, Mwatana did not count this person as a civilian. Association or affiliation with AQAP would not alone render a person targetable under international law. As such, the submissions likely undercount the true number of civilians harmed.

As an international human rights organizations, Mwatana conducts its research according to those standards, and does not investigate the status of “surviving family members or close associates,” which you note relates to U.S. law.

**c. Should the analysis done by the commander in determining whether or not to authorize *ex gratia* payments be disclosed publicly? Why would that be important?**

Yes. As mentioned above, in an April 21, 2021 letter to Mwatana and the Clinic, the US acknowledged one civilian casualty and stated that “condolence payments were not appropriate,” providing no further details. After the acknowledgment, Mwatana called the family members of the man killed in the 2019 strike. His son asked for the reason that condolence payments were deemed not appropriate, but Mwatana had no answer for him. He was disappointed and surprised that there were no ex-gratia payments made or any formal apology given. His father, Saleh Al Qaisi, had worked in Saudi Arabia and supported his immediate and extended family. He was in Yemen visiting his family at the time of the US strike that killed. Again, the absence of reparation and even any credible reasoning compounded the harms already done to a family that had lost a loved one in a US operation and that were still struggling with the psychological and economic impacts. If Saleh’s family had been informed of the reasons behind this decision, they would have been better equipped to argue against it in a transparent manner.

In another attack in which the US acknowledged civilian harm, the January 2017 raid in Al Bayda, the US said it would not provide amends for deaths “in part” due to civilians’ presence at an “Al Qaeda compound.” Mwatana visited the village where the raid occurred two days afterward. Rather than an “Al Qaeda compound,” Mwatana found destroyed homes, traumatized villagers, and families who described being asleep in their homes, in the middle of the night, when the raid began.

Mwatana notes that U.S. Central Command’s research methods, as described in its correspondence, do not appear to involve credible investigation, but rather appear to be based on speculation and conjecture. US Central Command implied that it would not provide condolence payments for acknowledged civilian harm out of concern this might benefit “terrorist” organizations. U.S. Central Command did not explain in its correspondence why condolence payments to civilian families would support terrorism.

It also raises significant questions that the U.S. Department of Defense, its latest civilian casualties report reviewing 2020, stated that it had not made any payments in the last year in any of the countries where it carried out operations, including Yemen.

3. When the Pentagon relies on air footage, they often miss civilian casualties hidden under rubble. Pentagon investigators rarely visit the strike site or interview witnesses or survivors. Human Rights Watch recommends a policy of “conducting on-site investigations whenever feasible, and of interviewing witnesses in all incidents involving credible allegations of civilian casualties.”

**a. Is there a safety concern here that overwhelms the need to collect data? What can be done to ensure the safety of investigators if this policy were to be adopted?**

Any credible investigation will necessarily include interviews with witnesses. An investigation will be fundamentally incomplete if it does not include testimony from those who witnessed the attack from the ground, including those who observed the site at the time of the incident, who saw the immediate impact of the incident, and who witnessed its aftereffects. Similarly, interviews with survivors and family members are crucial if investigations are to include (as they must, to be credible) an understanding of the civilian harm resulting from the incident. On-site investigations similarly serve to provide a far more accurate picture of what was hit, and what the resulting damage was.

Of course, there may be significant safety concerns in conducting these interviews or site visits. Human rights groups regularly consider such safety concerns, take steps to minimize the risk of harm, and only conduct interviews with people’s informed consent. In some cases, if the risk cannot be mitigated, human rights groups may not conduct interviews or site visits. Investigations conducted by or on behalf of the US military would pose particular risks in many conflict contexts. There may be, for example, significant

risks to witnesses if they meet or speak with investigators that are a part of, or are perceived as linked to, the US military. There may also be risks to local or civil society investigators if they are perceived to be linked to the US military. The principle of “do no harm” is paramount.

Despite these challenges, the fact remains that without these interviews and site visits, investigations will be incomplete and will necessarily fail to capture the full range of facts (as they so often have). In other areas, the US military has taken on and found solutions to immense challenges. If credible investigations are to be a priority for the US military, then it must commit to designing a policy that both ensures testimony and site visit information is considered in investigations and that does not expose people to further risk. Three common sense aspects of such a solution might include conducting thorough risk analyses before contacting witnesses or conducting a site visit (risks are highly context specific and may vary widely even within the same country), ensuring that risk analyses consider safety concerns relating to witnesses, survivors and family members and others in the impacted community, and not only investigators, and more thoroughly reviewing and incorporating the reporting and work of external organizations that are conducting on-site investigations and interviewing witnesses as part of their work.

A simple risk analysis will show that the risk varies from one area to another, and the situation on the ground changes. There are areas that are now entirely controlled by the Yemeni government who are allies with the US.

- b. Is there a role for external organizations in collecting this data – and if so, what kind of policy or law would have to be put in place for careful consideration of any data submitted? How has your organizations experience with U.S. Central Command informed your opinion on this topic?**

Mwatana and other independent human rights organizations will continue to investigate civilian deaths, injuries, and other harm from lethal operations in Yemen, including U.S. operations, as circumstances allow. We will continue to seek responses from responsible parties, including the U.S. military, on incidents we document.

In our experience, the U.S. response to reports of civilian harm was not “independent, impartial, prompt, thorough, effective, credible and transparent.” Instead, it was lengthy, led by the same body responsible for planning or justifying the lethal operations in question, and considered only the same evidence used to carry out said operations. The response we received lacked transparency, including answers to questions provided in cases that attracted greater media attention.

The U.S. government should strive to meet these standards, including by ensuring that bodies responsible for evaluating reports of civilian casualties have sufficient resources and support to do so, and that they are subject to independent oversight and held accountable for producing accurate and thorough results.

The Department of Defense should also implement an effective and accessible process for survivors, family members and civil society, including local civil society, to submit claims, information and evidence regarding civilian harm resulting from the United States’ use of lethal force in Yemen. The Department should provide clear, accessible and up-to-date information, including in Arabic, regarding how to submit information, as well as on any alleged violations found, any investigations and prosecutions undertaken, and any remedies provided. The U.S. should ensure that appropriate resources, including staff, are dedicated to these efforts. Current processes do not meet these standards.

**Questions for the Record from Senator Charles E. Grassley**  
**Hearing on “‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20**  
**Years of U.S. Drone Strikes”**  
**February 9, 2022**

*Radhya Al-Mutawakel*  
Chairperson  
Mwatana for Human Rights  
Sana’a, Yemen

1. On February 1, 2022, you retweeted the following:



- 1- Does the statement “Israel’s apartheid over Palestinians is a crime against humanity” accurately represent your views?

Yes.

**2. Do terrorist organizations hide within civilian populations or utilize civilians as a shield from drone strikes?**

In our most recent report, we investigated 12 US operations in Yemen in detail, including 10 drone strikes. As explained in that report, these drone strikes hit civilians while going about their daily lives. Regardless, if conducted in the context of an armed conflict, the attacking party would still have international humanitarian law obligations, including to take precautions, to distinguish between civilians and combatants and to ensure that any civilian harms were not disproportionate to the expected military advantage.

**3. Would requiring certainty that no civilians are present in order to target a terrorist combatant incentivize terrorists to employ human shields?**

Mwatana cannot speculate regarding what will or will not incentivize a terrorist organization to possibly do something in the future. Mwatana deals in facts, by documenting international human rights law violations and international humanitarian law violations by all parties in Yemen. What Mwatana can say with certainty is that the US has carried out drone attacks in Yemen for nearly two decades that have killed, wounded and otherwise harmed civilians, including in attacks that the US wrongly claimed targeted terrorists.

**4. Are ISIS and Al Qaeda still targeting Americans at home and abroad?**

Mwatana only provides information based on facts it has itself documented and verified in Yemen.

**5. Would ISIS and Al Qaeda members kill Americans if they could?**

Mwatana provides information based on facts, of things that have already occurred, based on information it has itself documented and verified. It does not fall within our organization's mandate to predict or speculate on what an extremist person or group might do. .

**6. Is it your contention that all drone strikes are unwarranted regardless of circumstances?**

International law, including international humanitarian law and international human rights law, set out clear rules on when States can use lethal force. In its advocacy, Mwatana has repeatedly called on the US to meet its international obligations, including respecting Yemenis' right to life.

The United States has been using lethal force in Yemen for nearly two decades, but the United States has never fully investigated the civilian cost of its operations in Yemen, has never taken sufficient steps to review the efficacy of these operations, and has never provided civilian victims the acknowledgment, apology, and reparations they are owed. In ensure compliance with

international law moving forward, the US should conduct a full review regarding the impact of its operations in Yemen. This review should examine the lawfulness and civilian impact of each operation undertaken since the United States began using lethal force in Yemen nearly two decades ago. After this review, the US should acknowledge each instance of civilian harm and the wider impact on the communities subjected to these operations, work to provide reparations, condolence payments, and other forms of amends, and ensure accountability where required.