To enhance protections of civilians during United States military operations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KHANNA introduced the following bill; which was referred to the Committee on

A BILL

To enhance protections of civilians during United States military operations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection of Civilians in Military Operations Act".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress—

(1) to commend the Department of Defense for the measures it has implemented and is currently
implementing to prevent, mitigate, track, investigate, learn from, respond to, and report civilian casualties resulting from United States military operations;

(2) to agree with the Department that civilian casualties are a tragic and unavoidable part of war, and to recognize that—

(A) the Department endeavors to conduct all military operations in compliance with the international law of armed conflict and the laws of the United States, including distinction, proportionality, and the requirement to take feasible precautions in planning and conducting operations to reduce the risk of harm to civilians and other protected persons and objects; and

(B) the protection of civilians and other protected persons and objects, in addition to a legal obligation and a strategic interest, is a moral and ethical imperative;

(3) that the Department has submitted to Congress three successive annual reports on civilian casualties resulting from United States military operations for calendar years 2017, 2018, and 2019, and has updated reports as appropriate; and
(4) to recognize the efforts of the Department, both in policy and in practice, to reduce the harm to civilians and other protected persons and objects resulting from United States military operations, and to encourage the Department to make additional progress in—

(A) developing at all combatant commands personnel and offices responsible for advising the commanders of such commands, and integrating into command strategy, the promotion of observance of human rights and the protection of civilians and other protected persons and objects;

(B) finalizing and implementing the policy of the Department relating to civilian casualties resulting from United States military operations, as required by section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 134 note);

(C) finalizing Department-wide regulations to implement section 1213 of the National Defense Authorization for Fiscal Year 2020 (Public Law 116–92) for ex gratia payments for damage, personal injury, or death that is incident to the use of force by the United States
Armed Forces, a coalition that includes the United States, a military organization supporting the United States, or a military organization supporting the United States or such coalition; and

(D) professionalizing foreign partner forces to reduce civilian casualties, including in connection with train and equip programs, advise, assist, accompany, and enable missions, and fully combined and coalition operations.

SEC. 3. MODIFICATION OF ANNUAL REPORT ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS.

Section 1057 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 113 note) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (2) through (9) as paragraphs (3) through (10), respectively;

(B) by inserting after paragraph (1) the following new paragraph (2):

“(2) A list of each authorized advise, assist, accompany, and enable mission during the year covered by such report during which civilian casualties
or human rights abuses by partner forces were observed or later reported.”;

(C) in subparagraph (A) of paragraph (4), as redesignated by subparagraph (A) of this paragraph, by inserting before the semicolon the following: “, and any measures in place for preventing, mitigating, and responding to the death or injury to civilians that occurs during advise, assist, accompany, and enable missions conducted by United States military personnel”;

(2) in subsection (d)—

(A) in the second sentence, by striking “, and shall be made available” and all that follows and inserting a period; and

(B) by adding at the end the following new sentence: “The unclassified form of each report shall be published on an Internet website of the Department available to the public concurrently with its submission to Congress.”;

(3) by redesignating subsection (e) as subsection (f): and

(4) by inserting after subsection (d) the following new subsection (e):

“(e) HUMAN RIGHTS ABUSES DEFINED.—In this section the term ‘human rights abuses’ has the meaning
given the term ‘gross violations of internationally recog-
nized human rights’ in section 502B(d)(1) of the Foreign
Assistance Act of 1961 (22 U.S.C. 2304(d)(1)).’’

SEC. 4. INTEGRITY OF CIVILIAN CASUALTY INVESTIGA-
TIONS.

(a) INVESTIGATIONS BY OFFICERS OUTSIDE UNIT
OR CHAIN OF COMMAND.—A commander in the Armed
Forces conducting an administrative investigation, com-
mander directed inquiry, or equivalent investigation on ci-
vilian casualties resulting from a United States military
operation that was undertaken by one or more units under
the command of the commander shall, to the extent prac-
ticable, select as an officer to conduct such investigation
an officer in the Armed Forces outside of such units or
chain of command.

(b) SEPARATION OF INVESTIGATIVE PERSONNEL
FROM PERSONNEL INVOLVED IN OPERATIONS.—The
military or civilian personnel of the Armed Forces who
conduct an investigation on civilian casualties resulting
from a United States military operation shall, to the ex-
tent practicable, be operationally separate from members
of the Armed Forces who were directly involved in such
operation.

(c) SITE VISITATIONS IN INVESTIGATIONS.—
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(1) IN GENERAL.—Each investigation on civilian casualties resulting from a United States military operation shall, to the extent practicable, include a visit (including the interview of civilian survivors and witnesses after their informed consent) by appropriate members of the United States Armed Forces to each site at which civilian casualties were confirmed or reasonably suspected in connection with such operation.

(2) VISITS BY ALTERNATIVE PERSONNEL.—If the Secretary of Defense determines that a visit by members of the United States Armed Forces to a site as otherwise required by paragraph (1) is not practicable, the Secretary shall—

(A) memorialize, in writing, the justification for such determination;

(B) make every reasonable effort to obtain such a visit by appropriate military or civilian personnel of a partner or coalition military force, or by personnel of the national government concerned, or a local government, capable of making such a visit in connection with the investigation concerned; and

(C) memorialize, in writing—
(i) the results of any visit under sub-
paragraph (B); or

(ii) if no visit could be obtained under
that subparagraph, the gaps in evidence in
the investigation concerned as a result of
the lack of such a visit.

SEC. 5. COORDINATION BETWEEN GEOGRAPHIC COMBAT-
ANT COMMANDS AND THE DEPARTMENT OF
STATE.

(a) IN GENERAL.—Not later than 180 days after the
date of the enactment of this Act, the Secretary of Defense
shall direct each commander of a geographic combatant
command to coordinate with the Department of State to
establish and maintain an uninterrupted line of commu-
nication between such command and the Chief of Mission
(of the Chief’s designee) in any country in which such
command is conducting military operations in order to as-
sist in the response to reports of civilian casualties result-
ing from such military operations.

(b) PRIMARY OBJECTIVE.—The primary objective of
the line of communication under this section shall be to
serve as a channel for fielding and coordinating reports
of civilian casualties resulting from United States military
operations undertaken by the command concerned in the
country concerned.
SEC. 6. DATABASE ON REPORTS ON INVESTIGATIONS.

(a) DATABASE REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall establish and maintain within the Department of Defense a database that preserves and organizes reports of the Department on investigations of civilian casualties resulting from United States military operations (including reports under section 1057 of the National Defense Authorization Act for Fiscal Year 2018, as amended by section 3 of this Act), and the results of such investigations.

(b) SEARCHABILITY.—The database required by subsection (a) shall be searchable by personnel across the Department.

(c) AVAILABILITY TO PUBLIC.—The public shall have access to, and be able to search, the database required by subsection (a) through an Internet website of the Department that is available to the public. For purposes of such access, appropriate information in the database may be maintained in a classified annex in the interests of the national security of the United States, and access to such annex appropriately limited.

(d) UPDATE.—The database required by subsection (a) shall be updated not less frequently than once each year.
SEC. 7. RESOURCES TO IMPLEMENT DEPARTMENT OF DEFENSE POLICY ON CIVILIAN CASUALTIES IN CONNECTION WITH UNITED STATES MILITARY OPERATIONS.

(a) PURPOSE.—The purpose of this section is to facilitate fulfillment of the requirements in section 936 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 134 note).

(b) PERSONNEL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall do the following:

(1) Add to, and assign within, each of the United States Central Command, the United States Africa Command, the United States Special Operations Command, the United States European Command, the United States Southern Command, the United States Indo-Pacific Command, and the United States Northern Command not fewer than two personnel who shall have primary responsibility for the following in connection with military operations undertaken by such command:

(A) Providing guidance and oversight relating to prevention of and response to civilian casualties, promotion of observance of human rights, and the protection of civilians and civilian infrastructure.
(B) Overseeing civilian casualty response functions on behalf of the commander of such command.

(C) Receiving reports of civilian casualties and conduct of civilian casualty assessments.

(D) Analyzing civilian casualty incidents and trends.

(E) Offering condolences for casualties, including ex gratia payments.

(F) Ensuring the integration of activities relating to civilian casualty mitigation, protection of civilians, and promotion of observance of human rights in security cooperation activities.

(G) Consulting with non-governmental organizations on civilian casualty and human rights matters.

(2) Add to, and assign within, the Office of the Under Secretary for Policy not fewer than two personnel who shall have primary responsibility for implementing and overseeing implementation by the components of the Department of Defense of Department policy on civilian casualties resulting from United States military operations.
(3) Add to, and assign within, the Joint Staff not fewer than two personnel who shall have primary responsibility for the following:

(A) Overseeing implementation by the components of the Department of Defense of Department policy on civilian casualties resulting from United States military operations.

(B) Developing and sharing in the implementation of such policy.

(C) Communicating operational guidance on such policy.

(c) Training, Software, and Other Requirements.—

(1) In general.—In each of fiscal years 2021 through 2023, the Secretary of Defense and each Secretary of a military department may obligate and expend, from amounts specified in paragraph (2), not more than $5,000,000 for the following:

(A) Training related to civilian casualty mitigation and response.

(B) Information technology equipment, support and maintenance, and data storage, in order to implement—

(i) the policy of the Department related relating to civilian casualties result-
ing from United States military operations
as required by section 936 of the John S.
McCain National Defense Authorization
Act for Fiscal Year 2019; and

(ii) the database required by section

(2) FUNDS.—The funds for a fiscal year specified in this subparagraph are funds as follows:

(A) In the case of the Secretary of Defense, amounts authorized to be appropriated for such fiscal year for operation and maintenance, Defense-wide.

(B) In the case of a Secretary of a military department, amounts authorized to be appropriated for such fiscal year for operation and maintenance for the components of the Armed Forces under the jurisdiction of such Secretary.

SEC. 8. UNITED STATES MILITARY OPERATIONS DEFINED.

In this Act, the term “United States military operations” includes any mission, strike, engagement, raid, or incident involving United States Armed Forces.