

# **(UN)ACCOUNTABLE**

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**Rethinking US Security Sector Accountability  
Across the Domestic-International Divide**

# RECOGNIZE. PREVENT. PROTECT. AMEND.

**February 2023**

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## ORGANIZATIONAL MISSION AND VISION

**Center for Civilians in Conflict (CIVIC)** is an international organization dedicated to promoting the protection of civilians in conflict. CIVIC envisions a world in which no civilian is harmed in conflict. Our mission is to support communities affected by conflict in their quest for protection and strengthen the resolve and capacity of armed actors to prevent and respond to civilian harm. CIVIC was established in 2003 by Marla Ruzicka, a young humanitarian who advocated on behalf of civilians affected by the war in Iraq and Afghanistan. Honoring Marla's legacy, CIVIC has kept an unflinching focus on the protection of civilians in conflict. Today, CIVIC has a presence in conflict zones and key capitals throughout the world where it collaborates with civilians to bring their protection concerns directly to those in power, engages with armed actors to reduce the harm they cause to civilian populations, and advises governments and multinational bodies on how to make life-saving and lasting policy changes. CIVIC's strength is its proven approach and record of improving protection outcomes for civilians by working directly with conflict-affected communities and armed actors. At CIVIC, we believe civilians are not "collateral damage" and civilian harm is not an unavoidable consequence of conflict—civilian harm can and must be prevented.

**The Stimson Center** promotes international security and shared prosperity through applied research and independent analysis, global engagement, and policy innovation. For three decades, Stimson has been a leading voice on urgent global issues. Founded in the twilight years of the Cold War, the Stimson Center pioneered practical new steps toward stability and security in an uncertain world. Today, as changes in power and technology usher in a challenging new era, Stimson is at the forefront: Engaging new voices, generating innovative ideas and analysis, and building solutions to promote international security, prosperity, and justice.

## ACKNOWLEDGEMENTS

This report was authored by Rosie Berman (Project Manager, Accountable Security), Dan Mahanty (Director, Research, Learning, and Innovation), and Annie Shiel (US Advocacy Director) of Center for Civilians in Conflict (CIVIC). Research for this report was conducted by a research team, led by Rosie Berman and including Rachel Stohl (Vice President, Stimson Center), Elias Yousif (Research Analyst, Stimson Center), Annie Shiel (US Advocacy Director, CIVIC), and Dan Mahanty (Director for Research, Learning, and Innovation, CIVIC). The project was supported by Stefan Bakumenko, Deena Essa, John Ramming Chappell, and Ari Tolany of CIVIC and Ryan Fletcher of the Stimson Center. Lauren Spink (Senior Advisor for Research, CIVIC) and Vanja Kovac (Gender Advisor, CIVIC) reviewed earlier drafts of the report. The team would like to thank Fionnuala Ní Aoláin, Amanda Lyons, and Sarah Erickson of the Human Rights Center at the University of Minnesota Law School for hosting a roundtable with civil society from the Twin Cities area, and Rebeca Cazeres of the Kroc Institute for Peace and Justice at the University of San Diego for hosting a roundtable with migrant rights practitioners in Tijuana, Mexico. A range of subject-matter experts and civil society leaders provided their time and expertise to the report, although their participation does not automatically constitute an endorsement of the report or its findings. The research project was funded with the generous support of the Carnegie Corporation of New York. The research team would also like to thank Ken Sofer and Amanda Catanzano of the International Rescue Committee for their support and feedback throughout the project. The team also thanks Jenn Budd, Brian Finucane, Marc Garlasco, Maha Hilal, Jessica Katzenstein, Joanna Naples-Mitchell, Nicole Ramos, Basim Razzo, and Will Wallace for providing feedback on an initial draft.



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## EXECUTIVE SUMMARY

Accountable state security institutions are a cornerstone of good governance. Accountability can serve as an important check on the power of these institutions, which are uniquely tasked with enforcing the government's will with force. It can also reaffirm the humanity of victims and survivors of harm, promote healing, and reduce the likelihood that harm will recur in the future. When governments fail to hold themselves or their security institutions accountable, or when external and internal sources of accountability fail, public trust begins to fray, cycles of harm continue, and democracies begin to fracture. In just the last few years, governments and societies across the world have been tested by a variety of stress factors, including but not limited to unaccountable and politicized security institutions and practices, which reflect a pervasive and under-recognized threat to democracy.

For its part, US history contains a range of accountability failures, from the enforcement of slavery and racial segregation domestically to the atrocities committed during the Vietnam War. While American institutions have undergone valuable reforms in the intervening years, ample evidence suggests that accountability continues to fall short for those who are harmed as a result of US security policy and practices across the domestic-international divide. Domestically, the continued and disproportionate killings of Black Americans and other people of color by law enforcement, as well as abuses against migrants at the US-Mexico border, have gone largely unaddressed. Internationally, the US military has caused significant civilian harm across a range of post-9/11 conflicts without recognition or accountability, and the legacy of torture at Guantánamo Bay and US “black sites” remains.

The contexts within which law enforcement and military servicemembers operate are undeniably different, as are the domestic and international legal frameworks that govern their conduct. This report does not seek to suggest that they are the same. Despite these notable differences, however, we see significant commonalities in victims' and survivors' experiences seeking accountability for harm, regardless of whether or not the security force conduct in question was lawful or unlawful. For example, people inside and outside of the United States seeking recognition or remedy for their harm face significant access barriers to reporting and accountability mechanisms, high transaction costs, and disparities in which cases are granted attention. And across the domestic-international divide, those who are harmed do not enjoy the same degree of political influence, power, or the ability to absorb the high costs of accountability that have been transferred to them. As a result, many variables work to favor the perspectives of governments and armed actors, while too few work in favor of those harmed. This report therefore addresses but also goes beyond questions about criminal accountability for individual unlawful conduct in order to reimagine what comprehensive accountability for harm might and should entail, regardless of legality or perpetrator and with victims and survivors at the center.

When done well, accountability has a wide range of benefits—first and foremost for the victims and survivors of state violence. Yet accountability also brings benefits for governments and broader societies. For example, investing

*When it comes to accountability, many variables work to favor the perspective of the government and armed actors, while far too few work in favor of those who are harmed.*

in accountability domestically could build trust and legitimacy around democratic governance at a time when many, both in and outside of the United States, are understandably questioning democracy's ability to "deliver" for all.<sup>1</sup> Reckoning with both unlawful and lawful harm resulting from recent wars in Afghanistan, Iraq, Syria, Libya, and Somalia could provide some measure of dignity and humanity to survivors, while also helping to separate the future of American national security policy the more troubling aspects of its past; such reckoning should be a crucial component of any effort to finally end the US "forever wars". Further, ensuring accountability for the US government's own actions would strengthen the credibility of the United States when promoting human rights, civilian protection, and democracy abroad. And although the very term "accountability" can conjure pejorative connotations for some, data suggests that the American public considers accountability as critical for both police and the military, across both domestic and foreign policy.<sup>2</sup>

No matter which of these perspectives the reader assumes, strengthening accountability is both an urgent and worthwhile endeavor. Based on this premise, the Center for Civilians in Conflict (CIVIC) and the Stimson Center (Stimson) launched a research project in 2021 designed to evaluate the current state of accountability for US security institutions, policies, and practices across the domestic-international divide. Centered heavily on the perspectives of those who have a claim on accountability, this study aimed to generate feasible options for strengthening accountability at every level of government, not only for the many benefits doing so could provide, but in response to the needs of those most affected by accountability failures.

Our key findings, further elaborated in Chapter VI, include:

- **Accountability takes a variety of forms, serves a variety of purposes, and provides undeniable benefits to those harmed, as well as to broader society and for maintaining good governance.** Accountability should be designed with the perceptions and experiences of all stakeholders in mind. It need not and should not be limited to holding specific perpetrators to account for unlawful conduct. Sources consulted for this project, including a poll conducted among a sample of the American public, see many benefits to accountability, such as justice and healing for those harmed, the prevention of future harm, and improved public trust in democratic institutions.
- **Despite its benefits, and in spite of certain advances in certain forms of procedural accountability, satisfactory accountability for harm caused by US security institutions remains elusive in both domestic and international contexts.** People in the United States and abroad experience common challenges in their pursuit of accountability, which include barriers to access and high transaction costs. Meanwhile, both the US military and law enforcement institutions exhibit a tendency to focus disproportionately on select cases, often as a result of media scrutiny or public outcry.
- **Accountability failures incur significant costs.** For the victims and survivors of harm, these costs include threats to their physical safety, psychological harm, economic hardship, and the risk of future harm. Accountability failures also erode public trust in democratic governance domestically. Internationally, these failures can fuel cycles of violence and complicate efforts to promote accountability for the actions of other states.
- **While accountability gaps and failures stem from a broad range of factors and depend on context, certain factors help to explain commonalities across US security institutions operating domestically and internationally.** These include, for example, competing demands

for different forms of accountability, social and cultural norms, and an aversion to constraints on freedom of action within security institutions.

- **Impacted communities in the United States and around the world envision a comprehensive system of accountability that encompasses various elements centered on victims' needs and desires.** These elements can include acknowledgement, explanation, and apologies; taking responsibility and making amends; legal liability and disciplinary action; and non-repetition.

In light of these findings, we make the following recommendations for the US government, also elaborated in Chapter VI:

- Embrace a comprehensive, systemic approach to accountability across US security institutions that offers a range of options centered around the needs and preferences of victims and survivors.
- Prioritize non-repetition, or the prevention of future or repeated harm, as a key facet of accountability.
- Recognize and take responsibility for harm through public acknowledgment and apologies as well as tangible steps to repair harm where possible, including but not limited to monetary amends, compensation, and/or reparations.
- Ensure individual accountability through both civil and criminal penalties when applicable, as well as non-legal disciplinary measures.
- Enact legislation tackling legal barriers to accountability.
- Develop accessible, transparent, and context-specific pathways for reporting harm.
- Conduct independent, comprehensive, and transparent investigations with embedded bias checks.
- Boldly reckon with past harms, including by re-investigating cases that were likely erroneously dismissed due to shortcomings in past investigatory practices.
- Inculcate an internal culture of accountability in US security institutions.
- Be consistent about US support for and promotion of accountability abroad.
- Consult with impacted communities and center the needs and preferences of victims and survivors in designing accountability mechanisms.

## Methodology

This report examines the current state of accountability for US security institutions, policies, and practices. While the findings are largely based on the perspectives of those most affected or harmed by these elements of the US security architecture, the report also considers the broader range of public interests served by strengthening accountability. For its part, CIVIC traditionally interprets civilian harm in the context of armed conflict to mean “conflict-related death, physical and psychological injury, loss of property and livelihood, and interruption of access to essential services.” This definition remains applicable to the scope of harms discussed in this report but has been expanded slightly to also include the physical and non-physical harms experienced by people at the hands of law enforcement outside of armed conflict. This report acknowledges that harms experienced by civilians in conflict, and by people outside of the context of an armed conflict, may result from both the lawful and unlawful conduct of state actors.

Research for this report was conducted between January 2022 and February 2023 by staff from Center for Civilians in Conflict and the Stimson Center (the “research team”). Narrowing the scope of concern for the exceedingly broad topic of US security sector accountability, and developing a corresponding agenda for change, raised at least three immediate challenges:

- This report attempts to identify the characteristics that surface as common to many, if not all security institutions, and proposes a set of factors that help to explain accountability trends across institutional divides. The US security sector—taken to include the full range of institutions that hold the authority and mandate to ensure public safety or national security, including through the use of force—comprises a wide array of law enforcement, military, intelligence services, and judicial bodies at the federal, state, and local levels. Each institution has its own legacy, traditions, character, culture, and bureaucratic attributes. Critically, important differences exist between and within law enforcement, intelligence, and military organizations as discussed above. Where possible, the report aims to identify meaningful differences.
- No study can examine the full history of accountability practices (and failures) across such a diverse array of institutions over two centuries of American history. This report extrapolates general observations from contemporary cases, while at times referencing more notable historical events that have a bearing on current practices.
- The US system is comprised of numerous local, state, and federal law enforcement bodies, all of which constitute state security institutions that owe accountability to the people they are meant to serve. Although our organizations typically focus on policy analysis and advocacy at the federal level, the federal government does not exercise direct jurisdiction over local law enforcement agencies in most matters and relies on court intervention to exercise oversight. As a result, federal oversight and accountability for local police often only comes after a pattern of civil rights abuse has been established. The report includes local law enforcement as a necessary unit of analysis to understand patterns of harm and accountability in US domestic security institutions. At the same time, the report’s recommendations focus primarily on ways that the federal government can support accountability in partnership with civil society and local government, while recognizing that many improvements in accountability for local law enforcement rely on factors that rest outside the federal government’s immediate control.

Research for this project involved a mix of qualitative research methods as well as a poll. The qualitative methods of data collection included desk research, interviews, roundtable discussions, and research workshops with subject matter experts and key stakeholders from civil society. Some participants were purposefully sampled and others selected using snowball sampling. After thematically coding the anonymized interview and workshop data, the preliminary findings underwent peer review among a selected group of the research participants.

These methods are described in further detail below:

### ***Desk Research and Subject Matter Expert Interviews:***

To examine theoretical perspectives on accountability, and to understand the relationships between accountability, democracy, and the security sector, the research team conducted desk research and subsequently carried out semi-structured interviews with 15 purposefully sampled subject matter experts in security sector governance, security policy, US law, and US policing (6 men, 9 women).



### ***Civil Society Interviews and Research Visits to the Twin Cities and San Diego/Tijuana:***

To understand the experience of civilians and communities with accountability systems, the research team interviewed 10 individuals and conducted 4 roundtable discussions with a total of 24 purposefully sampled civil society leaders (8 men, 16 women, one non-binary person<sup>3</sup>), and hosted three research workshops (including workshops in the Twin Cities region of Minnesota and the border region of San Diego, California and Tijuana, Mexico) with a total of 32 civil society leaders. Participants included community organizers, restorative justice practitioners, lawyers, advocates, service providers, and others focused on issues related to accountability for harm caused by US security policies and practices domestically and abroad. Many came from communities affected by these policies and practices. Some had experienced harm and unaccountability personally.

To minimize potential physical and psychological risks to our participants— particularly among those directly affected and members of affected communities more broadly, the research team selected participants who were already conducting advocacy around the issues in question and were accustomed to sharing their personal stories and expertise. Further, the research team elected to engage with service providers, advocates, and researchers who regularly engage affected individuals and communities as part of their work. These secondary interlocutors were able to share the perspectives of their constituents and clients along with patterns they had identified. We recognize that our decision to rely on advocates and seek some perspectives second-hand represents a limitation of our methodology and, as a result, our findings and recommendations. We have attempted to compensate for this limitation through other research methods.

### ***Poll:***

To better understand the American public's perspectives on the questions explored in this report, CIVIC and Stimson commissioned the polling firm YouGov to conduct a survey. YouGov surveyed 1,065 respondents. This sample of 1,065 was matched down to 1,000 respondents using a sample frame consisting of gender, age, and education, based on the full 2019 American Community Survey (ACS) 1-year sample. Select findings from the survey are embedded throughout the report, and CIVIC intends to make the entire set available to the public.<sup>4</sup>

### ***Peer Review:***

An initial draft of this report was reviewed by a selection of research participants who were offered a \$50 prepaid Visa card as a gesture of appreciation.

# I. ACCOUNTABILITY: WHAT IT MEANS AND WHY IT MATTERS

If placed together in a room to discuss accountability, representatives from civil society, federal and local governments, and the general public would probably agree at first that the government should have to answer for the conduct and performance of state security institutions and their agents. Yet disagreements among and even within these groups would soon surface over what accountability means, why it matters, where it should apply, and how it should be measured. This report does not aim to provide full answers to any of these questions. However, assessing and explaining the record of US accountability in order to strengthen it requires briefly exploring each. To establish a common basis for evaluation in subsequent chapters, this section supplements the perspectives of the sources directly consulted during the research by drawing more heavily on prevailing theoretical perspectives on accountability as a formal discipline.

## Why Does Accountability for State Security Institutions Matter?

Accountability provides the basis for social harmony at every level of human interaction. It assumes a particularly outsized importance in political systems, and especially democracies, where government is a public good. Through government accountability, the public benefits from more efficient and effective government services, reasonable constraints on government intrusion into private and public life, and policies that serve their interests. For its part, the government preserves public and moral authority – and by extension, the legitimacy – needed to govern.<sup>5</sup> In a democracy like the United States, the institutions commonly associated with a well-functioning democracy are, in fact, accountability mechanisms. Free, fair, and inclusive elections hold politicians accountable for promises and failures. The rule of law establishes and enforces limits on government power. Public oversight bodies and civil society monitor the expenditure of public funds and the delivery of government services.<sup>6</sup>

For the policy or lawmaker concerned with strengthening government accountability, security policy and practice should naturally emerge as a top priority. The first task for democratic accountability is, after all, “to make state power accountable to those subjected to state violence.”<sup>7</sup> Whereas accountability matters for all institutions and policies, accountability for state security institutions and policies arguably carries proportionally greater significance. Like other government institutions, security agents such as police officers, soldiers, or border patrol units represent the government’s authority. Unlike other institutions, however, state security institutions enforce the government’s will with force: they are uniquely empowered to deprive people both inside and outside of the state of their lives and freedom through the use or threat of violence. Unaccountable security forces thus either serve as instruments of coercion for political and societal elites or suffer from inadequate incentives or oversight by public institutions.<sup>8</sup> In either case, a lack of accountability for the conduct of government security forces reflects a political system that more broadly fails to limit the use of illegitimate violence.<sup>9</sup>

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Credit: U.S. Army Reserve/Spc. DeAndre Pierce

*A competitor in the United States Army Special Operations Command International Sniper Competition uses a digital range finder on his weapon while engaging long-distance targets at Fort Bragg, North Carolina, March 19, 2019. Twenty-one teams competed in the USASOC International Sniper Competition where instructors from the United States Army John F. Kennedy Special Warfare Center and School designed a series of events that challenged the two-person teams' ability to work together, firing range, speed and accuracy in varied types of environments. (U.S. Army photo by K. Kassens)*

Alternatively, security forces duly constrained by their political systems and accountable under the rule of law for protecting the human rights of all can strengthen a government's moral authority and legitimacy needed to govern by public mandate. When abuses do occur, security force accountability is critical to addressing the needs of the victims and survivors of harm, restoring a sense of safety and justice, supporting physical and psychological healing, and preventing harm in the future—benefits explored in greater depth throughout this report.

Security force accountability matters not only for security operations within the state in question, but also for security operations conducted outside of a state's borders. In the case of the United States, the US government submits to an accountability relationship with people outside of its territory through its obligations under treaty-based and customary international law, including international human rights law and international humanitarian law. Additionally, while the legal relationship between the US government and the people it affects around the world is different to the one that exists between the government and the people living within the US, both relationships include valid accountability demands. For example, individual civilians may have no legal claim to reparations for harm suffered during a lawful military operation. However, they may reasonably expect acknowledgement, apology, condolence payments, or guarantees of non-repetition, which do not exist within a formalized legal requirement. Drone strikes, security partnerships, and border operations all affect people in ways that create valid—if seldom recognized—demands for accountability from those affected.<sup>10</sup>

## Defining Accountability: What Does Accountability Mean?

Accountability scholars have described accountability as a “notoriously ambiguous” term that depends entirely on context for its meaning.<sup>11</sup> Far beyond a theoretical concern, different interpretations of the term and the scope of its application in the context of security policy and practice can limit consensus over what “good” accountability looks like. For some, “accountability” in the context of security policy and practice conjures images of crime and punishment based on violations of the rules and prescribed through very specific and formal liabilities. It is neither unusual—nor unwarranted—to see calls for formal investigations into possible violations of law and where appropriate, legal repercussions, whether in the context of civilian harm abroad or police violence domestically. But for many of the sources consulted for this project, whether in reference to military operations or domestic law enforcement, accountability represents something beyond criminal punishment alone (see Chapter IV for greater elaboration). In a YouGov poll conducted for this project, more people in the United States saw a very strong association between accountability and the terms such as “transparency” (34%), “explanations” (27%), “behavior change” (31%), “apologies” (23%), and “repair/restore” (28%). Only 19% saw a very strong association between accountability and the term “punishment.”<sup>12</sup>

*But for many of the sources consulted for this project, whether in reference to military operations or domestic law enforcement, accountability represents something beyond criminal punishment alone.*

Thus, recognizing accountability first as a *concept*, rather than as a word with a single definition; and second, as a *system*, rather than an isolated act may provide a helpful starting point for reconciling varied understandings of what accountability means or includes. This view also aligns with how accountability applies in other contexts, such as public administration, business, and even social norms of conduct. Seen from this broader perspective, accountability can include the full range of measures that a government, an organization, or an individual can or must take to own and answer for their actions—or their failure to take action—in meeting a set of responsibilities.<sup>13</sup>

The experts and literature consulted for this report provide clues as to the enduring characteristics and desirable qualities of accountability systems and processes across a variety of contexts and disciplines. Understanding these characteristics helps identify the most meaningful features of accountability for US security policy and practice, and ultimately for providing a pathway for building a more comprehensive, legitimate, and satisfying accountability regime. Some key concepts relevant to accountability worth considering are discussed below:

- **Accountability serves a variety of purposes:** Holding state agents and institutions accountable serves a number of purposes for individuals, organizations, and for the public. These may include improving organizational performance, administering justice, deterring or preventing a recurrence of similar actions, and aligning security policies with public security needs. When asked to rate the importance of the benefits commonly associated with accountability on a scale (1 being not important and 10 being very important)



73% of those polled rated the importance of accountability for **preventing future acts** as between 8 and 10.



72% rated the importance of accountability for providing **justice to those harmed** as between 8 and 10.



71% rated the importance of accountability for **improving trust in local and federal government** as between 8 and 10.



69% rated the importance of accountability for **improving attitudes and perceptions of security institutions** as between 8 and 10.<sup>14</sup>

- **Accountability relationships are often complex and involve power asymmetries.** People, governments, and organizations have many formal and informal responsibilities, meaning accountability is rarely expressed through a single interaction between equal parties.<sup>15</sup> Instead, the ways that parties meet their responsibilities to others comprise sometimes complex “accountability relationships.” The same is true for security institutions. For example, police officers in the United States are charged with solving crime, refraining from excessive force, and maintaining public safety. In meeting their responsibilities, they are answerable—through a range of formal and informal means—to individual citizens, communities, the institutions they work for, and one another. Holding the police accountable (or failing to do so) for meeting each of these responsibilities affects different stakeholders in different ways. Accountability demands can also exist in tension or even competition with one another, inducing parties to reconcile or prioritize them often amidst significant power imbalances.
- **Accountability can but does not always include formal liabilities.** Accountability regimes include formal and informal recognition of liabilities, i.e., what is “owed” when a party fails to meet their responsibilities. Formal liabilities, such as legal repercussions enshrined in law or a contract, both clarify expectations and set reasonable limits on sanctions. On the other hand, formal liabilities do not always accurately capture or reflect the strength or breadth of an accountability relationship. As a result, informal steps that help to meet social or normative expectations of accountability may be required when formal liabilities do not exist or apply.



**Accountability can include a range of measures.** The process of accounting for action or inaction can include a variety of measures depending on the ultimate purpose. Accountability can include investigations into the cause and effect of an action or inaction; accounting for the truth of what occurred through simple explanations or justification; formal punishment or sanction; efforts to repair harm including the provision of compensation, amends, reparations, or restoration for damage; changes to policy or practice; and/or expressions of contrition or regret.

- **Accountability has limitations.** Accountability cannot serve all purposes. It cannot serve as a proxy for preventing harm in the first place, undo the past, or replace all that has been lost.

## Accountability in Practice: What are Accountability Mechanisms?

In democratic political systems, elections serve as the most elemental form of accountability. The public can sanction unaccountable elected officials and political parties for security policies they disagree with by voting them out of office. But the volume of accountability demands, and the public interest involved with protecting a basic level of government accountability from political influence, requires democracies “delegate” accountability functions to the law, and to public and institutional accountability mechanisms. Some of these mechanisms (which may be more or less effective in practice) are described below:

- **Internal hierarchy:** Military service members, law enforcement officers, and other government agents are subject to the oversight of more senior echelons of management, who themselves are subject to the oversight of elected officials and their appointees.
- **Institutional hierarchy:** Municipal police departments may be subject to oversight from county or state-level oversight bodies, and federal oversight in certain matters by the Department of Justice. Federal law enforcement is subject to direct oversight from federal agencies. Military units are subject to oversight from higher echelons of their command or leadership structures, as well as oversight from civilian political leadership.
- **Internal oversight:** The conduct of individuals and units is subject to oversight by internal oversight bodies such as internal affairs or Inspectors’ General, or are required to confer with, or seek the approval of, internal legal counsel. Internal oversight may also include processes intended to document and review fact patterns, such as body cameras or administrative investigations.
- **Disciplinary measures:** The punitive measures that exist and that are enforced to ensure individuals and units receive appropriate sanctions for violating established rules. Depending on the context, such sanctions can include administrative leave, removal from a specific line of work, letters of reprimand, demotion, and termination.
- **Performance evaluation and learning:** Processes, such as “after action” or “lessons learned” reviews or internal studies conducted to measure and evaluate institutional performance to identify gaps and opportunities for course-correction.
- **Legislative oversight:** Elected lawmaking bodies such as the US Congress and state legislatures draft and pass legislation, decide budgets, and monitor the conduct of state security institutions in meeting their legal responsibilities and expectations regarding their performance.

- **Independent oversight bodies:** Boards or commissions, often created by law or formal mandate and made up of citizens or civilians, that conduct oversight of state security institutions and/or work to improve security force—community relations through investigations, incident review, advisory support, hearings, and other means.
- **Public oversight:** Journalists, civil society organizations, and public interest groups monitor the conduct and performance of state security institutions and advocate for changes to law, policy, and practice.
- **Mutual accountability:** Relationships between state security bodies and other public institutions can affect expectations of accountability regarding performance or conduct. For example, some CIA activities that carry foreign policy implications are subject to interagency review and approval.
- **Legal oversight:** The judicial system enforces, but also provides parameters and expectations for, accountability under the law. The courts ensure that the government and its agents abide by their legal obligations but also help to interpret and clarify the extent and nature of their liabilities. They also prevent excessive or unreasonable claims on accountability (sometimes known as “accountability overload”) as a legal matter. Civil liability, individual and institutional criminal liability, military courts-martial, and processes such as pattern-or-practice investigations and consent decrees fall into the category of legal oversight.

The mere existence of these or other measures does not guarantee desired or consistent accountability outcomes. The success of each measure also depends on a range of contributing factors. For example, independent oversight bodies require both political support and some degree of cooperation from state security institutions; effective public oversight depends on transparency; and the ability of an internal hierarchy to promote accountability can depend on organizational culture.

## Evaluating Accountability: What Does Good Accountability Look Like?

Although civil society, the government, and the public may agree on the importance of accountability, they may not agree on what it should look like, how much accountability is needed and in what forms, and what costs are worth bearing to achieve it. Sources consulted for this report provided both prerequisites for the success of accountability regimes, along with four distinct but related categories for evaluating them:

- **Outcomes:** Of all the ways to measure accountability, none is more important than the outcomes it produces. Key questions for assessing outcomes include:
  - Do processes align with and lead to the full range of desired outcomes, such as justice and humanity, policy alignment, improved performance, non-repetition, or trust in institutions?
  - Are outcomes, or patterns of outcomes, suggestive of significant accountability failures?
  - Are the dividends of accountability enjoyed equitably across gender, race, ethnicity, class, and other identity groups?<sup>16</sup>
- **Process:** Even the most well-resourced accountability systems may not succeed in producing the desired outcomes for all parties, in all situations, and on the basis of all claims. Fair processes and procedures can, therefore, serve as a complementary indicator. Fair processes also help safeguard against abusive accountability practices, such as bypassing due process in favor

of visceral impulses to satisfy accountability demands. Yet just as measuring accountability on outcome alone carries risks, process-based accountability can “... too easily degenerate into bureaucratic rituals in which employees adhere to widely-accepted processes within the organization and make excuses for poor outcomes by claiming that they did all they could within the bounds of organizational norms.”<sup>17</sup> Key questions for assessing process include:

- Was the full range of stakeholders affected by the accountability process consulted in its design? If under the same circumstances, certain people cannot benefit from accountability where others can, accountability will be distorted in favor of certain groups and not others.
- Is the process subject to rigorous public oversight?<sup>18</sup> Without a public role in guaranteeing a process meets people’s needs and provides satisfactory outcomes, that process will be less likely to do either.
- Was the process transparent, understandable, accessible, and fair? An inaccessible, secret, or difficult to understand process is unlikely to serve the desired ends of accountability.

- **Experience:** The overall effectiveness of an accountability regime should be measured, in part, by the views of the actual people who participate in it, both within and outside the government.<sup>19</sup> For example:

- How do people across identity categories experience their interactions as subjects, participants, or observers of an accountability regime? If people are treated with respect and dignity during the process regardless of identity, and understand and believe the process is fair, they may benefit more from its outcomes.
- Does the accountability regime encourage or discourage participation through the way people across identity categories experience their engagement with it? If people experience harassment for reporting misconduct or expressing their opinion, they and others will likely be discouraged from engaging in accountability processes.

- **Perceptions:** Ultimately, experiences, outcomes, and processes all shape perceptions of an accountability regime, and ultimately the institutions it is meant to govern. Observers should ask:

- Do people across identity categories have confidence in the fairness and effectiveness of accountability regimes? People will lose trust in an accountability regime they believe to be ineffective, abusive, or not designed to work in the first place.
- Are perceptions of an accountability regime disproportionately shaped by the legitimating effects of procedure or under-informed or inaccurate portrayals of outcomes?

## II. ACCOUNTABILITY AND THE US SECURITY SECTOR

American history contains a range of notable and unambiguous accountability failures, especially when judged by the perception and experience of those most affected by harmful security practices. True accountability for the dispossession of indigenous people and violent enforcement of slavery and racial segregation remains elusive, while disproportionate police killings of Black Americans and other people of color have gone largely unaddressed.<sup>20</sup> As have surveillance and racial profiling in the wake of 9/11<sup>21</sup> and serious human rights violations at the US-Mexico border.<sup>22</sup> Internationally, the US military has been involved in a range of conflicts and operations, lawful and unlawful, that resulted in significant loss of civilian life and injury, without recognition of or accountability for many of these harms. Other international security activities, such as harm resulting from covert CIA operations, support for human rights abuses during the Cold War, and torture at Guantánamo Bay and US “black sites,”<sup>23</sup> have also left a wake of harm without accountability.

As advocates and scholars have noted, many of these accountability failures stem in large part from original features of institutional design.<sup>24</sup> US law enforcement institutions—in particular— were designed to serve and be accountable to certain segments of the population at the exclusion or expense of others. This legacy cannot be ignored in the evolution and character of the same institutions today.<sup>25</sup> For example, police departments in the American South developed from slave patrols and colonial-era militias, tasked with repressing uprisings and violently controlling enslaved people.<sup>26</sup> The result, as Harvard University scholar Jessica Katzenstein noted, is that state security institutions “were never designed to be accountable to the targets of their violence.”

When steps have been taken to strengthen accountability regimes, they have frequently been prompted by public and congressional pressure over high-profile incidents and/or hard-fought grassroots campaigns led by affected communities. Some of the most meaningful developments include the increased prominence of the military’s law of war program in the wake of horrific abuses during the Vietnam War, including the significant expansion of military training in the laws of war and the mandated legal review of operations;<sup>27</sup> the presence of Inspectors General within most federal agencies following the Watergate scandal;<sup>28</sup> and state, local, and federal-level policies that require law enforcement officers to wear identification, so members of the public can more easily report abuse.<sup>29</sup>

Despite these improvements, many people who interact with US security forces, from Minneapolis and San Diego to Mosul and Raqqa, still feel underserved by the accountability mechanisms in place. While the contexts may vary, their overall experiences and perceptions of the accountability process and its outcomes related to domestic and national security activities share common characteristics. Accountability seekers experience significant barriers to entry, a selective approach that prioritizes certain types of accountability for some types of harm over others, an unamenable legal system, and flawed, slow, and biased bureaucratic processes that at times are subject to interference by security bodies themselves.

*While the origins of the challenges faced by people domestically and abroad vary, their overall experiences and perceptions of the accountability process and its outcomes related to domestic and national security activities reflect some common characteristics.*

## Inaccessibility

People harmed by US security forces both domestically and abroad face a range of intersecting accessibility challenges when seeking accountability, starting with the very ability to report that harm has occurred. Both within and outside of the United States, victims and survivors of harm often are not aware that reporting mechanisms exist.<sup>30</sup> For example, migrants who experience abuse at the hands of US Border Patrol agents often do not know they have the right to file a complaint.<sup>31</sup> A lack of information on the rights migrants have, available in the full range of languages they speak, compounds this problem.<sup>32</sup> Similarly, a Minnesota-based research participant who supports families that have lost loved ones to police violence shared that most families do not understand how statutes of limitations and the other legal processes involved in seeking accountability work.<sup>33</sup> Internationally, researchers in Somalia have found that civilians there are largely unaware of the existence of an online portal to report civilian casualties to US Africa Command (AFRICOM).<sup>34</sup> The Department of Defense (DoD) also does not appear to have advertised its own civilian casualty reporting webpage, which provides physical and email addresses for each combatant command.<sup>35</sup>

Even with awareness of reporting options, accessing reporting mechanisms is still challenging for many people. For example, in the context of US military operations, most people who live in areas where the US military operates, especially but not only women and low-income and rural communities, do not speak or read English.<sup>36</sup> Yet the DoD civilian casualty reporting webpage is entirely in English, with no option to translate.<sup>37</sup> While AFRICOM's specific online reporting portal does possess translated versions in Arabic, French, Portuguese, and Somali, finding these translations requires first navigating an English-language page to a small "translate" button, also written in English.<sup>38</sup> Both reporting platforms require an Internet connection, which may not be available to those living in areas where conflict has destroyed critical infrastructure, in rural communities, or for people who historically have had less access to the Internet such as women and the poor. Low digital literacy, especially among women and girls, elderly people, and low-income communities, presents an additional barrier to access even for those with an Internet connection.<sup>39</sup>

Similar challenges confront those reporting harm by Customs and Border Protection (CBP), which maintains a similar online portal.<sup>40</sup> Accessing the portal's Spanish-language version requires navigating an English-language webpage, and options to translate to Haitian Creole or the Indigenous languages spoken by many Central American migrants do not appear to exist. As in the case of the AFRICOM and DoD portals, migrants who lack access to the Internet are disadvantaged.<sup>41</sup>

Finally, reporting harm often comes with real security risks. Reporting can leave claimants and their loved ones vulnerable to intimidation and further harm. For example, in Somalia, due to Al-Shabaab's ban on Internet usage and digital devices, a civilian who even possesses a smartphone that they can use to access the AFRICOM portal puts their life at risk.<sup>42</sup> Within the United States, individuals and families seeking accountability for police violence have faced intimidation and threats from law enforcement.<sup>43</sup> One participant active in accountability efforts following the killing of her fiancé described police cars idling outside of her home and the home of her fiancé's mother, as well as an incident where police detained her son and menaced him with dogs and guns.<sup>44</sup> "You're scared for your own life," she told CIVIC and Stimson Center. Ultimately, as many participants expressed, fear of intimidation and retaliation leads to people being afraid to seek accountability at all.<sup>45</sup>



## Overcoming Access Barriers Through a Surrogate

Overcoming accessibility challenges often requires enlisting the support of a surrogate such as a human rights or legal aid organization, attorney, or journalist.<sup>46</sup> Surrogates can provide crucial information on existing reporting mechanisms and accountability options, serve as translators in the case of language barriers, and help people navigate complex legal systems and bureaucratic processes. However, individuals first need to know where and how to connect with a surrogate, a particular challenge for those lacking Internet, cell service, or necessary language skills. This positions surrogates as *de facto* gatekeepers to accountability.

Surrogates may also have trouble connecting to survivors because of the language and technological barriers noted above. They may face the same information disadvantages and security risks as the claimants they serve. They are also unlikely to have adequate time and resources to serve the demand from claimants<sup>47</sup> and at times must contend with mistrust from within affected communities grounded in the inability of past surrogates to secure satisfactory accountability outcomes.<sup>48</sup> Research by Dutch NGO PAX found that a prominent Yemeni human rights organization working with survivors of harm had at first not known itself that the DoD reporting webpage existed.<sup>49</sup> At the US-Mexico border, the US and Mexican governments have surveilled migrant rights defenders and journalists, subjecting them to advanced screening and warrantless electronic device searches. Some even had alerts placed on their passports, preventing them from crossing into Mexico.<sup>50</sup> Migrant rights defenders have described this move to CIVIC and the Stimson Center as “blacklisting.”<sup>51</sup>

## Selectivity

The United States takes a selective approach toward the pursuit of accountability for harm caused by its own security forces, how it supports and promotes accountability abroad, and how it engages with international law and legal institutions. This approach leads to accountability disparities and unsatisfactory accountability outcomes.

### *Media Attention, Public Outcry, and “Bad Apples”*

American state security institutions have adopted two tendencies reflective of a “selective” approach to accountability, often at the expense of a more consistent and comprehensive approach:

1. Disproportionate attention to widely publicized and especially egregious incidents, whereby accountability is demanded by public and congressional pressure; and
2. Legal liability for individual rank-and-file “bad apples,” often at the expense of systemic accountability or accountability for high-level leadership.

For example, in 2004, photos emerged of US service members torturing Iraqi prisoners in Iraq’s Abu Ghraib prison.<sup>52</sup> Private Lynndie England would emerge as the “poster child” for these abuses after images circulated of her posing next to naked detainees.<sup>53</sup> She was ultimately sentenced to three years in prison and served only half of that time. Despite the fact that an investigation by a bipartisan Senate committee confirmed that culpability for Abu Ghraib went beyond a few low-level “bad apples” to then-Secretary of Defense Donald Rumsfeld himself,<sup>54</sup> no officer higher in rank than a sergeant was convicted.<sup>55</sup> Recommendations from the committee that Rumsfeld face criminal charges went unheeded.<sup>56</sup> One subject matter expert consulted for this report noted that the massive amount of public outcry around Abu Ghraib served as the primary reason accountability occurred at all.<sup>57</sup>

Accountability and policy change around civilian harm caused by US military operations has also tended to come in response to high-profile incidents. For example, after a US airstrike attacked a Médecins Sans Frontières (MSF) hospital in Kunduz, Afghanistan, killing 42 people and injuring 37,<sup>58</sup> 12 US military personnel involved in the strike were punished with “suspension and removal from command, letters of reprimand, formal counseling and extensive retraining.” The US government not only made over 170 condolence payments and set aside \$5.7 million for the hospital’s reconstruction, but President Obama also issued a rare apology.<sup>59</sup> Despite MSF and others having called for an independent inquiry into what they say amounted to a war crime,<sup>60</sup> the DoD did not find the attack to be unlawful, and no service members were criminally charged.

After the *New York Times* piece “The Uncounted” detailed how US-led Coalition airstrikes in Iraq and Syria killed far more civilians than reported by the DoD,<sup>61</sup> prompting public and Congressional backlash,<sup>62</sup> then-Defense Secretary James Mattis commissioned an internal study to review how the military prevents and accounts for civilian harm.<sup>63</sup> After a drone strike in Kabul in August 2021 killed 10 civilians, including an aid worker and seven children, as the world watched the United States withdraw from Afghanistan, high-profile media coverage,<sup>64</sup> congressional pressure,<sup>65</sup> and civil society demands<sup>66</sup> for urgent reforms prompted Defense Secretary Austin to mandate the creation of the Civilian Harm Mitigation and Response Action Plan (CHMR-AP). To the DoD’s credit, the CHMR-AP could promulgate a more systemic approach to accountability and non-repetition if implemented properly.<sup>67</sup> The Biden administration also offered unspecific condolence payments and pledged to help resettle civilian survivors and family members in the United States.<sup>68</sup> In contrast to these high-profile incidents that received notable, albeit often unsatisfactory, DoD attention and responses, thousands of other incidents of civilian casualties that did not receive significant media or public attention have gone under-investigated, unacknowledged, and without remedy.<sup>69</sup>

*... thousands of other incidents of civilian casualties that did not receive significant media or public attention have gone under-investigated, unacknowledged, and without remedy.*

A similar pattern of prosecuting direct physical perpetrators of highly public incidents, while neglecting to pursue criminal accountability at higher levels or address the systems that enable abuse, manifests domestically. For example, the trial and conviction of former Minneapolis police officer Derek Chauvin came after massive public outcry and global protests sparked by a viral video depicting his fatal asphyxiation of George Floyd.<sup>70</sup> During Chauvin’s trial, the prosecution and witnesses painted him as a lone “bad apple” operating independently of an otherwise accountable system: “Make no mistake, this is not a prosecution of the police. It is a prosecution of the defendant. And there’s nothing worse for good police than a bad police who doesn’t follow the rules, who doesn’t follow procedure, who doesn’t follow training, who ignores the policies of the department,” prosecutor Steve Schleicher told the court.<sup>71</sup> One participant shared their belief that centering accountability efforts around individual officers such as Derek Chauvin is convenient for cities and police departments resistant to addressing the systemic policies and practices that led to the harm occurring.<sup>72</sup>

Prioritizing criminal accountability for individual “bad apples” in only the most egregious and public of cases—while neglecting accountability in less high-profile instances—contributes to disparities and unsatisfactory accountability outcomes. First, this approach minimizes and puts accountability out of reach for cases of harm seen as less egregious or that do not reach the threshold of a crime. For example, the vast majority of civilian harm resulting from US military operations does not prompt the significant outcry seen in the unequivocal and highly scrutinized war crimes committed at Abu

Ghraib. Most civilians harmed by “routine” US airstrikes in Syria, Somalia, and beyond have yet to see any sort of accountability, legal or otherwise.<sup>73</sup> Domestically, pervasive harassment, physical and sexual assault, and even killings by law enforcement—especially of Black and brown people in low-income neighborhoods—occur every day without making national news or leading to genuine accountability for victims, survivors, and their families. Thus, an approach that prioritizes the most high-profile, public, or egregious harms at the expense of “everyday” abuses places accountability even further out of reach for the majority of victims and survivors.

Second, an overemphasis on individual criminal prosecutions in the “worst of the worst” cases—the so-called “bad apples” approach—can preclude more systemic approaches to accountability. Liability for unlawful harm represents a critical component of accountability that should be pursued when necessary. However, it is not the only form of accountability (as discussed further in Chapter V) and is not always the most useful or satisfying form in all situations. Placing the sole blame on individuals without also addressing systems that enable them allows these systems to escape scrutiny, which in turn inhibits the implementation of necessary systemic changes that can contribute to non-repetition. Without systemic accountability, systemic harm—from repeated civilian injuries and deaths due to target misidentification abroad,<sup>74</sup> to police abuse of Black and brown people across the United States<sup>75</sup>—will likely continue.

### **Conflating Accountability with Legal Liability at the Department of Defense**

The record demonstrates that the DoD tends to associate accountability writ large with the narrower question of legal liability, which creates a gap in other forms of accountability in two key ways.<sup>76</sup> First, a preoccupation with legal liability can invite a posture of defensiveness when matters of accountability are discussed, whether or not civilian harm was unlawful or legal prosecution is on the table. Second, it prevents the DoD from recognizing the value of non-legal forms of accountability, such as providing explanations, apologies, and amends to those harmed, learning from past mistakes to ensure future non-repetition, or individual disciplinary measures.<sup>77</sup> One participant reflected that in the wake of the August 29, 2021 drone strike in Kabul that killed 10 civilians, including seven children, no one involved in the strike was ultimately held accountable because a DoD investigation had not found legal fault.<sup>78</sup>

### ***Accountability for US Adversaries Over US Partners***

When the United States supports and promotes accountability for harm perpetrated by foreign countries, it tends to do so selectively, focusing on situations where the perpetrator is a US adversary or seen as peripheral to US interests. For example, since Russia’s full-scale invasion of Ukraine in early 2022, the US has launched a War Crimes Accountability Team to assist Ukrainian prosecutors in investigating potential Russian crimes and bringing perpetrators to justice.<sup>79</sup> The US government has also provided significant assistance to international and hybrid criminal tribunals following mass atrocities in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, and the Central African Republic—countries the US sees as more peripheral to its interests.<sup>80</sup> In addition, the US has offered financial support to the Independent Investigative Mechanism for Myanmar and the United Nations Office of the High Commissioner for Human Rights (OHCHR) Sri Lanka Accountability Project.<sup>81</sup>

On the other hand, the US has been far more hesitant to support and promote accountability for abuses committed by its close allies and strategic partners. For example, billions of dollars of military

aid have flowed to Egypt since 1987 with few interruptions despite a consistent pattern of gross human rights violations by its security forces.<sup>82</sup> The United States has also been largely unwilling to acknowledge systemic human rights violations perpetrated by its close ally Israel,<sup>83</sup> a country that receives hundreds of billions of dollars in US security assistance annually—aid that largely escapes legally mandated human rights conditions due to Israel’s preferential status.<sup>84</sup> Congressional majorities have also voted down arms sales to US regional security partners Saudi Arabia and the United Arab Emirates over concerns around possible war crimes in Yemen, only for the sales to proceed following a presidential veto.<sup>85</sup>

The efforts the US has undertaken to support and promote accountability abroad are commendable and should not be dismissed. However, supporting and promoting accountability only when politically convenient serves to render these efforts vulnerable to allegations of hypocrisy, disingenuousness, and political bias, damaging their credibility with consequences for civilian victims and survivors. The United States’ unwillingness to use its comparative leverage to support and promote accountability for harm perpetrated by allies and partners further works to make accountability all the more elusive for civilians in Palestine, Yemen, Afghanistan, and beyond.

### ***Selective Interpretations of International Law***

The United States has often interpreted its international legal obligations selectively in order to maximize operational flexibility, compromising legal protections for civilians under international humanitarian law (IHL) and international human rights law as a result.

For example, Additional Protocol I to the Geneva Conventions requires that, “in case of doubt whether a person is a civilian, that person shall be considered a civilian.”<sup>86</sup> This rule is well-established as customary international law, which is binding on all states. The DoD’s Law of War Manual, however, states that “under customary international law, no legal presumption of civilian status exists for persons or objects.”<sup>87</sup> This assertion undermines established law of war protections for civilians, with real consequences for civilian lives and accountability for harm.<sup>88</sup>

Selective legal interpretations have also undermined accountability for detainee abuses. For example, Bush administration lawyers argued that Common Article III of the 1949 Geneva Conventions, which requires the humane treatment of detainees in non-international armed conflicts, did not apply to members of al-Qaeda or the Taliban. The administration asserted that while the “War on Terror” was international in scope, al-Qaeda and the Taliban were not states, conjuring a “legal black hole” where neither the IHL applicable to international armed conflicts nor that applicable to non-international armed conflicts applied.<sup>89</sup> According to then-Department of Justice lawyers John Yoo and Robert J. Delahunty, presidential power to wage war overrode the Convention Against Torture and domestic law criminalizing the practice.<sup>90</sup> As a result, hundreds of Muslim men and boys, many of them civilians misidentified by the US or sold to the US for a bounty, were subjected to torture techniques including waterboarding, sleep deprivation, stress positions, forced nudity and sexualized humiliation, in addition to other cruel, inhumane, and degrading practices.<sup>91</sup>

## The United States and the International Criminal Court

The International Criminal Court (ICC) represents the premier venue for prosecuting atrocity crimes that states cannot or will not prosecute themselves. Unlike many of its allies—and alongside countries such as Russia, China, and Saudi Arabia—the United States has declined to ratify the Rome Statute and join the court.<sup>92</sup> US officials have argued that ICC membership would leave US service members open to politically motivated prosecutions<sup>93</sup> and that the threat of prosecution could impede the United States' ability to carry out military operations.<sup>94</sup> The US has responded with hostility when ICC investigations have implicated its conduct.<sup>95</sup> The US has also consistently opposed the ICC inquiry into the situation in Palestine, which by its nature would implicate its close ally Israel.<sup>96</sup> On the other hand, the United States has supported ICC inquiries that do not implicate close allies, and particularly those that implicate its adversaries. For example, the US voted to refer the situation in Libya to the court in 2011, and provided critical assistance for the transfer of Congolese rebel leader Bosco Ntaganda and Lord's Resistance Army commander Dominic Ongwen to the ICC for prosecution.<sup>97</sup> Following Russia's 2022 full-scale invasion of Ukraine, the Biden administration offered rhetorical support to ICC efforts to pursue criminal accountability for Russian war crimes, despite the fact that Russia, like the United States, is not party to the Rome Statute.<sup>98</sup>

### *Limitations to Legal Accountability*

Even though the US places great emphasis on legal systems to deliver accountability, legal processes do not always deliver accountability effectively. Individual criminal prosecutions for war crimes and international human rights law, and their corresponding US legal statutes, are exceptionally rare.<sup>99</sup> Under IHL, military forces may lawfully carry out attacks against targets that result in harm to civilians and civilian objects, provided civilians are not the target and that the harm caused is not excessive relative to the anticipated "concrete and direct military advantage."<sup>100</sup> Legal analyses of war crimes have traditionally and heavily relied on questions of commander's intent and judgment, rather than the effects of operations, even when significant patterns of harm suggest disregard for the laws of war or irresponsible command.<sup>101</sup> As such, establishing that a civilian death resulting from military operations during the conduct of hostilities constitutes a violation of law is quite difficult by design (a feature of the law that is not unique to US practice).

A number of legal doctrines also prevent civil suits from advancing. These include:

- **State sovereign immunity** for the most part prevents individuals from suing US state governments for violations of federal law.<sup>102</sup>
- **State secrets privilege** "permits the government to block the release of any information in a lawsuit that, if disclosed, would cause harm to national security."<sup>103</sup> This allowed the Bush administration to dismiss at their outset lawsuits regarding National Security Agency (NSA) warrantless wiretapping and the illegal kidnapping of Khaled El-Masri by the CIA.<sup>104</sup>
- **The political question doctrine** holds that "federal courts will not adjudicate certain controversies because their resolution is more proper within the political branches."<sup>105</sup> In 2017, the US Court of Appeals for the DC Circuit rejected the wrongful death suit of two Yemeni families who had lost relatives in a 2012 drone strike on the grounds that it lacked the authority to question Executive Branch decision-making over military action.<sup>106</sup>



The right to seek civil damages against federal agents for violations of Fourth, Fifth, and Eighth Amendment rights has also been eroded in recent years.<sup>107</sup>

Additionally, individuals seeking damages at the federal level for law enforcement abuse must include enough factual detail in their initial complaints to establish a “plausible” entitlement to relief. Acquiring that information is often difficult in the face of law enforcement agencies withholding critical evidence.<sup>108</sup>

## **Qualified Immunity Across the Domestic-International Divide**

Qualified immunity is perhaps the most controversial legal barrier to civil accountability for abuses by government officials, including law enforcement. This judicially created doctrine holds that government officials cannot be held personally liable for financial damages for constitutional violations so long as the official in question did not knowingly violate “clearly established” law.<sup>109</sup> In this context, “clearly established” refers to already existing judicial decisions. As a result, previous decisions to grant qualified immunity serve to guarantee qualified immunity in future cases. With rare exceptions, the “clearly established” standard also prevents victims from civil lawsuits if no case with similar conduct and context already exists.<sup>110</sup>

Qualified immunity frequently prevents police officers from being held civilly accountable for the use of excessive force.<sup>111</sup> A 2020 Reuters investigation that examined 252 cases where plaintiffs sued police for excessive force in violation of the Fourth Amendment found that the courts granted qualified immunity in over half of the cases.<sup>112</sup> The doctrine has also surfaced in the context of harm against foreign nationals by US security forces. In 2008, a US appeals court dismissed a lawsuit filed by four former Guantánamo prisoners seeking \$10 million in damages from then-Defense Secretary Donald Rumsfeld and 10 military commanders over torture the plaintiffs had experienced. The court ruled that the defendants enjoyed qualified immunity for actions taken as part of their government jobs.<sup>113</sup>

## **Lack of External Oversight**

All security agencies should have internal processes to report and investigate abuse and bring wrongdoers to harm. Yet without external checks and oversight, these internal processes can give way to bias and opacity. Indeed, both domestic law enforcement and US military forces operating abroad often rely on accountability mechanisms whereby they investigate themselves, presenting a barrier to accountability.<sup>114</sup>

For example, experts agree that conducting investigations into allegations of civilian harm (whether lawful or unlawful) or abusive practices within the chain of command of a given security force risks biasing such inquiries in favor of those under scrutiny.<sup>115</sup> Yet a study by CIVIC and Columbia Law School’s Human Rights Clinic that reviewed over 220 internal US military administrative investigations into civilian harm found that many investigating officers came from the same unit responsible for the alleged incident. The study also found investigators to be highly skeptical of external sources of information, such as reports from civil society and the media, and instead tended to rely solely on internal US military records and sources when assessing civilian harm. Investigators rarely sought information from witnesses or survivors of attacks or visited the site of airstrikes.<sup>116</sup> As a result, thousands of instances of civilian harm have likely gone unacknowledged and without accountability. Indeed, journalists from the *New York Times* found that during Operation Inherent Resolve in Iraq and Syria, the military dismissed many allegations of civilian casualties with scant evaluation.<sup>117</sup>

Whether or not investigations are approached with the intent of ensuring truth and accountability also matters. Notably, a report from the US Army Judge Advocate General's Center for Law and Military Operations explicitly instructs that "Senior Commanders and [Judge Advocates] need to emphasize continually that the primary purpose of investigations is to protect Soldiers from unsubstantiated allegations."<sup>118</sup>

Similar "self-policing" occurs domestically. For example, the Minneapolis Police Department's (MPD) Internal Affairs Unit consists of sworn MPD sergeants who serve as investigators.<sup>119</sup> The Minnesota Department of Human Rights found that in addition to not interviewing relevant witnesses, Internal Affairs and Office of Police Conduct Review (OPCR) personnel investigating misconduct neglected to review evidence on file, including body camera footage.<sup>120</sup> When Internal Affairs and OPCR investigators did collect witness statements, they frequently did not assess them adequately.<sup>121</sup>

The use of internal investigations over independent, external inquiries has—in extreme cases—functioned to cover up harm and thwart accountability, denying recourse to individuals, families, and communities. For decades, Border Patrol Critical Incident Teams responded to allegations of agent misconduct by tampering with and destroying evidence, intimidating witnesses, and issuing fraudulent reports.<sup>122</sup> The Biden administration disbanded the Critical Incident Teams in 2022 and shifted investigatory responsibility to Customs and Border Protection's Office of Professional Responsibility (OPR). However, advocates remain concerned that OPR continues to hire agents previously involved with the Critical Incident Teams for investigatory roles, risking the independence of future investigations.<sup>123</sup> Further, it does not appear that the CPB has chosen to reopen past Critical Incident Teams "investigations."<sup>124</sup>

## **Border Patrol Critical Incident Teams and the Case of Anastasio Hernández Rojas**

In May 2010, US border agents beat, tased, and choked long-time San Diego resident Anastasio Hernández Rojas. He would later die from his injuries.<sup>125</sup> Hernández Rojas's lawyers and his family, with support from a former Border Patrol agent, later discovered that a Border Patrol Critical Incident Team had immediately attempted to cover up the fatal assault by dispersing eyewitnesses, erasing footage, withholding evidence from police investigators, and interfering with the investigation.<sup>126</sup> Though Anastasio's death was ruled a homicide, the Department of Justice ultimately declined to bring criminal charges against the Border Patrol agents responsible.<sup>127</sup> In 2017, Anastasio's family settled a civil lawsuit without judgment, out of fear the Trump administration would target them and increase their suffering.<sup>128</sup>

Anastasio's family filed a petition with the Inter-American Commission on Human Rights (IACHR) in 2016, alleging that CBP had violated his human rights and failed to provide proper redress under the American Declaration on the Rights and Duties of Man.<sup>129</sup> Hearings began in late 2022. While IACHR recommendations are nonbinding, advocates recognize this case—the first known extrajudicial killing case decided by the IACHR involving US law enforcement—as having the potential to establish a precedent for other cases of unaccountable killings by US law enforcement agents.<sup>130</sup>





Credit: Donna Burton

*September 25, 2013: CBP, Border Patrol agents from the McAllen station horse patrol unit on patrol on horseback in South Texas.*

When external oversight mechanisms have been created, they are often too weak to deliver accountability—whether as a result of technical shortcomings, a lack of political will, or both.<sup>131</sup> For example, at the municipal level, law enforcement lobbying has left many oversight bodies, such as task forces and civilian review boards, without subpoena or disciplinary power. As a result, these bodies often have little substantive authority to take actions beyond offering recommendations that they do not have the power to enforce.<sup>132</sup> One participant who worked with police officers and reformers in Baltimore described repeatedly seeing formalized accountability mechanisms, such as civilian review boards, fail to live up to their promises to prevent and strengthen accountability for abuse, noting also a widespread perception of the boards as toothless.<sup>133</sup>

Federal law enforcement accountability mechanisms have also fallen short of expectations. For example, following a Department of Justice pattern-or-practice investigation<sup>134</sup> of the Baltimore Police Department (BPD), implementation of a federal consent decree began in 2017 with the promise of systemic change of Department policies and practices.<sup>135</sup> Five years later, policy fixes prompted by the consent decree struggle to overcome an entrenched culture of unaccountability and changes in street-level interactions between police and community members remain elusive.<sup>136</sup>

## Building External Oversight: The Case of San Diego's Measure B

In 2020, an overwhelming majority of San Diego voters approved Measure B, which authorized the creation of an independent Commission on Police Practices. Supported by a broad coalition of civil society organizations, the proposed Commission had the authority to conduct independent investigations and hire independent legal counsel; subpoena law enforcement, witnesses, and all relevant records; and evaluate the San Diego Police Department's compliance with federal, state, and local laws.<sup>137</sup> Passing an ordinance to establish the Commission that for the most part enabled it to function as envisioned ultimately took another two years. Andrea St. Julian, co-founder of San Diegans for Justice, which led the efforts to pass Measure B, described securing concessions point by point over months of dedicated advocacy. She credits the victories she and her coalition partners achieved to the commitment and the organization of the San Diego community.<sup>138</sup>

## Bureaucratic Impediments to Accountability

As noted in Chapter I, standardized, equitable bureaucratic processes can be an important tool to embed accountability within a system. Yet complex and opaque bureaucratic processes can also be a hindrance to accountability and pose time-consuming and frustrating barriers for victims seeking justice.

Internationally, civilians harmed by US operations, whether lawful or otherwise, face significant bureaucratic barriers in seeking accountability, from the aforementioned challenges reporting their harm in the first place, to the opaque and time-consuming bureaucratic processes for obtaining acknowledgement or monetary amends for their harm. Neither the AFRICOM portal nor the DoD civilian casualty reporting web page describes what will occur after making a report, or what will happen to the claimant's personal information.<sup>139</sup> Many civilians thus do not even know that condolence payments (which the DoD refers to as "ex gratia"<sup>140</sup>) could be an option. Some civilians who have managed to report harm and make requests for condolence payments or other redress have waited years for a response, only to, at best, receive cursory rejection letters with no explanation as to why the Pentagon could not honor their request. Such letters contain no apology or recognition of the pain civilians continue to experience.<sup>141</sup> Additionally, the DoD does not have a standard practice of notifying and updating affected individuals and families on the status of investigations and in fact takes the view it has no obligation to respond at all.<sup>142</sup>

Likewise, an advocacy organization that supports migrants filing misconduct complaints through the Department of Homeland Security (DHS) complaints process reported that DHS communicates with them regarding the outcome of the investigations only some of the time. Interviews with the migrants themselves do not appear to figure into the investigatory process.<sup>143</sup>

Minneapolis residents who file police misconduct complaints face similar challenges. An investigation into the Minneapolis Police Department by the Minnesota Department of Human Rights found that "between January 2010, and May 2021, the average time that it took OPCR and/or Internal Affairs to complete an investigation and for a Police Chief to issue a final disciplinary decision after a police misconduct complaint was filed was over 475 days."<sup>144</sup> These long wait times only compound loved ones' uncertainty and grief and contribute to feelings of disenfranchisement.



### III. THE CONSEQUENCES OF ACCOUNTABILITY FAILURES

A lack of accountability for harm can have significant consequences for individuals, families, and communities that compound or add to the initial harm they have experienced. The intersecting physical safety, psychological, and economic consequences discussed below highlight how a lack of accountability not only begets further harm, but ultimately erodes the quality of the lives of people forced to contend with it. Accountability failures can also significantly undermine public trust and democratic governance domestically, as well as fuel cycles of violence and complicate accountability efforts internationally.

#### Physical Safety

Accountability failures can threaten the physical safety and security of survivors and their families. For example, when the US military fails to acknowledge civilian harm during its operations—and in doing so fails to recognize the civilian status of those harmed—the civilian victims or their families may face serious safety risks by virtue of their presumed association with an armed opposition or terrorist group.<sup>145</sup> For Basim Razzo, an Iraqi citizen who was severely injured and lost family members as well as his home in a Dutch airstrike based on US intelligence, a lack of official acknowledgement that he and his family were civilians targeted by mistake marked him as a potential ISIS collaborator and left him vulnerable to retaliation from his government and fellow citizens.<sup>146</sup> Many civilians who experience harm without recourse, including the loss of their family's breadwinners and the destruction of their homes and cities, are often exposed to further vulnerabilities including displacement and lack of adequate nutrition, clean water, sanitation, and health care. Women, girls, and sexual and gender minorities in particular face an elevated risk of sexual and gender-based violence in such scenarios.<sup>147</sup>

Similarly, a lack of accountability for US-based victims can introduce and exacerbate compounding safety risks. Most fundamentally, participants emphasized how unaccountable law enforcement abuse contributes to a profound sense of insecurity and fear among Black and brown communities,<sup>148</sup> who disproportionately experience harm at the hands of law enforcement.<sup>149</sup> One participant also described the danger that came with seeking justice for a loved one, which ultimately saw this person forced to move cities to escape police harassment only to have that harassment continue.<sup>150</sup> A lack of accountability can also invite future physical harm by removing consequences for abuse, a phenomenon described in further detail below.

#### Psychological Harm

Beyond physical insecurity, a lack of accountability also carries a profound psychological impact for victims, survivors, and their loved ones. Participants described how the trauma of police violence ripples through families and communities,<sup>151</sup> noting that a lack of accountability contributes to a lack of closure.<sup>152</sup> Surviving family members, from Yemen to Minnesota, described state agents having “stolen” their loved ones from them, and described feeling frustrated, hopeless, and angry.<sup>153</sup> Participants also observed that decisions about accountability, or lack thereof, can implicitly communicate whose lives are seen as valuable and what kind of behavior is considered acceptable. For the many Black, brown, low-income, and non-US citizen communities disproportionately affected by security force violence both domestically and abroad, unaccountability sends the message that their harm is socially acceptable.<sup>154</sup> “They kill us and they go home to their families and they don’t care because of what we look like,” one participant told CIVIC and the Stimson Center.<sup>155</sup>





Credit: Yash Mori

*June 2, 2020: Black Lives Matter Protest - Washington, DC*

Additionally, without accountability—including guarantees of non-repetition—communities often live in fear of further harm. As one participant described to CIVIC and the Stimson Center, “Black and brown communities have never experienced a feeling of safety.”<sup>156</sup> Another participant reflected that he, as a Black man, should not have to fear death at the hands of law enforcement as he goes about his daily life.<sup>157</sup> A third participant shared that the fact perpetrators remain in the community and are able to repeat harm or harm others adds to their anxiety and fear.<sup>158</sup> Abroad, members of the al Ameri and al Taisy families in Yemen’s al Bayda province have lost a combined 36 relatives in US airstrikes and raids without adequate acknowledgement from the US military or credible assurances of non-repetition. As a result, they now avoid public gatherings for fear of further strikes.<sup>159</sup> Years after the strikes, family members note problems eating and sleeping, and report that their children are afraid to play outdoors.<sup>160</sup>

Finally, participants described the significant psychological toll of seeking acknowledgement and justice for harm without success.<sup>161</sup> Spending months or years waiting in limbo for accountability only compounds the harm victims and survivors face, adding to their uncertainty and depriving them of closure.<sup>162</sup> One Twin Cities-based participant shared the story of a friend who, after years without accountability for the killing of her loved one by law enforcement, took her own life.<sup>163</sup> The psychological impact of unaccountability can transcend generations.<sup>164</sup> Further compounding the challenge is the reality that psychosocial support for victims and survivors is frequently out of reach physically and financially, and those who can access it must contend with stigma.<sup>165</sup>

## Economic Costs

Harm without accountability, whether domestically or abroad, frequently brings economic costs to already socioeconomically marginalized individuals, families, and communities. These costs are magnified when family breadwinners are killed or incapacitated and homes, farms, and businesses are destroyed.<sup>166</sup> Funerals, medical care, and mental health care create additional expenses on top of food and housing.<sup>167</sup> One participant, discussing an Iraqi man who lost 13 members of his family in a US airstrike, remarked that while a small amount in terms of what the man has suffered, \$15,000—the maximum authorized amount for an *ex gratia* payment under current US regulations—“would change this person’s life.”<sup>168</sup> Female family members who take over from killed or injured male breadwinners face discrimination in the labor market, pay inequities, and in contexts such as Afghanistan or Yemen, face restrictions on their freedom of movement that hinder their ability to provide for their families.<sup>169</sup> Families forced to flee their homes due to the safety risks associated with harm must leave their livelihoods and social networks behind.<sup>170</sup> Without financial recourse, these costs fall squarely on survivors. For example, Adel Al Manthari, a Yemeni civil servant severely injured in a 2018 US drone strike, relies on a GoFundMe campaign to pay for lifesaving medical care in the absence of acknowledgement or recourse from the United States. His daughters, aged eight and 14 at the time of the strike, were forced to drop out of school to care for him.<sup>171</sup> Within the United States, families of victims of police violence have also relied on crowdfunding campaigns to afford funeral costs, legal fees, psychosocial support, and to meet basic needs.<sup>172</sup>

## Perpetuating Cycles of Harm

As noted in Chapter I, a lack of accountability can also enable future or continued harm by creating a permissive environment and/or removing certain deterrents or disincentives for abuse. For example, these deterrents could range from criminal or civil liability, administrative repercussions such as job loss, or reputational and social costs. The uneven application of accountability also sends a signal to security forces and society writ large about what behavior is acceptable and who is seen as most deserving of justice.

Within the United States, for example, law enforcement officers implicated in brutality often evade accountability.<sup>173</sup> Without consequences for their actions, many police officers implicated in harm become repeat offenders.<sup>174</sup> Civil society participants echoed these concerns.<sup>175</sup> One participant stated that “police harm because they can.”<sup>176</sup> Another said that “Derek Chauvin killed George Floyd because he knew nothing would happen.”<sup>177</sup> This lack of accountability can normalize harm not only among perpetrators, but also among victims and survivors who stop believing that accountability is an option. An advocate from San Diego described how individuals in low-income communities of color frequently harassed by police do not file complaints because they see daily harassment and humiliation as an ordinary facet of day-to-day life and see no hope for justice. Other times, they may not know their rights.<sup>178</sup>

Similarly, unaccountability abroad can also enable future harm. For example, after President Trump pardoned four Blackwater contractors convicted of first-degree murder and voluntary manslaughter for killing 14 Iraqi civilians and injuring 17, UN spokesperson Marta Hurtado warned that “pardoning [the contractors] contributes to impunity and has the effect of emboldening others to commit such crimes in the future.”<sup>179</sup> Former military leaders expressed similar sentiments a year earlier when Trump moved to pardon three military members accused or convicted of war crimes, worrying that the pardons could lead to future impunity for war crimes by harming the integrity of the military legal system and undermining command influence.<sup>180</sup>





Credit: REUTERS/Khaled Abdullah

*A man walks past a graffiti, denouncing strikes by U.S. drones in Yemen, painted on a wall in Sanaa November 13, 2014.*

Unaccountability can also drive and perpetuate ongoing cycles of conflict. Many studies have reaffirmed the reality that civilian harm and human rights violations, and a lack of accountability for those harms, are key drivers of conflict and violence.<sup>181</sup> For example, in Afghanistan, civilian harm and the absence of accountability were found to have contributed to the alienation of local populations and fed Taliban recruitment.<sup>182</sup> Al Shabaab has also used civilian harm caused by US airstrikes as a recruitment tactic.<sup>183</sup> Research by Mercy Corps drawing on interviews and surveys with youth in Afghanistan, Colombia, and Somalia found that the principal drivers of political violence are rooted not in poverty, but in experiences of injustice, including discrimination, corruption, and abuse by security forces.<sup>184</sup>

## **Consequences for Democratic Governance in the United States and Abroad**

Within the United States, a lack of accountability has real consequences for the public trust and institutional legitimacy that undergird democratic governance. Civil society leaders we spoke to expressed that the persistent lack of accountability for police killings, injuries, assaults, and other human rights violations leads to a lack of trust in the governance systems meant to serve them.<sup>185</sup> They described police as operating above the law despite being tasked with enforcing it.<sup>186</sup> “Nobody will have trust until this changes,” noted one participant.<sup>187</sup> The US government’s own studies have recognized this trust deficit: In a 2017 Department of Justice (DOJ) report on the Chicago Police Department (CPD), the DOJ concluded that trust between the CPD and the people it serves “has been broken by systems that have allowed CPD officers who violate the law to escape accountability.”<sup>188</sup> As a result of this lack of trust, there are many people both in Chicago and around the country—particularly those from Black and brown communities, as well as other marginalized groups—who hesitate or refuse to call the police even in an emergency out of fear that an officer may harm a loved one, a neighbor, or even the caller themselves.<sup>189</sup>



May 31, 2020 : A Black Lives Matter sign drawn by a child nearby the George Floyd memorial on Chicago Ave in Minneapolis, Minnesota

Lack of accountability, and the resulting lack of trust in police and other law enforcement agencies, can also undermine trust in other institutions meant to serve the public.<sup>190</sup> For example, when people witness how few police officers are held criminally—or even civilly—accountable for harm, especially for harm perpetrated against marginalized communities, they observe that the judicial system as a whole is biased against them and may no longer trust or turn to it for protection.<sup>191</sup> A participant familiar with police accountability issues in Baltimore noted that people had largely given up on formal accountability channels because of how little recourse they had seen come through those channels.<sup>192</sup> Another participant described the judicial system as “gaslighting people into thinking they have the opportunity to fight injustice.”<sup>193</sup> In Minneapolis, one civil society leader shared that people do not trust that a proposed consent decree with the Minnesota Department of Human Rights—a court-enforced agreement that would require the Minneapolis Police Department to make specific changes to policies and practices—<sup>194</sup> will provide accountability.<sup>195</sup> Meanwhile, 72% of respondents surveyed for this project ranked the benefit of accountability to improving trust in government between 8 and 10 on a scale of 10.<sup>196</sup>

In short, unaccountability violates the implicit and explicit social contract that underpins democratic government in the United States. As a result, participants noted that pervasive unaccountability for law enforcement abuse damages the legitimacy, functioning, and health of US democracy writ large. For one participant, as long as Black, brown, and Indigenous people continue to live under threat

of police terror, the US is at best a “pseudo-democracy.”<sup>197</sup> Scholars Joe Soss and Vesla Weaver echo this perspective, arguing that communities subjugated along the lines of race and class do not experience the liberal-democratic face of the US government but one of social control and repression.<sup>198</sup> Another participant added that living in fear of injustice affects people’s ability to exercise their rights.<sup>199</sup> A third participant went on to question the legitimacy of US democracy due to the lack of action by elected leaders to hold police accountable.<sup>200</sup> Other sources consulted for this report pointed out that unaccountability in the security sector can erode democratic norms such as respect for the rights of citizens and a commitment to due process.<sup>201</sup> A participant with expertise in security sector governance further warned that without security sector accountability, it is very easy for antidemocratic actors to undermine democratic systems and processes.<sup>202</sup>

Just as a lack of accountability weakens the legitimacy of governance domestically, it can also strengthen perceptions of democracy’s failure to deliver internationally. For example, China has regularly pointed to the United States’ own injustices, including police brutality, as evidence of democracy’s false promises.<sup>203</sup> In its 2021 “Report on Human Rights Violations in the United States”—China’s answer to the US State Department’s own annual human rights reports—China referred to the US Summit for Democracy as a “farce” for its focus on international human rights. The report also cited other countries at the United Nations Human Rights Council calling on the United States to address its own domestic and international human rights violations.<sup>204</sup>

## **Undermining Accountability Internationally**

Failures in accountability, both for harm caused domestically and abroad, also carry serious consequences internationally, enabling harm by other states following the United States’ lead and undermining international accountability efforts.

As a global power, US security policies and practices have worldwide implications. For example, in the wake of the September 11, 2001 attacks on the World Trade Center and the Pentagon, the United States promulgated a “global war on terror” and suspended certain fundamental human rights protections in the name of counterterrorism, including through domestic surveillance and racial and religious profiling programs, indefinite detention at Guantánamo prison, the use of torture, and the use of lethal force outside of recognized war zones in the form of “targeted killings.”<sup>205</sup> In turn, these decisions, which broke globally understood norms, gave US allies and adversaries alike the license to implement harmful policies under the guise of “counterterrorism.” For example, Egypt has branded human rights defenders, journalists, lawyers, and other political opponents as terrorists and subjected them to severe repression.<sup>206</sup> A Human Rights Watch investigation into Egypt’s counterterrorism campaign in the Sinai peninsula found evidence of “crimes including mass arbitrary arrests, enforced disappearances, torture, extrajudicial killings, and possibly unlawful air and ground attacks against civilians.”<sup>207</sup> In 2017, the Myanmar military brutally expelled 700,000 of the historically persecuted Rohingya Muslim minority in the name of counterterrorism. The United States has officially determined that this campaign included genocide and crimes against humanity.<sup>208</sup> China, too, has long used the language of terrorism and the specter of 22 Uyghur men detained in Guantánamo Bay<sup>209</sup> to justify its mass surveillance and arbitrary and incommunicado detention of hundreds of thousands of Uyghurs and other Turkic Muslims.<sup>210</sup> Uyghurs in China are regularly arrested for “extremist” acts such as participating in religious activities or traveling abroad and sent to “re-education” camps for indefinite periods of time where they undergo forced labor, indoctrination, and torture.<sup>211</sup>

The ways that the United States models accountability—or a lack thereof—also have real consequences for the accountability efforts of other states and the international community as a



whole. When the United States advocates for accountability on the world stage, yet often fails to achieve accountability in its own security forces and operations, this undermines those efforts. As one participant noted, “You’re showing people that you don’t really believe what you say, and that you’re willing to accept behavior that is not consistent with the values that you are propounding.”<sup>212</sup> In a clear illustration of this challenge, US Ambassador to the United Nations Linda Thomas-Greenfield was forced to withdraw part of a statement criticizing Russia’s use of indiscriminate cluster munitions in Ukraine, since the United States itself has not yet joined the Convention on Cluster Munitions.<sup>213</sup> Similarly, the United States’ refusal to be part of the International Criminal Court—even as it supports certain prosecutions—exposes the Court to accusations of ineffectiveness and double standards.<sup>214</sup> In response to these criticisms, the African Union has labeled the Court a “neo-colonial court” and urged its members to withdraw their cooperation.<sup>215</sup>

Allies and adversaries alike notice the gap between US rhetoric and practice, challenging the United States’ ability to hold partners accountable for very real human rights abuses.<sup>216</sup> Both have used US unaccountability to deflect international condemnation of their own serious human rights violations.<sup>217</sup> A pro-government member of parliament in Egypt, a key US security partner, wrote in a 2021 op-ed for a state-run newspaper that while the United States called out Egyptian rights violations, it ignored its own in “Iraq, Afghanistan, Abu Ghraib prison, Guantanamo Bay and others!”<sup>218</sup> When President Biden met with Saudi Crown Prince Mohammed bin Salman during the summer of 2022, he raised the case of Jamal Khashoggi, the *Washington Post* journalist executed on the Crown Prince’s orders. Prince bin Salman countered by mentioning torture and sexual violence at Abu Ghraib and the recent shooting of Palestinian-American journalist Shireen Abu Akleh by the Israeli military.<sup>219</sup> US adversaries Cuba, Russia, and China have all pointed to Guantánamo in response to US criticisms of their own poor human rights records.<sup>220</sup> As law enforcement nationwide cracked down on racial justice protests in 2020, Iran’s Supreme Leader Ayatollah Ali Khamenei remarked that “They [Americans] commit crimes, you can see, heinous and open crimes. That’s how they act. They don’t apologize for that. At the same time they talk about human rights.”<sup>221</sup> While the United States is right to call attention to human rights violations, selectivity in its approach coupled with the United States’ own marred accountability record can challenge or undermine these efforts. 73% of those surveyed for this project either “agreed” or “strongly agreed” that “Accountability for law enforcement officers in the US makes the US a more credible leader on human rights and democracy abroad.” Only 6% disagreed.<sup>222</sup>

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*“Accountability for law enforcement officers in the U.S. makes the U.S. a more credible leader on human rights and democracy abroad.”*





## Unaccountability Across the Domestic-International Divide: Police Torture, Secret Prisons, and Deliberate Cruelty

Without accountability, harmful tactics and abusive personnel can migrate across contexts. In 2015, journalist Spencer Ackerman uncovered that Navy reserve lieutenant and Guantánamo interrogator Richard Zuley, who tortured detainees at Guantánamo Bay, had engaged in similar abusive practices as a police detective in Chicago years prior.<sup>223</sup> Zuley subjected his Chicago victims, predominantly Black and poor people, to prolonged shackling and threatened them and their family members to induce false confessions. He did not face any consequences for employing these tactics. Instead, the Navy deployed him to Guantánamo Bay. At Guantánamo, he took charge of the interrogation of Mohamedou Ould Slahi, a Mauritanian who had fought the Soviets in Afghanistan in the 1980s. At the time of his arrest he was not affiliated with an armed group. Zuley's interrogation plan received personal sign-off from then-Defense Secretary Donald Rumsfeld. Abusive "interrogation" techniques included beatings, stress positions, sleep deprivation, exposure to extreme heat and cold, and auditory bombardment in addition to a blindfolded boat trip designed to disorient Slahi. Zuley told Slahi that the US had his mother in custody and threatened to bring her to the all-male prison environment of Guantánamo, which Slahi's lawyers considered a rape threat. Slahi responded as Zuley's victims in Chicago had: by giving false confessions to get the torture to stop. Like his fellow Guantánamo torturers, Zuley did not face accountability over what Mark Fallon, deputy commander of the now-shuttered Criminal Investigative Task Force at Guantánamo, described as his "illegal, immoral, and unconstitutional"<sup>224</sup> interrogation of Slahi. Zuley has since returned to Chicago where, as of 2015, he worked at the city's department of aviation.<sup>225</sup>

Impunity in Chicago allowed Zuley to travel to Guantánamo and implement what Ackerman described as a "supercharged" version of the tactics he employed as a police detective.<sup>226</sup> Unaccountability at Guantánamo may also have allowed the tactics used there to travel elsewhere: roughly a decade later, journalists—Ackerman among them—and human rights organizations detailed how undocumented migrant men, women, and children would be forced to spend days or weeks exposed to extreme cold in CBP intake cells known as *hieleras*, or iceboxes.<sup>227</sup> Detained migrants are held virtually incommunicado, lights in the cells are kept on all night, and migrants are woken for questioning, mimicking the sleep deprivation Guantánamo detainees suffered.<sup>228</sup> As Ackerman notes, while "There is no record tracing...the "migration" of torture techniques into the immigration intake centers, jails, and camps...it was nevertheless conspicuous that variants of CIA and military torture techniques occurred within the system."<sup>229</sup> With no accountability and no guarantees of non-repetition, the risk remains that these abuses and the personnel that commit them will continue to migrate across the domestic-international divide.

## IV. FACTORS CONTRIBUTING TO ACCOUNTABILITY FAILURES

Chapters II and III described some of the common challenges and experiences people face seeking greater accountability for harm arising from US security policy and practices. The research conducted for this project suggests that certain political, cultural, and institutional factors actively affect or contribute to accountability deficits. These factors are explored in detail below.

### Competing Claims and Demand Signals

In a democratic system, public expectations of accountability help to shape public policy and ideally, align it with public interests.<sup>230</sup> But within such pluralistic, democratic societies, interests and expectations often conflict. Demand signals for government accountability of different kinds can exist in tension with one another, and their supporters may not all carry the same degree of influence or power. These tensions can help explain inconsistencies and selectivity in accountability outcomes, as well as how different forms of government responsiveness are prioritized across various dimensions of security policy and practice.

For example, when it comes to US military operations, commanders routinely face the challenge of resolving the tension between promoting force protection (a commander's responsibility to their soldiers), civilian protection (responsibility to civilians), and mission accomplishment (responsibility to civilian leaders).<sup>231</sup> Measures taken to protect US and partnered forces may come at a greater risk to civilians and vice versa. Likewise, steps taken to protect forces or civilians could conceivably impose constraints on mission accomplishment. The total cost of military and civilian losses is weighed against both the utility and moral justifiability of the military campaign itself.<sup>232</sup> The military is also answerable for each of these objectives to a range of political stakeholders, including the President, Congress, the public, the press, and international partners—each with different, and sometimes competing, expectations, interests, and levels of influence.

The perspectives of the American public on both military and civilian casualties can influence how militaries weigh or prioritize competing responsibilities, and by extension, the need to account for each. For instance, studies suggest that the American public is generally wary of civilian casualties, all else being equal, but even less tolerant of sacrificing US soldiers.<sup>233</sup> For their part, American political leaders from both parties have internalized how low public tolerance for military casualties affects war support overall, and for the better part of 20 years, gradually shifted the emphasis of military interventions to “light footprint” operations with limited US combat troops involvement and a preference for air strikes and partnered operations. While remote operations may limit military casualties, they can increase the likelihood of civilian harm and, without a ground presence to assess and investigate harm, make acknowledgement of and accountability for civilian harm less likely.<sup>234</sup> The casualty monitor *Airwars* estimates that US and Coalition forces killed between 8,000 and 13,000 Iraqi and Syrian civilians in the war against ISIS between 2014 and 2020, most of whom remain officially unacknowledged.<sup>235</sup> During the same period, the Pentagon reported 20 US soldiers died as a result of hostile action.<sup>236</sup>

In this example, pressure to avoid military casualties does not automatically infer indifference to, or equate to a zero-sum tradeoff in concern for, civilian casualties. Indeed, the US military has taken steps to prevent and address civilian harm—especially in response to high-profile incidents. The aforementioned Civilian Harm Mitigation and Response Action Plan also holds significant

promise for a more standardized approach. Yet overall, the disproportionate rates of civilian death and injuries that result from US military operations overseas without major political consequence suggests a higher degree of political and societal tolerance for harm to foreign civilians. These victims do not typically hold political or electoral power in the United States and are predominantly Black, brown, and Muslim. Sources consulted for this report believe that these factors lower the demand signal for political accountability.<sup>237</sup>

Domestically, American political institutions and officials also encounter “plural, contested, and overlapping” demands for accountability when it comes to law enforcement.<sup>238</sup> Elected officials and police departments may feel accountable for meeting societal demands to address rising crime rates and other social problems, which, when addressed through “hard security” law enforcement and carceral approaches, may conflict with demands for protection from and accountability for police abuse itself—demands that may come from more marginalized segments of the population.<sup>239</sup> One recent study by two Harvard University scholars found that voter registration among Black and Hispanic citizens living in the vicinity of a police shooting increased by between 5 and 8% following a local police killing. The study found no “statistical or practical effect” on the voting habits of white citizens.<sup>240</sup>

Sources interviewed for this report, including both subject matter experts in US policing and civil rights activists, shared the view that political leaders often demonstrate greater accountability towards elite voters and donors than to those police abuse affects disproportionately, who tend to come from marginalized groups, including but not limited to Black people and other people of color; lesbian, gay, bisexual, transgender, and queer people, and other gender and sexual minorities (LGBTQ+); and low-income communities. From this perspective, domestic security institutions can be seen as resolving competing accountability demands based on a hierarchy of political interests, rather than human rights.

## **Accountability as a Constraint on Action**

In all contexts, accountability measures require time and resources. As such, security bodies and their civilian overseers often—and not always incorrectly—perceive accountability measures as placing constraints on the speed and flexibility with which security forces can perform their primary tasks and duties.<sup>241</sup> Measures like transparency, peer review, recording, or other steps taken before or during a military or law enforcement operation for the benefit of ensuring accountability can add time or otherwise constrain action. The same is true for measures that follow an operation such as after-action reviews, reporting, investigations, and disciplining personnel. In fact, each of these measures *impose costs by design* in order to serve an array of public interests broader than narrowly conceived security goals.

It is therefore unsurprising that law enforcement agencies and military services, for whom unnecessary limitations on the full range of motion are culturally anathema, often seek to limit “accountability overload” as much as possible. One former military officer consulted for this project offered that some military practitioners feel that “onerous” procedures designed to address civilian casualties harm the military’s ability to conduct operations.<sup>242</sup> It is partly for this reason that DoD

*Yet overall, the disproportionate rates of civilian death and injuries that result from US military operations overseas without major political consequence suggests a higher degree of political and societal tolerance for harm to foreign civilians.*



November 10, 2019: U.S. Soldiers in the 4th Battalion, 118th Infantry Regiment, 30th Armored Brigade Combat Team, North Carolina Army National Guard, attached to the 218th Maneuver Enhancement Brigade, South Carolina Army National Guard, provide M2A2 Bradley Fighting Vehicles for support to Combined Joint Task Force-Operation Inherent Resolve (CJTF-OIR) eastern Syria Nov. 10, 2019. The mechanized infantry troops partner with Syrian Democratic Forces to defeat ISIS remnants and protect critical infrastructure in eastern Syria.

often takes care to avoid binding itself to measures beyond those it sees as necessary, especially by emphasizing clear limits on its obligations under the law. For example, the DoD's current regulations on ex *gratia* payments for civilians harmed in US operations takes great care to maximize command flexibility and avoid any suggestions of legal obligations, noting, "Offers of ex gratia...are not legally required, nor may they be construed as an admission or acknowledgement of any legal obligation."<sup>243</sup> The military may not be opposed to doing more to account for civilian harm in principle—and in fact may do more than is required by law—but only to the extent that doing so carries acceptable tradeoffs and does not compel resource allocation or otherwise limit its flexibility in the future.

American police departments, which are deeply biased toward freedom of action, share an institutional and cultural aversion to the imposition of any measure whose effect is to delay or restrain. Police unions—whose political power is explored further below—have couched their opposition to legislative measures to change use of force standards in terms of its impact on the freedom of law enforcement officers to act and to defend themselves.<sup>244</sup> For example, Steve Loomis, the president of Cleveland, Ohio's police union while Cleveland was under a federal consent decree, described reforms as counterproductive. "Every time a kid points a gun," Loomis said, "he has to do a use-of-force investigation. Now guys aren't pointing their guns when they should be pointing their guns."<sup>245</sup> A position paper from the International Association of Chiefs of Police, the world's largest professional association for world police leaders, similarly argued that changing the legal standard by which police would be evaluated for using force from reasonable to necessary "...would result in endless scrutiny and second-guessing by investigators, prosecutors, and civil courts," and "may cause hesitation in officers' responses, which could have grave circumstances."<sup>246</sup>

Political leaders often echo these narratives. In early 2009, then President-elect Obama couched his reluctance to pursue accountability for CIA torture in terms of not wanting to undermine the CIA's role in keeping the US safe. "I don't want them to suddenly feel like they've got [to] spend all their time looking over their shoulders," he said.<sup>247</sup>

## Social Norms and Attitudes

A growing body of evidence—including the experiences of individuals consulted for this report —suggests that social norms, such as the veneration of security institutions and officers and acceptance of harm caused by such institutions in the name of security, can partly explain accountability deficits in both domestic law enforcement and military operations.

No serious discussion of accountability for US security policies can ignore the empirical fact that the people and communities most affected by law enforcement violence have been predominantly Black, brown, and Indigenous, and often low-income. At the same time, the civilians harmed by US operations abroad are predominantly Black, brown, and Muslim.<sup>248</sup> Sources consulted for this report attributed the persistence of this pattern of harm, and the lack of popular demands for accountability, to the lingering effects of structural racism in American institutions and the pervasive degree of social and political acceptability for harm to these people within the public at large. One participant suggested that there would likely be more urgency around accountability for police violence if the majority of victims were white.<sup>249</sup> Another participant described a “culture of dehumanization” targeting Black people.<sup>250</sup> Meanwhile, studies have shown that domestic racial attitudes have a bearing on support for military aggression, and even government abuse.<sup>251</sup>

The high esteem Americans hold for both military and police in the United States likely also contributes to the public’s apparent ambivalence toward strengthening accountability. Public confidence in both the military and the police remains higher than confidence in Congress, public schools, the media, and the courts.<sup>252</sup> Prevailing sentiments expressed by both politicians and the general public equate military service with heroism.<sup>253</sup> Elite units such as the Special Forces—along with the specific type of masculinity they embody—are particularly revered.<sup>254</sup> As one scholar interviewed for this research noted, “Admiration really gets in the way of accountability. [It’s] very hard to hold accountable people or groups that you admire.”<sup>255</sup>

## The Political Influence and Power of Security Institutions

In a democratic system, the legitimacy of security institutions is traditionally attached to safeguards against certain functions suggestive of political partisanship or overt influence on electoral processes.<sup>256</sup> Even so, security institutions, including US national security agencies, the military, and law enforcement organizations all serve as instruments of political power and wield significant political influence. How, and the degree to which they do so, can carry profound implications for accountability processes and outcomes.

Perhaps the most salient example of the political influence wielded by security officials is that of police unions, which sources consulted for this project identified as by far the most significant source of political influence on questions of law enforcement accountability. While unions do not officially or directly speak on behalf of all law enforcement officers, nearly 57% of non-supervisory police officers are members of a union, and unions exist in all 18,000 police departments across

*No serious discussion of accountability for US security policies can ignore the empirical fact that the people and communities most affected by law enforcement violence have been predominantly Black, brown, and Indigenous, and often low-income.*





July 10, 2015: Black Lives Matter Protest, Baton Rouge, Louisiana

the United States.<sup>257</sup> Police unions generate influence through bipartisan financial support, candidate endorsements, and by actively participating in shaping public perceptions of police.<sup>258</sup> Police unions have actively—and in many cases successfully—opposed legislative and policy measures intended to improve accountability outcomes in the name of local law enforcement across the country.<sup>259</sup> Sources consulted for this report from the Twin Cities, San Diego, and beyond referred to the power of unions in shaping political opposition to accountability for police.<sup>260</sup>

The political influence of law enforcement has also prompted elected leaders to prioritize law enforcement perspectives over those of civil society stakeholders. One advocate for police accountability, an experienced lawyer with the American Civil Liberties Union, shared that a state-level elected official would not meet with her unless a police chief attended as well.<sup>261</sup>

In a less direct but nonetheless powerful exercise of political influence, the social norms described in the section above also grant both law enforcement and the military political power. For example, while active-duty military officials do not publicly lobby against accountability measures—in part due to restrictions on partisan political activity<sup>262</sup> and the norms of remaining apolitical and respecting civilian control<sup>263</sup>—widespread public support for the military can translate into political incentives for candidates and elected officials to demonstrate support for the military as a sign of patriotism.<sup>264</sup>



## Bureaucratic Culture

Accountability for security policy and practice depends in part on the organizational culture of security institutions themselves. Used in this sense, culture can include common rituals and behavioral norms, along with shared awareness and intuition about what is “acceptable.”

Very few broad generalizations can be made of organizational culture, especially when examining diverse, complex organizations. Military culture and police culture are distinct from one another, but so too are cultures across individual military services and units, police precincts, and federal and municipal law enforcement entities. In some cases, organizational culture can strengthen accountability, such as when those within an organization, and especially leaders, recognize its value for performance, order and discipline, and public perception.<sup>265</sup> In other cases, organizational culture can produce strong antibodies to accountability, undermining formal efforts to account for conduct. While culture varies across security bodies, our research identified some cultural characteristics that appear more common than others.

Perhaps unsurprisingly, research for this report suggests that resistance to internal—and especially external—attempts to advance accountability for breaches of law or misconduct often derive in part from a sense of organizational loyalty. Individuals who pursue accountability at the expense of the status quo often face unspoken forms of retribution, while those who remain silent (or even participate in attempts to cover up misconduct) may be rewarded.<sup>266</sup> As noted by one scholar, discerning the effect of organizational culture on accountability means looking not only at rituals and inside jokes, but also asking “who doesn’t say anything? Who still gets a promotion?”<sup>267</sup> Major General Antonio Taguba, who the military itself tasked with investigating Abu Ghraib, was harassed by political officials and threatened with an investigation into his own conduct. He was ultimately forced into retirement after his report into the abuses was leaked.<sup>268</sup> When Captain Ian Fishback attempted to report torture perpetrated by US forces in Fallujah, Iraq through his chain of command, his superiors rebuffed him and told him that speaking up would hurt his career.<sup>269</sup> Domestically, sources consulted for this project spoke of a “code of silence” within US law enforcement that discourages municipal police officers and Border Patrol agents alike from reporting their colleagues’ misconduct.<sup>270</sup>

Distrust of external oversight represents a distinct attribute of organizational culture in both police and military institutions. Whether or not the majority of military or law enforcement personnel fundamentally distrust the press or civil society, many seem to believe that outside parties are too under-informed about the nature of their work to merit an oversight role. One US military veteran interviewed for this project observed that “...there’s a feeling in the military that the checks...are put into place by people who do not understand the military, or understand how military operations are conducted and need to be planned.”<sup>271</sup> Similarly, sources consulted for this report reflect the view that measures to adapt domestic policing are seen as naive and under-informed regarding the risks to personal safety police officers endure. Like their military counterparts, police often view external efforts to monitor their activities as misguided because non-officers “cannot possibly understand what they do and the threats they face.”<sup>272</sup> The impulse to treat externally imposed accountability with skepticism creates a reinforcing cycle that yields negative outcomes: security institutions resist oversight and accountability measures out of a belief that outside parties do not have enough information to

*Distrust of external oversight represents a distinct attribute of organizational culture in both police and military institutions.*

make informed judgements, while secrecy—motivated in large part by distrust of oversight actors—denies the public the information needed to do so. Meanwhile, if the agency in question manages to preserve a monopoly on public portrayals of their operations, they can mute any signal that greater accountability is needed—though cell phone footage and social media have made preserving that monopoly more difficult in recent years.

## V. ENVISIONING COMPREHENSIVE ACCOUNTABILITY

The civil society practitioners and affected community members CIVIC and the Stimson Center spoke to from within and outside the United States raised consistent themes that, taken together, offer a holistic vision of how to address the pervasive accountability failures individuals, families, and communities harmed by US security forces experience. Participants highlighted the clear benefits accountability provides, while recognizing that understandings of comprehensive accountability vary between individuals, communities, and contexts. Sources consulted for our research also outlined the principles and actions necessary to bridge the gap between the current status quo of unaccountability and an affirmative accountability approach that centers the needs of victims and survivors, their families, and their communities. Though the perspectives captured are not universally representative, they present an illustrative picture of what comprehensive accountability could look like and how it could be achieved.

### Key Elements of Comprehensive Accountability

Reflections gathered throughout the project, including from the individuals we interviewed or who participated in workshops, together convey a vision of accountability that includes several elements. These elements, which will be explored in detail below, include acknowledgement, explanation, and apologies; taking responsibility and making amends, including through monetary compensation; legal liability and disciplinary action when warranted; and non-repetition. Participants also emphasized the importance of measures that reflect the needs and desires of the victims, survivors, and communities that accountability is meant to serve. **While any one element may be insufficient on its own, each can reinforce the others as part of a more comprehensive approach.**

It is also important to acknowledge that limitations exist to the ability of accountability to meet the full spectrum of people's needs. For example, it cannot undo harm or bring back lost loved ones,<sup>273</sup> nor can accountability processes alone transform the roles, cultures, and mandates of security institutions or serve as substitutes for harm prevention.<sup>274</sup>

#### *Acknowledgment, Explanation, and Apologies*

Sources consulted for this research consistently pointed to **acknowledgement** of harm and wrongdoing as a key component of and starting point for accountability. From their perspective, acknowledgement requires recognizing both the harm done as well as the impact and injustice of that harm, whether it amounts to a legal violation or not.<sup>275</sup>

Participants expressed that acknowledgement may also include recognizing the innocence of the person harmed, thus clearing the person's name.<sup>276</sup> For example, in the context of armed conflict, an acknowledgement of "innocence"—i.e., that a person was a civilian rather than a combatant—can reduce the risk of that person, their family, or their community being targeted due to perceived affiliation with an armed actor.<sup>277</sup>

Acknowledgement of past harm can additionally play a role in non-repetition and moving toward a more accountable future.<sup>278</sup> "If we can't be honest with ourselves," one participant noted, "we'll keep doing it over and over."<sup>279</sup>

**Explanation**, or the steps taken to provide facts about what happened and why, represents another aspect of accountability raised by participants.<sup>280</sup> According to one participant, knowing the truth can help provide comfort and closure.<sup>281</sup>

**Apologies**, or the expression of contrition or regret for harm caused, were a third significant aspect of accountability raised by sources consulted for this project.<sup>282</sup> Sources noted that public apology for wrongdoing can also signal to communities that states and security institutions are willing to learn from their mistakes and work to ensure they do not repeat them.<sup>283</sup> Like acknowledgement of harm, participants believed that apologies should come from the security institution that perpetrated the harm and be directed at victims and survivors.<sup>284</sup>

Participants asserted that acknowledgement alone is not necessarily sufficient. A participant with experience supporting civilians harmed by the US military noted that the conversation too often ends with acknowledgement and at times, an apology.<sup>285</sup> Another participant with a similar background shared that apologies may not mean much to victims without corresponding actions, such as compensation for losses.<sup>286</sup> Others view acknowledgement of harm as the beginning of a process,<sup>287</sup> which as one participant described, would lead to understanding how harm can be undone or at least addressed.<sup>288</sup>

### ***Taking Responsibility and Making Amends***

Participants emphasized that in addition to recognizing that harm occurred, accountability necessitates that US security institutions take responsibility and ownership for harm caused along with the social, political, and societal implications of that harm.<sup>289</sup> Further, participants expressed that taking responsibility requires shifting the burden of seeking accountability and responding to harm away from victims, their communities, and the civil society organizations that assist them—on whom it disproportionately falls—and towards the state to engage in accountability proactively.<sup>290</sup>

Many sources from across the domestic and international spheres highlighted the provision of tangible and intangible remedies, designed to address and where possible repair harm done, as an important aspect of taking responsibility.<sup>291</sup> Such practices align with the concepts of restorative justice, which center the needs of those harmed in identifying remedies, and of “making amends.” It is this victim-centered approach to addressing civilian harm caused during military operations that CIVIC and partner organizations promote.<sup>292</sup>

For example, participants highlighted the provision of monetary payments, compensation, or reparations<sup>293</sup> as important tools for taking responsibility and addressing harm. Financial amends can have symbolic or cultural meaning, and, if of a sufficient amount, can help people rebuild their lives with dignity, especially in the wake of losing their family’s breadwinner or their own livelihood.<sup>294</sup> A human rights researcher who has interviewed families harmed by US airstrikes in Somalia shared that the individuals they spoke with identified monetary amends as a practical and culturally relevant form of justice—and likely the only form of justice they will get in the absence of prosecutions, which they do not see as realistic.<sup>295</sup> A Twin Cities-based participant told us that they viewed monetary amends as a form of tangible support that can help people meet financial and psychosocial needs following the killing of a loved one by law enforcement.<sup>296</sup> Monetary amends, as outlined by participants, can take the form of both

*... taking responsibility requires shifting the burden of seeking accountability and responding to harm away from victims, their communities, and the civil society organizations that assist them—on whom it disproportionately falls—and towards the state to engage in accountability proactively.*

direct cash transfers and paying for medical or psycho-social care,<sup>297</sup> and can also extend to whole communities in order to support collective healing after collective harm.<sup>298</sup> Participants additionally made clear that security institutions should provide amends in a victim-centered manner that resonates with recipients<sup>299</sup> and offer genuine, rather than token, amounts, which have come across as insulting.<sup>300</sup> One participant further highlighted that people offered monetary amends “need to be allowed the dignity of refusing.”<sup>301</sup> Basim Razzo ultimately did not accept the \$15,000 the US military offered him for his losses, an amount dwarfed by his calculation of the actual damages caused.<sup>302</sup>

Despite the tangible benefits monetary amends can provide, participants pointed out that they represent only one piece of accountability and can sometimes be seen as inappropriate or unsatisfactory on their own.<sup>303</sup> One participant argued that monetary amends must be paired with acknowledgement<sup>304</sup> while another highlighted that changed behavior matters as well.<sup>305</sup> A third participant argued that individual restitution alone does not qualify as accountability.<sup>306</sup> Similarly, a lawyer with experience investigating civilian harm abroad worried that advocacy efforts focused solely on condolence payments at the expense of international legal obligations risk anchoring the conversation in a place that is “so far removed from what people actually deserve.”<sup>307</sup> In addition, financial recourse cannot meet all needs. Participants emphasized that money cannot bring back a lost loved one or lessen the pain of that loss.<sup>308</sup>

Non-monetary steps can also contribute towards taking responsibility and making amends. Internationally, for example, this could include rebuilding communities destroyed during military operations and restoring function to critical infrastructure and essential services.<sup>309</sup> Domestically, participants suggested that such steps could include giving asylum seekers harmed by immigration agents access to the protection they are guaranteed under international law,<sup>310</sup> and providing resources such as mentorship programs, therapeutic spaces, and recreational centers to communities disproportionately affected by police abuse.<sup>311</sup>

### ***Holding Perpetrators Liable***

US-based and international participants also spoke about the role of civil and criminal liability in ensuring accountability.<sup>312</sup> An advocate focused on preventing civilian harm abroad highlighted that if an investigation uncovers a possible war crime, investigators must evaluate whether a criminal investigation and trial may be necessary.<sup>313</sup> Other participants emphasized the importance of abiding by international legal frameworks.<sup>314</sup>

Participants also noted the importance of civil and disciplinary options short of criminal prosecution when conduct does not amount to a crime but nonetheless violates policy, rules, or ethics, and causes harm. This can include disciplinary measures, such as temporary suspension or dismissal from a particular line of work, or dismissal from the security body in question.<sup>315</sup>

Like other steps discussed above, participants emphasized that individual liability and punishment on their own may not satisfy demands for accountability, stating that they also have shortcomings. Participants noted that accountability is not purely criminal or legal.<sup>316</sup> It goes beyond “throwing three people in jail”<sup>317</sup> or “the single officer who committed the single crime.”<sup>318</sup> Participants emphasized that accepting guilt in one case does not change the fact that harm continues to happen.<sup>319</sup> Another participant recognized that punishment for the perpetrators does not materially change the violence that has been inflicted on the survivors and questioned how much prosecutions of low-level perpetrators matter to victims if victims do not receive acknowledgement or amends directly, or a guarantee of non-repetition from the institution. The same participant encouraged practitioners to think beyond a dominant focus on legal liability towards a framework grounded in restorative justice: restoring the lives of victims and survivors to the extent possible.<sup>320</sup>

## ***Ensuring Non-Repetition***

For participants focused on both civilian harm abroad and law enforcement abuse at home, actions taken by security institutions, policymakers, and courts to ensure non-repetition—i.e., a guarantee that the same harms will not recur—represent a major component of accountability.<sup>321</sup> One participant described accountability as not just about what happens after harm occurs, but about stopping cycles of harm, and emphasized that the preventative side of accountability is what matters most.<sup>322</sup> Another participant asserted that repeated harm makes it more difficult to take other accountability efforts seriously.<sup>323</sup> 76% of those surveyed for this project rated the importance of “changes to policy or procedure that prevent an act or failure to act” among other elements of accountability between 8 and 10 (on a scale of 10, 10 being “very important”).<sup>324</sup>

Non-repetition can take the form of changing laws and policies, adjusting use-of-force standards, and documenting, institutionalizing, and implementing lessons learned.<sup>325</sup> In the context of domestic law enforcement, sources also presented steps to reduce the use of force by police and thereby ensure non-repetition. These included the creation of alternative institutions, such as unarmed services to respond to mental health calls,<sup>326</sup> defunding or abolishing specific law enforcement bodies to prevent future harm, and reimagining approaches to addressing interpersonal and systemic harm altogether.<sup>327</sup>

Beyond laws, policies, and institutions to prevent harm to affected communities continuing, participants also highlighted the need to dismantle social narratives and ideologies that contribute to harm and proscribe accountability, including white supremacy, classism, and Islamophobia. Failure to do so means these narratives and ideologies will continue to frame whole populations as inherently threatening and reinforce the belief that the majority of harm is perpetrated by “bad apples” acting in isolated incidents.<sup>328</sup>

## ***Centering Affected Communities***

Participants made clear that all accountability efforts must be centered around individuals and communities affected by the harm in question. What accountability looks like ultimately should be up to the people who experienced harm, and those implementing accountability mechanisms should not impose external ideas of what constitutes accountability.<sup>329</sup> As participants pointed out, however, these communities—especially the most marginalized—have largely been shut out of these processes and provided with fewer opportunities to engage. Often, survivors are only included after significant advocacy.<sup>330</sup> An approach that centers affected communities would, participants assert, deliberately engage them in all their diversity and provide them with a major role throughout the process.<sup>331</sup>

## ***The Benefits of Comprehensive Accountability***

Participants outlined clear benefits that accountability can provide to people who experienced harm, to their families, and to their communities. Accountability can serve to reaffirm humanity and restore a sense of safety and a sense of justice in the wake of a violent rupture.<sup>332</sup> As one participant expressed, “it feels different when you think you’ll get justice and [when] you think you won’t,” and that “knowing that there was some kind of justice matters.”<sup>333</sup> Participants shared that accountability at large can support physical and psychological healing, with acknowledgement and the provision of the truth in particular providing comfort or closure.<sup>334</sup> In addition, as one participant emphasized, accountability can serve to alleviate the fear that perpetrators will harm others in the future or come back to harm survivors and their families.<sup>335</sup>





Credit: Geoff Livingston

May 29, 2020 : George Floyd Black Lives Matter Protest, 14th & U Streets in Washington, DC.

Participants also noted that accountable state security institutions benefit US domestic and foreign policy. Accountability can serve to bolster the United States' international standing and its image as a champion of the rule of law and democracy, while also improving trust in US governance and security institutions.<sup>336</sup> Further, as one participant pointed out, a stronger US commitment to accountability within its own security sector can provide a normative model to other countries.<sup>337</sup> The same participant shared that accountability would allow the United States to more credibly present itself abroad as a democratic nation that adheres to the rule of law.<sup>338</sup>

## The Path Forward

Overcoming the many challenges involved with realizing accountability in the US security sector and moving towards a more holistic and inclusive vision of accountability will demand significant effort from the government, security institutions, and civil society. Years of tireless advocacy by civil society have already generated important progress, demonstrating the importance of a broad range of actors from grassroots and victims' rights groups representing affected communities, to legal aid organizations and prominent human rights organizations. One civil society leader noted that the number of people making the connection between racial justice issues at home and abroad—including the role of racism in unaccountability—is growing.<sup>339</sup> Another participant noted that in recent years, political leaders and the general public have paid more attention to police violence domestically, the identities of those harmed, and the consequences that follow.<sup>340</sup>

According to participants, building on this foundation and moving towards comprehensive accountability will require the following:



**Engaging with affected communities** to understand what successful and satisfactory processes and outcomes entail. For consultations to truly qualify as meaningful, participants cautioned that such efforts must be approached with sincerity and an explicit commitment to listening as well as action.<sup>341</sup> Proactive engagement can:

- Help bring the process in line with people’s needs by capturing the range of experiences and needs that exist within communities.<sup>342</sup>
- Provide opportunities for the US and affected communities to co-design accountability mechanisms. Inclusive design ensures that authorities are acting on what people see as best rather than on their own assumptions.<sup>343</sup>
- Demonstrate a recognition that these communities have both agency and ideas for solutions to the problems they face.<sup>344</sup>
- Shift the burden of seeking accountability away from survivors, who bear it disproportionately, and towards the state.<sup>345</sup>
- Help the US overcome the considerable mistrust among affected communities that pervasive harm and unaccountability has fostered.<sup>346</sup>



**Building political will and courage** to transform entrenched systems and confront entrenched political interests.<sup>347</sup> This includes, for example, political leaders being willing to confront the power of police unions and pro-police lobbies.<sup>348</sup> Resource allocation is also an indicator of political will, and successful accountability efforts require resources—including funding and staff—as well as a clear plan for execution.<sup>349</sup>



**Addressing cultures of impunity.** As discussed in Chapter IV, because institutional and societal cultures and norms often promote unaccountability, participants emphasized the importance of transforming culture, norms, and narratives, within both security institutions and the broader public, towards a greater appreciation for accountability and justice.<sup>350</sup> Individual leaders play a critical role in transforming institutional cultures.<sup>351</sup> For example, research by CIVIC and the Columbia Law School’s Human Rights Institute found that when commanders prioritize civilian protection, “civilian casualty incidents are taken more seriously by military personnel and are much more likely to be adequately investigated.”<sup>352</sup>



**Strengthening and building civil society coalitions across the domestic-international divide.** Participants agreed that comprehensive accountability efforts cannot succeed without the participation of a broad section of civil society, which can include community groups, non-profit organizations, universities, religious institutions, and the media, among others.<sup>353</sup> Civil society actors already build and harness grassroots power to advocate for a holistic approach to accountability and pressure policymakers to take new actions and fulfill previous commitments.<sup>354</sup> They also often take the lead in shifting narratives, educating the public about the importance of accountability and why it remains elusive, and documenting abuses.<sup>355</sup> Connecting the issues of security and accountability domestically and internationally and advocating together—which one participant pointed out that grassroots groups have already done<sup>356</sup>—can serve to develop new and innovative partnerships, facilitate knowledge sharing, and advance the cause of comprehensive accountability across law enforcement and military contexts.

## VI. FINDINGS AND RECOMMENDATIONS

Efforts to improve and expand security accountability in the United States are at a pivotal moment. Massive protests demanding racial justice and accountability for police violence have prompted some steps at the federal level. Despite President Biden's May 25, 2022 Executive Order on accountable policing and criminal justice more action is needed. Internationally, civil society demands for accountability and policy reforms after 20 years of repeated civilian harm spurred the creation of the Civilian Harm Mitigation and Response Action Plan (CHMR-AP), a critical opportunity to improve the US record for preventing and responding to civilian casualties. Both the Executive Order and the CHMR-AP provide opportunities for policymakers and advocates to point out the shortcomings of each—such as the lack of a commitment in the CHMR-AP to review erroneously dismissed cases of past harm and the fact that by its very nature the Executive Order only applies to federal law enforcement—and push for reforms or legislation to address these gaps.

Below are key findings of our research and recommendations for the Biden administration, successive US administrations, legislators, and civil society to strengthen accountability efforts grounded in the needs and perspectives of affected communities.

### Key Findings

- **Accountability provides undeniable benefits to victims and survivors of harm, as well as to US society and governance.** It reaffirms the humanity of victims and survivors, provides them with comfort and closure, supports their physical and psychological healing, and can prevent future harm. Accountability is also critical to democratic governance and public trust, as well as US credibility abroad.
- **Despite its benefits, a lack of accountability remains a pervasive feature of US security sector institutions across the domestic-international divide.** Common barriers to accountability include inaccessibility, selectivity, limitations of legal accountability tools, a lack of external oversight, and bureaucratic impediments.
- **Across the domestic-international divide, people harmed by US security activities share experiences of unaccountability.** Though the contexts, types of harms, and the security bodies involved vary, affected communities both in and outside the United States reported broadly similar experiences seeking accountability for harm, similar barriers such as inaccessibility and bureaucratic hurdles, and similar consequences of accountability deficits.
- **Unaccountability comes with significant costs to victims and survivors, their families, and their communities across the domestic-international divide.** These include threats to physical safety, psychological harm, economic costs, and the risk of further harm. Accountability failures also erode public trust in governance institutions and damages the legitimacy, functioning, and health of US democracy domestically. Internationally, accountability failures can fuel cycles of violence, enable harm by other states, complicate international accountability efforts, and undermine perceptions of democracy's ability to deliver globally.
- **Unaccountability stems from a broad range of factors, but certain factors help to explain common experiences and outcomes.** The prioritization of the accountability claims of those with more power over those with less, the political power of security institutions, and prevailing institutional and social norms act together to produce widespread accountability failures.

- **Impacted communities in the United States and around the world envision a comprehensive system of accountability that encompasses various elements centered on victims' needs and desires.** These elements can include acknowledgement, explanation, and apologies; taking responsibility and making amends; legal liability and disciplinary action; and non-repetition.

## Recommendations for the US Government

- **Embrace a comprehensive, systemic approach to accountability across US security institutions that offers a range of options centered around the needs and preferences of victims and survivors.** Such a system should include mutually reinforcing elements of acknowledgement, explanation, and apology; responsibility and amends, including monetary amends or compensation; legal liability and disciplinary action when necessary; and non-repetition. Comprehensive accountability also requires going beyond individual liability alone to confront systemic accountability deficits and inequities in accountability outcomes, particularly for marginalized groups.
- **Prioritize non-repetition, or the prevention of future or repeated harm, as a key facet of accountability.** A focus on non-repetition should include both upstream, structural changes to prevent harm and efforts to identify, document, implement, and institutionalize lessons learned. Security institutions should communicate progress to affected communities and allow for community input into systemic preventative policies.
- **Recognize and take responsibility for harm through public acknowledgment and apologies as well as tangible steps to repair harm where possible, including but not limited to monetary amends, compensation, and/or reparations.** Such steps may include, but are not limited to, direct cash transfers; the facilitation of no-cost medical care and culturally appropriate psychosocial support; rebuilding damaged or destroyed communities, critical infrastructure, and essential services; providing policy remedies, such as ensuring asylum seekers gain access to the legal protections to which they are entitled; and community-level amends or reparations. Types of amends offered should be based on the needs and preferences of those harmed.

Congress and relevant federal agencies should consult closely with affected communities to explore what appropriate amends may look like both in the domestic and international contexts. As one immediate step, the Department of Defense should offer *ex gratia* payments to the victims and survivors whose harm the Department has already recognized as “credible,” using the \$3 million authorized by Congress for these payments every year.<sup>357</sup>

- **Ensure individual accountability through both civil and criminal penalties when applicable, as well as non-legal disciplinary measures.** The Department of Defense and domestic law enforcement agencies alike should review their tools and guidance for holding individual personnel to account for their actions. This should include robust, independent investigations and punitive measures for violations of international humanitarian law, international human rights law, and corresponding domestic law, but should also include disciplinary measures for violations of policy, rules, or ethics that do not amount to legal violations. These measures can include temporary suspension, job loss, loss of promotion or eligibility for other related roles, or other work-related disciplinary options.
- **Enact legislation tackling legal barriers to accountability.** Congress should pass, and the President should sign into law, legislation removing legal barriers to accountability, such as codifying the right to seek damages from federal agents for violating Fourth, Fifth, and Eighth Amendment rights and repealing qualified immunity.



➤ **Develop accessible, transparent, and context-specific pathways for reporting harm.** Pathways should be in a format that people across identities in a given context can access in the language or languages they understand. Multiple types of pathways, such as a phone hotline, an online portal, or in-person reporting locations, may be necessary due to the accessibility and security needs of different segments of a given population. The existence of mechanisms, how to access them, and what types of information may be required should be advertised to relevant populations in relevant languages, keeping in mind how different people of different genders, ages, locations, and socioeconomic status access information. This information can be obtained through consultations with a range of civil society organizations, including women's groups and groups representing ethnic minorities. Pathways should be as transparent as possible about what happens once claimants submit reports, including where and how reports are stored, who has access to any reports filed and to personally identifying information, and what next steps and possible accountability options will look like. The US military should support allies and partners in developing similar pathways that meet these standards. The Department of Justice should support state and local police departments to do the same. The Department of Homeland Security should also ensure sub-agencies adopt these standards.

➤ **Conduct independent, comprehensive, and transparent investigations with embedded bias checks.** From start to finish, investigations into harm should be independent—e.g., conducted outside of chains of command or by entities with no formal relationship to the actions under investigation. Security institutions should provide as much transparency as possible as to what the investigatory process looks like, the timetable of an investigation, and what potential outcomes and accountability options could entail. Investigators should proactively seek and consult information from witnesses and survivors, non-governmental organizations, the media, and local authorities, including through interviews and site visits. Investigators should regularly incorporate anti-bias checks or establish “red teaming” protocol to question assumptions during investigations, and be familiar with relevant languages and cultural considerations, including how people of different genders and ages interact in public and private spaces. Investigators should be required to remain in regular contact with claimants from the start, providing substantive information with regards to the progress of the investigation. If claims are dismissed, investigators should make clear as to why and provide opportunities for claimants to appeal the dismissal or to submit additional evidence. The findings and results of investigations should be made public.

The US military should support allies and partners in developing investigatory practices that meet these standards. The Department of Justice should support state and local police departments to do the same. The Department of Homeland Security should also ensure sub-agencies adopt these standards.

➤ **Reckon with past harms, including by re-investigating cases that were likely erroneously dismissed due to shortcomings in past investigatory practices.** In particular, the Department of Defense should reopen investigations into credible instances of civilian harm that were likely erroneously dismissed as “not credible” due to flawed investigatory practices. The Department of Homeland Security should do the same with regards to investigations into Border Patrol misconduct that was dismissed due to tampering by Critical Incident Team members. Reinvestigations should occur in line with the above best practices and through regular communication and consultation with victims/survivors and their families.

➤ **Inculcate an internal culture of accountability in US security institutions.** This includes establishing robust protections for internal whistleblowers and working to transform a culture of impunity based around a “code of silence” into a culture of accountability. Institutional leaders play a key role in shifting culture and should work to create a climate of accountability in words



as well as actions. Additionally, civil society and the media have a role to play in countering narratives that foster support for accountability deficits among the general public.

- **Be consistent about US support for and promotion of accountability abroad.** The US should support and promote accountability consistently around the globe, whether the perpetrator is an ally, partner, or an adversary. In particular, the US should employ the leverage it has with allies and partners to strengthen ally and partner accountability policies and practices. The United States should also join the International Criminal Court and, in the interim, take steps to improve US cooperation with the Court across all contexts and perpetrators, not only when politically expedient.<sup>358</sup>
- **Center and consult with affected communities.** Across all of the above accountability efforts, the United States should center the needs and desires of victims and survivors of security force abuse, actively consulting with communities and civil society. This is critical to establish effective processes and accountability outcomes, as well as to build trust and uphold democratic governance. The government should make a particular effort to consult women's groups, LGBTQ+ organizations, and groups representing marginalized racial, ethnic, religious, and regional groups in a given context. This effort includes considering and addressing the specific security concerns these groups face in order to facilitate their participation. The US must take care to proactively reach out to these groups to avoid placing the burden of making contact fully on civil society. In addition, the US must be transparent with civil society interlocutors about where their information will go and how it will be used. The US must also keep communities informed about how their input is informing accountability policies and practices.

## Endnotes

- 1 "Public Trust in Government: 1958-2022," Pew Research Center, June 6, 2022, <https://www.pewresearch.org/politics/2022/06/06/public-trust-in-government-1958-2022/>
- 2 YouGov. (n.d.). *YouGov panel rewards*.
- 3 This person voluntarily disclosed their gender identity to us. We acknowledge that other gender minority individuals may have participated but chose not to disclose this information.
- 4 YouGov interviewed 1065 respondents who were then matched down to a sample of 1000 to produce the final dataset. The respondents were matched to a sampling frame on gender, age, race, and education. The frame was constructed by stratified sampling from the full 2019 American Community Survey (ACS) 1-year sample with selection within strata by weighted sampling with replacements (using the person weights on the public use file). The matched cases were weighted to the sampling frame using propensity scores. The matched cases and the frame were combined, and a logistic regression was estimated for inclusion in the frame. The propensity score function included age, gender, race/ethnicity, years of education, and region. The propensity scores were grouped into deciles of the estimated propensity score in the frame and post-stratified according to these deciles. The weights were then post-stratified on 2020 Presidential vote choice, and a four-way stratification of gender, age (4-categories), race (4-categories), and education (4-categories), to produce the final weight.
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330 CIVIC and Stimson interview with subject matter expert, July 27, 2022; CIVIC and Stimson interview with civil society leader, August 16, 2022.

331 CIVIC and Stimson interview with subject matter expert, July 27, 2022; CIVIC and Stimson interview with civil society leader, August 16, 2022.

332 CIVIC and Stimson interview with subject matter expert, April 28, 2022.

333 CIVIC and Stimson interview with civil society leader, July 26, 2022.

334 CIVIC and Stimson interview with subject matter expert, April 28, 2022; CIVIC and Stimson interview with subject matter expert, June 17, 2022; CIVIC and Stimson interview with civil society leader, July 26, 2022; CIVIC and Stimson interview with civil society leader, September 29, 2022.

335 CIVIC and Stimson interview with civil society leader, July 26, 2022.

336 CIVIC and Stimson interview with subject matter expert, April 21, 2022; CIVIC and Stimson interview with subject matter expert, April 21, 2022; CIVIC and Stimson interview with civil society leader, August 16, 2022; CIVIC and Stimson interview with civil society leader, September 29, 2022.

337 CIVIC and Stimson interview with civil society leader, August 16, 2022.

338 Ibid.

339 CIVIC and Stimson interview with civil society leader, July 21, 2022.

340 CIVIC and Stimson interview with subject matter expert, April 21, 2022.

341 CIVIC and Stimson interview with subject matter expert, July 27, 2022; CIVIC and Stimson interview with civil society leader, August 16, 2022.

342 CIVIC and Stimson interview with civil society leader, September 23, 2022.

343 CIVIC and Stimson interview with subject matter expert, July 27, 2022.

344 Ibid.

345 CIVIC and Stimson interview with civil society leader, August 16, 2022.

346 CIVIC and Stimson interview with subject matter expert, July 27, 2022; CIVIC and Stimson interview with civil society leader, August 16, 2022.

347 CIVIC and Stimson roundtable discussion with subject matter experts, May 18, 2022; CIVIC and Stimson interview with subject matter expert, July 27, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, July 28, 2022; CIVIC and Stimson interview with civil society leader, August 12, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 12, 2022.

348 CIVIC and Stimson interview with subject matter expert, May 10, 2022; CIVIC and Stimson interview with civil society leader, July 26, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson interview with civil society leader, August 12, 2022.

349 CIVIC and Stimson interview with subject matter expert, July 27, 2022.

350 CIVIC and Stimson interview with civil society leader, July 21, 2022; CIVIC and Stimson research workshop with civil society leaders, August 10, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson interview with civil society leader, August 11, 2022; Virtual feedback session with peer reviewers, February 2, 2023.

351 CIVIC and Stimson roundtable discussion with subject matter experts, May 18, 2022.

352 Mahanty et al., "In Search of Answers," 23.

353 CIVIC and Stimson interview with subject matter expert, June 17, 2022; CIVIC and Stimson research workshop with civil society leaders, July 28, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson interview with civil society leader, August 12, 2022.

354 CIVIC and Stimson interview with civil society leader, July 21, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson interview with civil society leader, August 12, 2022.

355 CIVIC and Stimson interview with civil society leader, July 21, 2022; CIVIC and Stimson interview with civil society leader, July 26, 2022; CIVIC and Stimson roundtable discussion with civil society leaders, August 11, 2022; CIVIC and Stimson interview with civil society leader, August 11, 2022.

356 CIVIC and Stimson interview with civil society leader, July 21, 2022.

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*Black Lives Matter organizers, supporters, and allies gather inside the Minneapolis City Hall rotunda on December 3, 2015, after an early morning raid and eviction of demonstrators occupying the space outside the Minneapolis Police Department's 4th Precinct, following the police shooting death of Jamar Clark. Credit: Tony Webster*