

## Backgrounder: US “Condolence” Payments

*June 2010*

*“I think the key for us is, on those rare occasions when we do make a mistake, when there is an error, to apologize quickly, to compensate the victims quickly, and then carry out the investigation.”*

*Statement by Defense Secretary Robert Gates<sup>1</sup>*

### History of US Efforts to Pay Condolences

Since the Korean War, the US has maintained the ability to pay for damages suffered by the civilian population, if deemed customary in the region. These payments are called “solatia” and are given to a family as an expression of sympathy. A single paragraph in each service branch’s claims regulation defines solatia. Army regulation 27-20, Paragraph 10-10, provides the authority for the use of condolence payments by the Army:

*Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Such payments are not to be made from the Claims Expenditure Allowance. These payments are made from local operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned. This applies even where a command claims service is directed to administer the command’s solatia program.*

### Condolences in Iraq & Afghanistan

Each time the US goes to war, a decision is made as to whether solatia/condolences are customary or appropriate. At the beginning of both the Afghan and Iraq wars, CENTCOM declined to authorize the payments leaving no claims system for civilians suffering losses due to US combat operations.

In September 2003, the highest level of Command in Iraq (Combined Joint Task Force-7 or CJTF-7) authorized what it called “solatia-like” payments. This remains the only authorization for condolence payments to date in Iraq. In November 2005, condolence payments were approved for use in Afghanistan. Condolences are ex-gratia payments are considered a gesture of sympathy only, given to ease civilian suffering. They are in no way meant as formal reparation, legal compensation, or an admission of fault or negligence. Condolences are paid from the Commanders Emergency Response Program (CERP).

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<sup>1</sup> Dexter Filkins, “US Tightens Airstrike Policy in Afghanistan”, New York Times, June 21, 2009, <http://www.nytimes.com/2009/06/22/world/asia/22airstrikes.html>

The maximum payout in cases of death, serious injury, property losses, or damage in Iraq and Afghanistan is 2,500 USD. Through conversations with the Center for Law and Military Operation (CLAMO) within the US Army JAG Corps, Center for Civilians in Conflict has found that payments may be authorized up to 10,000 USD if approved by a higher command. There is, however, little evidence that many successful claims surpass 2,500 USD.

The Center's field research and analysis of 12,776 pages of claims documentation made by Afghan and Iraqi civilians:<sup>2</sup>

- Judge Advocates on the ground do not uniformly interpret and apply existing guidelines for compensation creating an ad hoc system of approvals, denials and valuation;
- There is a low valuation of life in the condolence payments made;
- There is no uniform understanding of what constitutes an FCA versus a condolence claim resulting in inconsistent decision-making and awards;
- There is no appellate process for condolence as exists under the FCA;
- Claims denied under the Foreign Claims Act (FCA) are generally not referred for a condolence payment when the claim should be considered for payment;
- There is an overreliance on the "combat exclusion," which prohibits payments for claims that are the result of direct or indirect combat action;
- There appears to be an over-reliance on US military-produced evidence and disregard for the evidence submitted by the claimant.

## Creating a Better Condolence System

The Center is calling on the US to look closely at its system of condolences and make the necessary changes to ensure the program works in a fair, transparent and safe way. To improve the way it addresses civilian harm, the United States should:

- Draft and implement uniform procedures and guidelines for claims;
- Allow for leeway in valuation with payment guidelines;
- Properly train commanders, Judge Advocates, and soldiers;
- Enable immediate implementation of a civilian claims system in new theaters;
- Better document civilian harm and claims;
- Create a high-level Pentagon position on civilian harm to oversee policies, strategies, and tactics that focus on preventing and addressing civilian harm.

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Last updated: June 2010

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