

## **Draft Political Declaration on Strengthening the Protection of Civilians from Humanitarian Consequences that can arise from the use of Explosive Weapons in Populated Areas**

**March 2021**

Center for Civilians in Conflict (CIVIC)<sup>1</sup> welcomes the draft “Political Declaration on Strengthening the Protection of Civilians from Humanitarian Consequences that can arise from the use of Explosive Weapons in Populated Areas” circulated by Ireland on January 29, 2021.<sup>2</sup>

The draft text recognizes the humanitarian consequences from the use of explosive weapons with wide area effects in populated areas (EWIPA), stresses on compliance with international humanitarian law, and sharing of good practices to strengthen protection of civilians.

CIVIC offers the following comments for consideration by Ireland to strengthen the declaration to effectively protect civilians with proposed changes italicized and underlined.

### **Title**

CIVIC, as noted in our February and April 2020 comments, again recommends replacing “humanitarian harm” with *civilian harm* to broadly encompass harm to civilians and civilian objects as humanitarian harm is vague and associates “humanitarian” with a negative term of harm.

We also recommend removing harm that “can” occur from explosive weapons from the title to send a clear and strong message—based on documented evidence by the UN, ICRC, NGOs—that harm to civilians and civilian objects do occur when EWIPA is used.

---

<sup>1</sup> CIVIC works to strengthen protection of civilians by engaging armed actors and civilians to develop and implement solutions to prevent, mitigate, and respond to civilian harm. CIVIC is a Steering Committee member of the International Network on Explosive Weapons (INEW). Since 2012, CIVIC has participated in EWIPA talks held by OCHA, ICRC, Austria, Ireland, Norway, and INEW, during which we have contributed to discussions on known good practices and policies on explosive weapons in populated areas, as well as civilian harm mitigation policies and tools adopted by armed actors. CIVIC defines civilian harm mitigation as “all measures taken by armed actors to prevent, minimize, and address civilian harm resulting from their own presence, activities, and operations.” [www.civiliansinconflict.org](http://www.civiliansinconflict.org)

<sup>2</sup> CIVIC submitted comments to prior draft declaration in February 2020 and April 2020.

## Part A: Preamble

### Section 1

#### ***Paragraph 1.2***

We recommend removing *can* in the first sentence and in the third sentence to unequivocally acknowledge that EWIPA has both direct impact on civilians, civilian objects, and indirect/reverberating effects.

#### ***Paragraph 1.3 and 1.4***

CIVIC recommends consolidating paragraphs 1.3-1.4 to show all types of harm that occur after use of EWIPA.

#### ***Paragraph 1.6***

Based on our experience, CIVIC continues to see challenges in implementing operational policies and practices to mitigate civilian harm, including on explosive weapons, as well as a lack of transfer of such practices during partnered operations or in security force assistance, and the need to constantly adapt and learn on new approaches to mitigate civilian harm. We recommend the following:

- Many militaries *have enacted operational policies and good* practices designed to mitigate civilian harm, which include a detailed understanding of the effects of explosive weapons on a military target and its surrounding areas and the associated risk to civilians in populated areas. However, there is scope for *better implementation of these policies and good practices* ~~practical improvements in the full implementation of, and compliance with, obligations under International Humanitarian Law, and the application and sharing of good practices.~~ *Such evolving policies and good practices on mitigating civilian harm should be exchanged as part of trainings, security assistance, and during partnered operations* to promote ~~ion~~ and better implementation of International Humanitarian Law.

#### ***Paragraph 1.7***

We recommend using language of “tracking” of civilian casualties by the military, which is the lexicon used by those that have created such a tool. We also offer some additional language on the utility of this tool and its effectiveness. CIVIC has helped create civilian casualty tracking mechanisms within militaries (Afghanistan and Ukraine) and with multinational forces (AMISOM and G5 Sahel) to track civilian harm incidents and identify root causes of civilian harm to mitigate them. Such a tool works more effectively when the military’s or multinational

force's tracking is supplemented by information being recorded from outside the military. This allows for more comprehensive analysis on all possible incidents and remedial measures to acknowledge and mitigate civilian harm. CIVIC offers the following amendments:

- We recognize the importance of efforts to track civilian casualties and the use of all practical measures to ensure appropriate data collection, including, where possible, data disaggregated by sex, age, and disability. Such tracking efforts by armed forces should be supplemented by information from external organizations, media, civil society, who are recording civilian casualties. Comprehensive analysis by armed forces of all sources of data—both internal and external—contributes to lessons learnt processes that should lead to new or revised policies, practices, trainings to mitigate civilian harm. Such data can also aid efforts to make amends for incidental harm and provide basis for investigation of lawfulness of harm and accountability.

## **Section 2**

### **Paragraph 2.2**

We recommend removing “in particular within populated areas” at the end of the last paragraph.

### **Paragraph 2.3**

We recommend adding effects of attack after feasible precautions.

- We recall the obligations on all parties to armed conflict to comply with International Humanitarian Law when conducting hostilities in populated areas, and recall in particular the obligation to distinguish between combatants and civilians as well as between military objectives and civilian objects; the prohibitions against indiscriminate and disproportionate attacks; and the obligation to take all feasible precautions in attack and against the effects of attacks. We also recall the obligation under International Humanitarian Law to provide civilians with general protection against dangers arising from military operations.”

## **Part B: Operative Section**

### **Section 3**

#### **Paragraph 3.2**

CIVIC proposes the following amendment to strengthen trainings based on our experience with armed actors and seeing gaps that exist in factoring in risk to civilians and civilian objects:

- Ensure comprehensive training of ~~our~~ armed forces on International Humanitarian Law, scenario based trainings on how to reduce risk of civilian harm, identifying lessons, and good practices during the conduct of hostilities in populated areas to effectively protect civilians and civilian objects.

### **Paragraph 3.3**

CIVIC re-iterates its recommendation on the previous draft urging commitments on avoidance of use unless sufficient mitigation measures to limit effects can be undertaken.

- Ensure that ~~our~~ armed forces adopt and implement a range of policies and practices to avoid civilian harm, including by avoiding the use of explosive weapons with wide area effects in populated areas, when the effects may be expected to extend beyond a military objective.

CIVIC proposes the following sentence to clarify the commitment.

*This commitment will be implemented unless sufficient mitigation measures have been taken to limit their use effects and risk of civilian harm.*

### **Paragraph 3.4**

We recommend identifying how foreseeability actions will be undertaken in planning processes.

- Ensure that ~~our~~ armed forces enact tools, processes, and consult urban experts when taking into account the direct and reverberating effects on civilians and civilian objects which can reasonably be foreseen in the planning of military operations and the execution of attacks in populated areas.

## **Section 4**

### **Paragraph 4.1**

CIVIC welcomes language committing on strengthening international cooperation on good practices to enhance the protection of civilians, but recommends broadening the consultation beyond armed forces to include subject matter experts, civil society, humanitarian organizations, academia who have important insights from armed conflicts to share. We also re-iterate that good practices and policies should be shared in security assistance and partnered operations as in many cases such practices and policies are not integrated, and offer language recognizing that practices evolve and change as better approaches are identified. CIVIC proposes the following amendments:

- Strengthen international cooperation and assistance with respect to exchange of policies and good practices to enhance the protection of civilians and compliance with international humanitarian law. Such evolving good practices and policies should be shared as part of trainings, security assistance, during partnered operations, and exchanged through workshops or seminars. A working group of interested parties could facilitate exchange of evolving good practices and policies.

#### **Paragraph 4.2**

CIVIC welcomes the importance of data collection, and suggest the following amendments to include evidence based analysis to develop new guidance, trainings, and policies and to remove

- Collect and, where possible and appropriate, share and make public data, disaggregated by sex, age, and disability on the direct and reverberating effects on civilians and civilians objects of our military operations involving from the use of explosive weapons with wide area effects for analysis to identify causes of harm to improve policies, trainings, and effective acknowledgement and assistance to victims.

#### **Paragraph 4.4**

CIVIC recommends adding types of victims assistance as recognized in landmines and cluster munitions frameworks:

- Victims assistance includes physical rehabilitation, psychosocial support, and socio-economic reintegration.

#### **Paragraph 4.6**

CIVIC welcomes commitment of states to regular meetings to review implementation of the declaration and urges that other stakeholders, such as United Nations, ICRC, and non-governmental organizations, subject matter experts, and academia be invited to participate in the working group meetings and workshops.