

# **Civilian Claims Act**

## **Fair Compensation for Civilian Casualties of US Military Operations**

Payments made to civilians harmed by US military operations in war express sympathy and provide assistance for losses suffered. In the absence of a viable civilian claims program, the current condolence program was pieced together in 2003 and remains ad hoc, inadequate, and poorly funded, often increasing resentment rather than fostering goodwill.

The United States needs a consistent, uniform system to provide claims adjudication for civilians harmed as a result of US actions. That system should better enable the Pentagon to process claims during wartime with standard procedures, guidelines and funding.

### **The Current Problem**

#### **No separate funding**

Funds for condolence payments are currently dispersed under CERP. They are therefore often overshadowed by larger reconstruction projects. To be effective, a civilian claim should be funded separately as an official claims program so that Judge Advocates (JAs, military lawyers on the ground) will never be required to limit or deny payments based on a lack of money, and victims and their families are assured payment in a timely manner.

#### **No uniform guidelines**

There remains great disparity in the application of the current condolence program. Some units pay while others don't. Further, as units rotate in and out of Iraq and Afghanistan, the system is reinvented each time. Uniform guidelines are necessary on standards of proof, valuation, recordkeeping and an appeals process. Guidance will decrease the negativity on the ground, often intensified by the current ad hoc system.

#### **Leeway in valuation**

Under the Foreign Claims Act, the full market value may be paid for a Toyota run over by a tank in Iraq, but under the current condolence system only \$2,500 (standard) may be paid for a breadwinner killed. Valuation of life, injury or property should be decided on a case-by-case basis with no artificial ceiling. The amount must demonstrate genuine understanding and provide enough for the survivors to recover.

#### **Training**

Unit officers responsible for the current program lack adequate training to implement the condolence program, including an appropriate understanding of the significance of the payments. The same efforts to train JAs adjudicating claims under the FCA should be used for a civilian claims program – with practical guidance on standards of proof as well as appropriate ways to deal with civilian victims.

#### **No permanency**

In the past five years, the Pentagon has twice denied the application of the solatia program, which led to the creation of the current system. There is currently no assured mechanism for the US military to adjudicate civilian claims if a new conflict were to begin. Without a permanent program, claims services for civilians caught in war will always be haphazard and arbitrary.

### **The Solution**

The Civilian Claims Act (CCA) is a permanent, effective civilian claims system. Championed by Senator Patrick Leahy (D-VT), it is currently in the draft stages and will be introduced sometime after mid-April. The CCA is good public policy; builds goodwill on the ground; provides documentation on civilian casualties; ensures adequate training, guidelines, and institutional knowledge; is transparent, with written decisions and appeals; treats all civilian victims fairly; can be up and running quickly at the start of every engagement (administration is already in place under currently existing claims commissions); ensures cash-in-hand for victims following a tragic event.



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