

Somalia, the fate of Children in the conflict

Case prepared by Ms. Danielle Breitenbürger, Master student at the Faculties of Law of the Universities of Geneva and Basel (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Gaetane Cornet, research assistant, at the University of Geneva.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

No Place for Children

[Source: Human Rights Watch, No Place for Children, Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia, Report, 20 February 2012; footnotes omitted; numbering of the paragraphs added by us; available on <http://www.hrw.org>]

Summary

[...]

[1] Children in war-torn Somalia face horrific abuses, including forced recruitment as soldiers, forced marriage and rape, and attacks on their schools by the parties to the conflict. Those responsible are never held to account.

[2] Children, defined as anyone under age 18, have suffered disproportionately from the ongoing conflict. Fighting between the Transitional Federal Government (TFG), the African Union Mission in Somalia (AMISOM), and TFG-aligned militias on one hand and al-Shabaab, the Islamist armed group that now controls much of the country, on the other, intensified in the capital, Mogadishu, and other parts of south-central Somalia in mid-2010 and early 2011. In October 2011 the conflict in the southern regions escalated

further with the incursion of Kenyan armed forces against al-Shabaab, followed shortly after by the arrival of Ethiopian forces.

[3] Children are often the main victims of the indiscriminate artillery and small arms fire that has long characterized the fighting in Mogadishu. They are also the most affected by the ongoing humanitarian crisis, which is underpinned by a UN-declared famine through the south-central region of Somalia as well as the ongoing conflict between al Shabaab and the TFG.

[4] This report documents al-Shabaab's targeting of children for recruitment as soldiers, forced marriage, and rape, with a focus on abuses in 2010 and 2011. In addition, it documents how the group has targeted students, teachers, and school buildings for attack. Al-Shabaab fighters have also used schools as firing positions, and the students inside as "human shields," placing children at risk of injury or death from indiscriminate or disproportionate return fire from TFG or AMISOM forces.

[5] Children have served within TFG forces and TFG-aligned militias, although Human Rights Watch has not been able to independently confirm how widespread children's participation is.

[...]

[6] While the presence of children in fighting forces in the 21-year-long Somali conflict is not a new phenomenon, there has been an unprecedented upsurge of al-Shabaab forced recruitment of children since mid-2010; attacks on students, teachers, and schools have also been prevalent in the last two years.

[7] Although al-Shabaab has long relied on spreading extremist propaganda and material rewards to coerce children to join, since mid-2010 it has increasingly recruited children forcibly to replenish its dwindling ranks.

[8] Children have nowhere to hide. Al-Shabaab has abducted them wherever they congregate: schools, playgrounds, football fields, and homes. Schools in particular have been attractive targets – 14 of the 21 child escapees from al-Shabaab whom Human Rights Watch interviewed were taken from schools or on their way to school.

[9] Life for children in al-Shabaab training camps is harsh: boys undergo grueling physical combat training, weapons training, and religious and political teaching during which some describe being forced to watch videos of suicide bombings. Boys also described witnessing brutal physical punishments and executions of those accused of spying for the TFG, and those attempting to escape or merely failing to obey orders.

[10] Al-Shabaab militants send children to the front lines, often with little training. Several witnesses spoke of children serving effectively as "human shields" for more experienced fighters during some of the most intense fighting in Mogadishu. Others, including children too young to carry military weapons, were aggressively coerced and threatened into serving as suicide bombers. Besides participating in active combat, al-Shabaab

uses children in a multitude of support roles, including carrying ammunition, water, milk, and food to the front lines; removing the wounded and killed; and working as spies, guards, and porters.

[11] Abducted girls are assigned cooking, cleaning, and other domestic duties in the camps. Al-Shabaab uses girls and young women not only for support for combat operations, but also for rape and forced marriage to fighters.

[12] Children, their families, and their teachers who try to prevent recruitment and abduction or who attempt to escape face severe consequences. Al-Shabaab has killed or injured parents who intervened to protect their children although, on occasion, parents and community leaders have successfully negotiated the release of abducted children with local al-Shabaab leaders.

[13] When children “defect” or escape from al-Shabaab into the hands of the TFG or AMISOM, or are captured on the battlefield, they face interrogation by the TFG security services, detention, and an uncertain future instead of being protected as children.

[14] While the available information suggests that the TFG itself does not forcibly recruit children, children have found their way into its ranks, often by volunteering for TFG forces or those of aligned militias, manning checkpoints, and taking part in combat.

[15] The TFG has to date failed to ensure that stringent and systematic age screening procedures and standards are in place to screen all its recruits and forces. Recruits who have not attended a training funded by the European Union (EU) in Uganda and have been directly recruited from militias are particularly likely to escape screening. Human Rights Watch is not aware of any member of the TFG forces being held to account for the recruitment and use of children.

[16] Schools have featured heavily in al-Shabaab’s combat operations as well as its efforts to control Somalis’ everyday lives. Many Somali children are no longer in or have never been to school. Somalia has one of the lowest rates of enrollment in the world; however, children and young people who have persisted in attending school have found themselves, their teachers, and their school buildings intentionally targeted for attack by al-Shabaab.

[17] Al-Shabaab forces have turned schools into battlegrounds, firing at TFG and AMISOM forces from functioning school buildings and compounds, deliberately placing students and teachers in harm’s way from often indiscriminate return fire by TFG and AMISOM forces. Al-Shabaab has in some cases bombed school buildings, killing students, teachers, and bystanders. The group has used schools to recruit students as fighters and to abduct girls and young women for rape and forced marriage.

[18] Al-Shabaab has imposed their harsh interpretation of Islam on schools in areas that they control,

prohibiting English, the sciences, and other subjects deemed improper, and enforcing severe restrictions on girls' dress and interactions with male students. They have threatened and even killed teachers who resist their methods, lectured students on jihad and war as a recruitment tool, and placed their own teachers in schools. Lessons have been left devoid of substance, teachers have fled, and, where schools have not shut down entirely, children, deprived of any meaningful education and afraid for their safety, have dropped out in large numbers. Girls have dropped out disproportionately.

[19] There remains no accountability in Somalia for violations of international human rights and humanitarian law. The TFG and AMISOM have not taken action against commanders responsible for laws-of-war violations or the conscription of children. Al-Shabaab has to date been impervious to all calls to end human rights abuses. Governments supporting the TFG and AMISOM have largely failed to recognize that al-Shabaab atrocities are counterproductive and no excuse for abuses by the Somali government.

[20] The TFG initially denied the presence of children within its forces but has more recently publicly acknowledged the need for action to be taken to end their presence and use. In November 2011 the TFG reiterated a commitment to enter into a formal UN action plan to end its use of child soldiers. To date this commitment has not translated into necessary changes and concrete measures on the ground, notably ensuring stringent and systematic screening of all TFG recruits to prevent child recruitment and holding accountable those responsible for the recruitment and use of children in its forces. For the planned integration of militia groups into the TFG forces, effective vetting measures are essential.

[21] The TFG has come under too little pressure to improve its record on children's rights, or human rights more generally, by key international actors who, by offering political and financial support to Somalia, are in a position to demand progress. These include the UN, the United States (US), and the EU. The "Roadmap" signed in September 2011 under the auspices of the UN Political Office for Somalia (UNPOS), which is seen by international partners of the TFG as the main instrument through which to hold the TFG to account, vaguely refers to ending recruitment of children but fails to include clear benchmarks that would enable monitoring compliance. While the UN and US have recently called on the TFG to end the use and recruitment of children, to date they have not sought to condition support to TFG forces on this basis.

[...]

I. Background

Major Parties to the Conflict

[22] The following is an overview of the major parties to the armed conflict in Somalia as of late 2011.

Transitional Federal Government (TFG)

[23] Somalia's Transitional Federal Government (TFG), set-up in 2004, is recognized by the UN and almost all key foreign governments (with the notable exception of Eritrea) as the legitimate government of Somalia. Until 2011, it controlled only a small section of southern Mogadishu, but extended its control over several areas of the city in the course of 2011. The embattled TFG depends on the African Union Mission in Somalia (AMISOM) for its survival and security, and on donor funds. It has proved unable to assert political control, build key government sectors, or provide the essential services that would build its credibility. Infighting between different factions and components of the Transitional Federal Institutions (TFIs), of which the TFG is a component, has significantly hampered political developments.

Al-Shabaab

[24] Al-Shabaab is a militant Islamist group that began as part of the armed wing of the Islamic Courts Union (ICU) when the courts rose to power in Mogadishu in 2006. Al-Shabaab is not a monolithic entity but rather an alliance of factions that initially rallied under its banner with the aim of forcing the Ethiopian troops to leave Somalia. These groups retain a limited common agenda of defeating AMISOM and the TFG and extending its extreme interpretation of Sharia (Islamic law) across Somalia. Al-Shabaab currently controls more territory in southern Somalia than any other faction and became the largest armed insurgent group in December 2010 following its merger with Hizbul Islam, another Islamist armed group led by former ICU member Hassan Dahir Aweys. Al-Shabaab withdrew from Mogadishu in August 2011 but continues to carry out attacks in the war-torn capital.

Drought, Famine, and al-Shabaab's Restrictions on Humanitarian Access

[25] Compounding the dire effect of ongoing fighting on civilians is unrelenting drought, famine, al-Shabaab's severe restrictions on humanitarian aid and ongoing diversion of aid in TFG-controlled areas.

[26] Severe drought in south-central Somalia worsened from October 2010 onwards. By August 2011, the UN had declared six regions – primarily in southern Somalia – to be in a state of famine. An estimated four million people, more than half of the Somali population, were in crisis as of that month, around three million of whom were in the south in predominantly al-Shabaab-controlled areas. As of January 2012, according to the UN, four million Somalis remain in need of humanitarian assistance. The Somali population of internally displaced persons and refugees – already one of the largest in the world – has further escalated: one-quarter of Somalia's estimated population of 7.5 million was either internally displaced or lived outside the country as refugees as of December 2011.

[27] Aid agencies have been limited not only by conflict and insecurity but also by al-Shabaab, which has restricted some agencies' work. The group has imposed a ban on over a dozen individual agencies since 2009, placed significant financial and logistical burdens on organizations that are working in areas under their control, and threatened and attacked humanitarian workers. In early July 2011 al-Shabaab declared that it was lifting the ban it had imposed on certain foreign aid agencies in areas under its control as long as the

distribution of aid was their only objective. But the ban has yet to be lifted and by November al-Shabaab had proclaimed a fresh ban on 16 aid organizations, including UN agencies. Al-Shabaab also continues to severely restrict the freedom of movement of those seeking access to humanitarian assistance in areas under its control.

[28] Access to humanitarian assistance in areas under TFG control has also been hampered by diversion and looting of humanitarian aid. Media reports in August 2011 suggested that food aid diversion in Mogadishu was occurring on a large scale.

[29] Counterterrorism legislation, and most notably the US Office of Foreign Assets Control (OFAC) sanctions that seek to prevent support reaching designated terrorist organizations, have also negatively impacted humanitarian operations in Somalia, resulting both in a significant decrease in US funding of humanitarian organizations since 2008 and the imposition of burdensome measures on those receiving US support.

Discussion

I. Classification of the situation

1. (Paras [2], [23]-[24])

1. How would you classify the situation in Somalia? Does al-Shabaab fulfil the requirements for being a party to a non-international armed conflict? What evidence speaks for it to be? Against this position? If there is a non-international armed conflict, which treaties apply? (GC I-IV, Art. 3; P II, Art. 1)
2. Does it matter for the application of IHL that the UN and almost all key foreign governments recognize the TFG as the legitimate government of Somalia? What impact does the political situation have on the qualification of the conflict? (GC I-IV, Art. 2(1))
3. Do the interventions of AMISOM, Kenya and Ethiopia and the support of the TFG by Western countries have an impact on the qualification of the conflict? Does the intervention of other states automatically make any conflict international?

II. Protection of children during hostilities

1. (Paras [3], [4], [16], [17])

1. Are children afforded specific protection in non-international armed conflicts? (P II, Art. 4(3) and 6(4); CIHL, Rules 135-137)
2. Do the al-Shabaab fighters violate IHL when using schools as firing positions? (P II, Art. 13(1); CIHL, Rules 22-24)
3. Are schools a legitimate military objective under IHL? Do they become one for the TFG or AMISOM forces if they are used by al-Shabaab fighters as firing positions? Which principles must be observed when attacking schools? In which cases must these forces refrain from launching an

attack? (P I, Arts 51, 52 and 57; CIHL, Rules 8, 9, 10, 14-21)

4. Are TFG or AMISOM forces allowed to target students who are being used by al-Shabaab fighters as “human shields”? Under which circumstances? Is the use of “human shields” allowed under IHL? Which principle does it certainly violate? (P II, Art. 13(1); CIHL, Rules 22-24, 97)

III. Recruitment of children

1. (Paras [4]-[8], [14], [15])
 1. Is the forced recruitment of civilians prohibited by the IHL of non-international armed conflicts? If the recruited persons are above 18 years of age? If they are between 15 and 18? If they are below 15? What if the children voluntarily enlist? In the government's forces? In a non-state armed group? What are the differences between the formulations of the provisions relating to child soldiers addressed to governments and armed groups? (GC I-IV, Art. 3; P II, Art. 4(3)(c); CIHL, Rules 136-137; 1989 Convention on the Rights of the Child, Art. 38(2) and (3); The International Criminal Court, Art. 8(2)(e)(vii); See Document, Optional Protocol on the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, Arts 1-4;)
 2. Is the TFG obliged under IHL to ensure that their soldiers are above the prescribed age by conducting age screening procedures?
 3. Who is bound by the different international instruments prohibiting the recruitment of children? The state parties? Non-state armed groups operating on the territory of a state party?
 4. How can the distinction between voluntary and forced recruitment be drawn? To what extent can a child give its consent to being a child soldier? Are the spreading of extremist propaganda and the promise of material rewards sufficient to imply a degree of coercion amounting to forced recruitment?
 5. How can a distinction be drawn between child soldiers that take a direct part in hostilities and those who do not? Does the different formulation in the two Additional Protocols also entail a different meaning (P I, Art. 77(2); P II, Art. 4(3)(c))? Should the notion of direct participation in this context be interpreted in the same way as in the context of conduct of hostilities? What are the consequences of these interpretations for children used in support roles?
1. May child soldiers be classified as combatants in a non-international armed conflict? In international armed conflicts?
2. Does IHL allow the targeting of child soldiers who are actively participating in hostilities? Who are directly participating in hostilities? Who have a continuous fighting function? Does the principle of necessity applied in the context of IHL require the attacking forces to try to capture a child soldier before killing it? (P II, Art. 4(3)(d); see Document, ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)
3. (Para. [13]) May the TFG detain child soldiers from al-Shabaab? On which legal basis? Is your answer different if the child is captured on the battlefield or escaped from al-Shabaab? Do the children still benefit from special protection when they are detained? (P II, Art. 4(3)(d); CIHL, Rule 135)
4. Do the recruiting methods of al-Shabaab violate the prohibition to commit acts or threats of violence the primary purpose of which is to spread terror among the civilian population? (P II, Art. 4(2)(d); CIHL, Rule 2)

IV. Control of curriculum and restrictions on girls

1. (Para. [18])
 1. Does IHL guarantee the right to education for children in a non-international armed conflict? (P II, Art. 4(3)(a))
 2. Do human rights apply in the present situation? Are non-state armed groups bound by international human rights law? If they exercise effective control over a territory? Can Somalia be held responsible for the violations of human rights by al-Shabaab?
 3. How is the relationship between a non-state armed group exercising effective control over a territory and the local population regulated in the law of non-international armed conflicts? Is IHL of military occupation applicable to the situation in Somalia? To what extent does al-Shabaab's role similar to that of an occupying power in the regions under its control? Could the discussed provisions, or some of them, therefore be applied by analogy? What is the opinion and practice of states and armed groups relating to this matter? If the law of occupation was applied by analogy, could al-Shabaab change the curriculum of schools in a fundamental way and enforce restrictions on girls' dress and interactions with male students?

V. Treatment of soldiers within al-Shabaab

1. (Paras [9]-[11])
 1. Does the treatment of male child soldiers by al-Shabaab violate IHL? Does its treatment of female child soldiers violate IHL?
 2. Does IHL traditionally prohibit such practices within one party to the conflict? Could the fundamental guarantees in Article 4 of Protocol II also apply to victims of such abuses by their own party to the conflict? What could be your argumentation?
 3. Do human rights apply in this situation? Can Somalia be held responsible for al-Shabaab's treatment of its own members?

VI. Restrictions on humanitarian access

1. (Paras [25]-[29])
 1. May al-Shabaab be held responsible for not supplying the local population with food to the extent possible? Is al-Shabaab allowed to restrict the work of aid agencies? Under which circumstances? Can it restrict the freedom of movement of people seeking access to humanitarian assistance? (P II, Arts 13-14 and 18; CIHL, Rules 53-56)
 2. Are humanitarian workers protected from threats and attacks under IHL? (P II, Arts 13 and 18; CIHL, Rule 31)
 3. Under which conditions does IHL allow the diversion of humanitarian aid? Can the provisions of Protocol I be applied by analogy in this case? (CIHL, Rule 55; P I, Art. 70)

VII. Implementation of IHL

1. (Paras [19]-[20])
 1. Can the TFG and AMISOM waive their obligations under IHL as a response to al-Shabaab

atrocities? (CIHL, Rules 140 and 145)

2. For which type of violations of IHL may individuals be held criminally responsible? Under which conditions may commanders be prosecuted for such acts? (GC I, Art. 50; GC II, Art. 51; GC III, Art. 130; GC IV, Art. 147; P I, Art. 85; CIHL, Rules 151-155)
3. Does Somalia have an obligation under international law to prosecute persons responsible for violations of IHL? If they were committed by members of the TFG forces? If they were committed by al-Shabaab? Does your answer vary in cases of international armed conflicts? (GC I, Art. 49; GC II, Art. 50; GC III, Art. 129; GC IV, Art. 146; CIHL, Rule 158)

1. (Paras [19] and [21]) Do the UN, US and EU violate IHL by offering political and financial support to Somalia without effectively demanding that the TFG respect IHL? What obligations do states have when it comes to ensuring that other state parties respect IHL? Do these obligations also apply in non-international armed conflicts? (GC I-IV, common Art. 1; CIHL, Rule 144)

© International Committee of the Red Cross