

Somalia, IHL violations in Somalia's long-running armed conflict

Case prepared by Mr. Tadesse Kebebew, LL.M., student at the Geneva Academy of International Humanitarian Law and Human Rights, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both 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.

[Source: World Report: Somalia, HRW, 2016, available at: <https://www.hrw.org/world-report/2016/country-chapters/somalia>]

[1] Somalia's long-running armed conflict continued to take a heavy toll on civilians in much of south-central Somalia. Warring parties continued to kill, wound, and forcibly displace civilians. Restrictions on humanitarian access exacerbated the human rights and humanitarian crises.

[2] Ongoing political infighting and three government reshuffles in three years, along with political maneuvering around implementation of federalism, detracted from justice and security sector reform progress. Tensions over creation of a new interim regional administration in central Somalia led to open conflict between clan militias and government forces, resulting in abuses against civilians.

[3] The forces of the African Union Mission to Somalia (AMISOM), as well as Ethiopian armed forces, launched a new offensive against the armed Islamist group Al-Shabaab in southern Somalia. While Al-Shabaab lost control of some key towns, it maintains control over large swathes of territory, and many key transport routes. Al-Shabaab carried out targeted attacks on civilians and civilian infrastructure, in the capital, Mogadishu, and other towns under government or allied authority, and increased high-profile attacks on

AMISOM facilities. There were credible reports that AMISOM forces killed civilians during operations and in response to Al-Shabaab attacks.

Abuses by Government and Allied Forces

[4] Civilians have been killed at government-manned checkpoints and in the crossfire of fighting between government forces and Al-Shabaab, clashes over the creation of federal states, and in indiscriminate responses to attacks.

[5] The security situation remained volatile in government-controlled towns. Government forces failed to protect civilians, including journalists, clan elders, clerics and lawmakers and other officials from targeted killings by Al-Shabab as well as by unknown gunmen, primarily in Mogadishu, Baidoa, the capital of the Bay region, and Beletweyn, the capital of Hiraan.

[6] In February, as a result of ongoing tensions regarding establishing an interim regional administration in central Somalia, fighting in Guri'el between government forces and the Ahlu Sunna Wal Jama'a, a Sufi militia, resulted in civilian deaths and massive displacement. According to the United Nations, about 90 percent of the estimated population of over 65,000 temporarily fled. Inter-clan fighting, reportedly involving government forces, in Hiraan also resulted in civilians deaths.

[7] Somalia's national intelligence agency, NISA, continued to conduct mass security sweeps despite having no legal mandate to arrest or detain. NISA has occasionally held detainees for prolonged periods without judicial review and beat suspects during interrogations.

[8] The military court continued to try cases that are not legally within its jurisdiction and in proceedings falling short of international fair trial standards. Eleven individuals were sentenced to death by military courts and executed in south-central Somalia and Puntland.

[9] Children continued to be killed, arbitrary detained, and recruited into the armed forces. In January 2015, Somalia ratified the Convention on the Rights of the Child and in November endorsed the Safe Schools Declaration committing to take concrete steps to protect students and educational institutions.

Abuses by Al-Shabaab

[10] Al-Shabaab regularly targets civilians and civilian structures, particularly in Mogadishu, resulting in numerous casualties. On November 1, Al-Shabaab attacked the popular Sahafi Hotel in Mogadishu, killing at least 15 people, including a journalist covering the attack, other civilians and officials. On December 5, 2014, Al-Shabaab claimed responsibility for a twin attack in Baidoa that killed at least 19 people including three journalists.

[11] Credible reports indicate that Al-Shabaab administers arbitrary justice and severely restricts basic rights in areas under its control, and continued to forcibly recruit children. Al-Shabaab committed targeted killings, beheadings and executions, particularly of those accused of spying. On February 7, Al-Shabaab publicly executed two women accused of working for NISA in Jilib, Middle Juba. Al-Shabaab controls some supply routes and imposes blockades on towns captured by AMISOM and Somali government forces, notably Wajid, Buloburte and Hudur, severely restricting movement of goods and assistance; on occasion Al-Shabaab killed civilians accused of breaking blockades.

Abuses by Foreign Forces

[12] Reports increased of indiscriminate killings of civilians by AMISOM and other foreign forces, particularly at checkpoints, following attacks on AMISOM convoys and in airstrikes.

[13] In July, local residents in Merka and media accused Ugandan forces working under AMISOM of killing civilians in response to Al-Shabaab attacks on AMISOM supply convoys. On July 31, AMISOM soldiers killed six family members celebrating a wedding. An AMISOM investigation admitted responsibility for the killings, reported three soldiers had been arrested to face prosecution.

[14] On August 8, Ethiopian forces under AMISOM killed five civilians and injured six others at a checkpoint in Halgan, Hiraan. In late May, clashes on the Ethiopian side of the Galgadud border, between the special police of Ethiopia's Somali region, known as "Liyu police," and local pastoralists, resulted in significant displacement and civilian casualties, including women and children.

Sexual Violence

[15] In 2014, the government endorsed an action plan to address alarming levels of sexual violence. However, as in other prioritized reform areas, implementation has been slow and protection of the most vulnerable communities non-existent. While the full scope of sexual violence remains unknown, internally displaced women and girls are clearly particularly vulnerable to rape by armed men, including government soldiers and militia members.

[16] Some soldiers from Uganda and Burundi deployed with AMISOM sexually exploited and assaulted women and girls on their bases in Mogadishu. In some cases women and girls were offered humanitarian assistance, medicine and food in exchange for sex. Few women filed complaints due to fear of reprisals and absence of effective and safe complaint mechanisms. The African Union, and Burundian, and Ugandan authorities investigated specific allegations, although no prosecutions had occurred at time of writing.

Displaced Persons and Access to Humanitarian Assistance

[17] Somalia's 1.1 million internally displaced people, primarily women and children, remained extremely vulnerable and reliant on assistance. Humanitarian agencies faced challenges accessing needy populations due to insecurity, and restrictions imposed by parties to the conflict.

[18] Targeted attacks on humanitarian organizations persisted. Al-Shabaab claimed responsibility for an April 20 attack in which a suicide bomber killed four United Nations Children's Fund (UNICEF) staff and two security guards in Garowe, Puntland. On November 15, a contractor for the UN mine action was killed by armed men in Beletweyn.

[19] Military operations conducted by AMISOM, Kenyan, and Ethiopian forces, and Somali forces against Al-Shabaab, as well as clan-fighting, resulted in significant civilian displacement. More than [35,000] people, including women, children and people with disabilities, who fled to Mogadishu during the 2011 famine remained in dire conditions in the capital and are subjected to forced evictions, sexual violence and clan-based discrimination by government forces, allied militia, and private individuals.

[20] In December 2014, the government passed a displacement policy largely in line with international law, yet large-scale forced evictions, including by government forces, occurred in Mogadishu, Kismayo, and Baidoa. During the first two months of 2015, over 40,000 people were forcibly evicted in Mogadishu. Government forces forcibly evicted over 21,000 people during one operation in March, beat some evictees, destroyed shelters, and left them without water, food, or other assistance.

[...]

Key International Actors

[21] Foreign and regional partners continued to provide financial and other assistance to AMISOM, including to mentor and train Somali armed forces engaged in security and military operations against Al-Shabaab. On July 28, the UN Security Council renewed AMISOM's mandate until May 2016, in a resolution that did not underscore the importance of accountability for abuses by AMISOM forces.

[...]

[22] The US has claimed responsibility for three drone strikes since December 29, 2014, against individuals allegedly involved in the September 2013 Westgate mall attack in Kenya, a marked increase in drone usage in Somalia. While the US Defense Department has openly acknowledged involvement, it has consistently failed to make public concrete information regarding civilian casualties.

Discussion

I. Classification of the Situation and Applicable Law

1. Using the information provided, how would you classify the situation in Somalia? On what criteria is your determination on classification based? Who are the parties to the conflict? Which criteria have to be fulfilled for a situation to be classified as a non-international armed conflict? Which set of rules applies in the present case? Does Protocol II bind Somalia? AMISOM? At least those contingents from States parties to Protocol II? (GC I-IV, Common Art.3; P II, Art.1).
2. Does IHL apply to the conduct of AMISOM?
3. (*Para 14*) Does IHL apply to the clashes between Ethiopian special police ('Liyu Police') and local pastoralists? (GC I-IV, Common Art.3).
4. (*Para 22*) Does IHL apply to the drone strikes by US since December 29, 2014, in Somalia against individuals allegedly involved in the September 2013 Westgate mall attack in Kenya? If so, who are the parties to the conflict? What is the applicable law?
5. Is any conduct described in this report not prohibited by IHL?

II. Conduct of Hostilities

- 6 (*Para. [10]*) Does IHL of non-international armed conflicts prohibit indiscriminate attacks? Did the attacks by Al-Shabaab on Sahafi Hotel in Mogadishu and twin attacks in Baidoa violate IHL of non-international armed conflict? Are the attacks on AMISOM facilities violations of IHL? Are the AMISOM facilities protected as civilian objects? Do they benefit from special protection under IHL? (CIHL, Rule.33; ICC Statute, Art.8 (2) (e) (iii)).
7. (*Paras [10], [12] & [13]*) Is Al-Shabaab's targeting of civilian structures necessarily a violation of IHL of non-international armed conflict? (CIHL, Rule.148).
8. Is Ethiopia responsible for the killings of civilians by its forces operating under AMISOM? If so, what measures should Ethiopia take? (CIHL, Rules 149, 150 and 158).
9. (*Para.11*)
 - a. Is the closing of supply routes and imposing blockades on towns captured by AMISOM and Somali government forces, notably Wajid, Bulo-Burte and Hudur a lawful method of warfare? Does IHL regulate the issue of blockades? If so, how? (CIHL, Rules 7, 103; P I, Art.70)
 - b. Do the targeted killings perpetrated by Al-Shabaab constitute a violation of IHL? Even if the victims are accused of spying?(GC I-IV, Common Art.3; CIHL, Rule 89)

III. Treatment of Persons, Prohibition of Rape and Other Forms of Sexual Violence

10. What protection does IHL provide against rape and other forms of sexual violence? Does IHL expressly prohibit rape and other forms of sexual violence in international armed conflicts? In non-international armed conflicts? (GC I-IV, Common Art.3; P II, Art. 4(2) (a) and (e); CIHL, Rules 90, 91 and 93; GC IV, Art. 27; P I, Arts 75(2) and 76)
11. Is rape a war crime? In non-international armed conflict? What additional measures could help put an end to this practice? Would an additional international instrument be useful? What provisions should it contain? (CIHL, Rule 156; ICC Statute, Art. 8(2) (e) (vi))
12. Does it matter whether the rape victim is a civilian, a fighter, a militant sympathizer, or a terrorist? Man, woman or a child? (GC I-IV, Common Art.3; P II, Art. 4(2); CIHL, Rules 93, 134 and 135)
13. (*Para.16*) Is AMISOM bound by the rules of IHL prohibiting rape and other forms of sexual violence? What about the AU Member States contributing troops to AMISOM? Are they bound by IHL in relation to the conduct of AMISOM? By International Human Rights Law? (GC I-IV, Common Art.1)

14. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in non-international armed conflicts? Are international organizations under such obligations? (CIHL, Rules 93 and 158)

IV. Treatment of Persons, Detention

15. (Para 8) Does IHL of non-international armed conflict prohibit or authorize detention? Does a state have an inherent power to detain under Common Art.3? How about armed groups? AMISOM forces? Is human rights law the *lex specialis* regarding detention and treatment issues during non-international armed conflicts? Do the provisions on the grounds and procedures of detention under IHL for international armed conflicts apply by analogy to non-international armed conflicts? (GC I-IV, Common Art.3; P II, Arts.4-6; CIHL, Rules 99, 100).

16. Does IHL of non-international armed conflict prohibit the use of military courts to try persons detained in relation to the conflict? Will there be a problem even if the court offers the essential guarantees of independence and impartiality? What does the expression 'a regularly constituted court' under common Art.3 imply? Does the omission of this wording in P II Art. Art.6 (2) have any consequences under IHL? (GC I-IV, Common Art.3; P II, Art. 6)

17. (Para.7) Must a person detained in a non-international armed conflict be either tried or released? Is detention for prolonged periods without judicial review a violation of IHL? Does a person detained during an armed conflict have a right to challenge the legality of his/her detention without delay before an independent and impartial court? According to IHL? According to International Human Rights Law (IHRL)? (GC I-IV, Common Art.3; P II, Arts.4-6; CIHL, Rule 99).

18. (Para 11) Is Al-Shabaab under obligation to respect fair trial and other basic rights in areas under its control? Under IHL? Under international human rights law? (GC I-IV, Common Art.3; CIHL, Rules 99, 100).

V. Treatment of Persons, Recruitment of children

19. (Para 11) 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? (P II, Art. 4 (3) (c); CIHL, Rule 137)

20. Who is bound by the different international instruments prohibiting the recruitment of children? State parties? Non-state armed groups operating on the territory of a state party? (See also Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, Art. 4)

21. How can the distinction between voluntary and forced recruitment be drawn? To what extent can a child give his/her 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?

22. Does IHL allow the targeting of child soldiers who are directly participating in hostilities? Who are just indirectly 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 him/her? (P II, Art. 4(3) (d); ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)

23. Are the actions of Al-Shabaab as concerns children generally compatible with special protection schemes foreseen by IHL for children? (P II, Art.4 (3); CIHL, Rules.135, 136, and 137)

VI. Restriction on Humanitarian Access

24. 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? Can it restrict the work of humanitarian actors? (P II, Arts 13-14 and 18; CIHL, Rules 53-56)
25. Are humanitarian workers protected from threats and attacks under IHL? (P II, Arts 13 and 18; CIHL, Rule 31)
26. Do attacks on personnel providing relief supplies constitute a violation of IHL? War crimes? Even attacks on armed AMISOM forces providing relief? (GC I-IV, Common Art.3; P II, Arts 4(2) (a), 13(2) and 18)
27. Under which conditions does IHL allow the diversion of humanitarian aid? Can the provisions of Protocol I be applied by analogy in this case? (P I, Art.70; CIHL, Rule 55)
28. How could the respect of IHL be ensured in such a conflict? Who should do it? Who could do it?