

Somalia: Deeply Flawed Rape Inquiry

Case prepared by Mr. George Dvaladze, 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 ^[1], 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.

A. World Report: Somalia

[Source: World Report: Somalia, HRW, 21 January 2014, available online http://www.hrw.org/sites/default/files/wr2014_web_0.pdf ^[2]]

[...]

[1] Civilians continue to suffer serious human rights abuses as the new Somali government struggled to extend its control beyond the capital, Mogadishu, and to some key towns in south-central Somalia in 2013. Parties to Somalia's long-running armed conflict were responsible for serious violations of international law; abuses include indiscriminate attacks, sexual violence, and arbitrary arrests and detention.

[2] The Islamist armed group Al-Shabaab maintains control of much of southern Somalia, and the group increased attacks on high-profile civilian locales in Mogadishu, including the courthouse, a popular restaurant, and the United Nations compound, killing scores of civilians. Those fighting against Al-Shabaab—a combination of Somali government armed forces, the African Union Mission in Somalia (AMISOM), Ethiopian government troops, and allied militias—have also committed abuses.

[...]

B. Somalia: Deeply Flawed Rape Inquiry

[Source: Somalia: Deeply Flawed Rape Inquiry, HRW, 11 November 2013, available at: <http://www.hrw.org/news/2013/11/10/somalia-deeply-flawed-rape-inquiry> ^[3]]

[1] Somali authorities should order a new, impartial, and transparent investigation into an alleged gang rape by African Union (AU) soldiers.

[...]

[2] A Somali woman told local media on August 9, 2013, that Somali government forces had abducted her the day before in a northern district of the country's capital, Mogadishu.

They handed her over to men she alleged were troops from the African Union Mission in Somalia (AMISOM), based on their physical characteristics and the language they spoke. She said they gang-raped her and then dumped her on the streets. Three months on, the government's investigation into the case has been mismanaged and no findings have been made public.

[...]

[3] The government investigation has been marred by multiple procedural flaws. While the plan was for a joint investigation, given the allegations against both the Somali government and AMISOM forces, collaboration has been limited. AMISOM and civil society representatives were first included on the committee but later excluded from participating in investigations due to alleged conflicts of interest.

[...]

[4] AMISOM's tepid response to the allegations also raises serious questions about its commitment to holding its troops accountable for sexual violence in a transparent manner. AMISOM soldiers are drawn from the militaries of Uganda, Burundi, Djibouti, Sierra Leone, and Kenya. During the investigation, the AMISOM spokesperson denied the allegations at a press conference, questioning why AMISOM soldiers would abduct women from outside their medical facilities when they regularly treat girls as patients.

[5] On November 5, the AMISOM spokesman told Human Rights Watch that AMISOM and the Somali government had determined the woman's allegations to be unfounded but did not clarify the process or evidence that led to such conclusions.

[6] AMISOM forces have previously faced allegations of sexual violence in Somalia. The

UN Security Council in a March 2013 resolution called on AMISOM to take measures to prevent sexual abuse and exploitation and address allegations of abuse. In July, the Security Council Monitoring Group on Somalia and Eritrea reported that allegations of sexual exploitation and abuse are regularly leveled against AMISOM but that the mission lacks procedures to address these allegations systematically.

[7] ‘The Somali authorities and African Union forces aren’t going to make allegations of sexual violence go away with blanket denials,’ Gernholtz said. ‘Troop contributing countries should immediately establish clear and transparent procedures to investigate allegations promptly and impartially, and appropriately hold those found responsible to account.’

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (Document A, paras [1]-[2])
 - a. Using the information in Document A, 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 ^[4]; P II, Art. 1 ^[5])
 - b. Does IHL apply to Mogadishu? To the entire territory of Somalia? To the territory of the member States of the AU? To the territories of Uganda, Burundi, Djibouti, Sierra Leone and Kenya? (GC I-IV, Common Art. 3 ^[4]; P II, Art. 1 ^[5])
 - c. Does IHL apply to AMISOM? Under which circumstances?

II. Treatment of Persons - Prohibition of Rape and Other Forms of Sexual Violence

2. (Document B, paras [1]-[7]) 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 ^[4]; GC IV, Art. 27 ^[6]; P I, Arts 75(2) ^[7] and 76 ^[8]; P II, Art. 4(2)(a) ^[9] and (e) ^[9]; CIHL, Rules 90 ^[10], 91 ^[11] and 93 ^[12])
3. Is AMISOM bound by the rules of IHL prohibiting rape and other forms of sexual violence? By the UN Security Council resolution calling on AMISOM to take measures to prevent sexual abuse and exploitation and address allegations of abuse? What about the AU Member States contributing troops to AMISOM? Are they bound by IHL? By International Human Rights Law? (GC I-IV, Common Art. 1 ^[13])
4. Does IHL prohibit transferring a person to another Power where there is a risk that the person may be raped or subjected to other forms of sexual violence? Does such a prohibition exist in human rights law? (CIHL, Rules 90 ^[10], 91 ^[11] and 93 ^[12]; GC I-IV, Common Art. 3 ^[4]; P II, Art. 4(2)(a) ^[9] and (e) ^[9]; GC I, Art. 12 ^[14]; GC II, Art. 13 ^[15]; GC III, Art. 14 ^[16]; GC IV, Art. 27 ^[6]; P I, Art. 75(2) ^[7])
5.
 - a. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in international armed conflicts? In non-international armed conflicts? (CIHL, Rules 93 ^[12] and 158 ^[17]; GC I, Art. 49 ^[18]; GC II, Art 50 ^[19]; GC III, Art. 129 ^[20]; GC IV, Art. 146 ^[21]; P I, Art 85 ^[22])
 - b. Do you think that the obligation to investigate also extends to international organizations? To third States contributing troops to a peace operation? (GC I-IV, Common Art. 1 ^[13])
 - c. Under IHL, what are the requirements for an inquiry into an alleged rape? Must the victim be involved? Must the result be made public? If the inquiry concludes that rape was committed by a member of peace forces, who has to try the suspect? (CIHL, Rules 93 ^[12] and 158 ^[17]; GC I-IV, Common Art. 1 ^[13]; P II, Art. 6 ^[23]; GC I, Art. 49 ^[18]; GC II, Art 50 ^[19]; GC III, Art. 129 ^[20]; GC IV, Art. 146 ^[21]; P I, Art. 85 ^[22])

6.
 - a. Does human rights law impose an obligation on States to prevent and repress rape and other forms of sexual violence? To investigate allegations of rape and other forms of sexual violence? If yes, do you think that the obligations imposed on States under IHL and International Human Rights Law (IHRL) are different? If different, which regime is more protective?
 - b. Under IHRL, what are the requirements for an inquiry into an alleged rape? Must the victim be involved? Must the result be made public? If the inquiry concludes that rape was committed by a member of peace forces, who is responsible for the trial of the suspect?
7. Is rape a war crime? 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 ^[24]; GC I, Art. 50 ^[25]; GC II, Art 51 ^[26]; GC III, Art. 130 ^[27]; GC IV, Art. 147 ^[28]; P I, Art. 85 ^[22]; ICC Statute, Art. 8(2)(b)(xxii) ^[29] and (e)(vi) ^[29])
8. Under IHL, does it matter whether the rape victim is a civilian, a combatant, a fighter, a militant sympathizer, or a terrorist? Man, woman or a child? (CIHL, Rules 93 ^[12], 134 ^[30] and 135 ^[31]; GC I-IV, Common Art. 3 ^[4]; P II, Art. 4(2) ^[9]; GC I, Art. 12 ^[14]; GC II, Art. 13 ^[15]; GC III, Art. 14 ^[16]; GC IV, Arts 27 ^[6]; P I, Arts 75(2) ^[7], 76 ^[8] and 77 ^[32])

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Links

[1] <https://casebook.icrc.org/disclaimer-and-copyright>

[2] http://www.hrw.org/sites/default/files/wr2014_web_0.pdf

[3] <http://www.hrw.org/news/2013/11/10/somalia-deeply-flawed-rape-inquiry>

[4]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD>

[5]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=93F022B3010AA404C12563CD>

[6]

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[7]

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[8]

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[9]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD>

[10] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90

[11] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule91

[12] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule93

[13]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=074D7AE3436CF248C12563CD>

[14]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B97B83DC12AC4998C12563CD>

[15]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6F743996A6E529C2C12563CD>

[16]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F0E25F9F56372523C12563CD>

[17] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule158

[18]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3F6C2B8B20272F58C12563CD>

[19]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=58854E245CB34B82C12563CD>

[20]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=C083F579BD003884C12563CD>

[21]

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[22]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD>

[23]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DDA40E6D88861483C12563CD>

[24] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule156

[25]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8DE472A17F7E30AFC12563CD>

[26]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=14F60F779A9C29F2C12563CD>

[27]

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[28]

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[29]

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[30] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule134

[31] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule135

[32]

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