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INVESTIGATIONS INTO CIVILIAN CASUALTIES FROM US AIR STRIKES IN SOMALIA NEEDED URGENTLY

OVERVIEW

Since 2017, air strikes conducted by the United States of America (USA) against the armed group Al-Shabaab and the armed group calling itself Islamic State (IS) in Somalia have soared, from 14 in 2016 to at least 47 in 2018. In the first eight months of 2019 alone, the USA has already surpassed the 2018 figures, with 48 strikes carried out with armed US Reaper drones and manned aircraft.

For many years the USA claimed that its air strikes and other military operations in Somalia had not resulted in a single civilian death or injury. In March 2019, US Africa Command (AFRICOM) asserted that it had carried out 110 strikes since 2017, killing more than 800 “terrorists” but not one civilian.¹ However, just a month later and following publication by Amnesty International of new evidence of civilian casualties, the US finally admitted that a civilian woman and child had been killed in an air strike in 2018 and that it had failed to report the two killings to the US Congress.² While Amnesty International welcomed this admission as a first step, we are yet to see evidence that the USA and Somalia have taken concrete steps to thoroughly investigate all credible allegations of civilian casualties and ensure survivors of air strikes and the families of victims are afforded their right to justice, accountability and remedy.

Recent research by Amnesty International,³ conducted over nine months in 2018 and 2019, focused on five attacks that took place in the Lower Shabelle region since April 2017. In the course of this research, we found credible evidence that 14 civilians were killed and eight more injured in these incidents and concluded that US air strikes were responsible for four of these attacks; and that the fifth was most plausibly also caused by a US air strike. Given that the US has conducted more than 120 additional strikes across Somalia in the past two-and-a-half years, the true number of civilian casualties is likely to be higher.

WEAKENED CIVILIAN PROTECTIONS SINCE 2017

In March 2017, the US President issued a directive designating southern Somalia an “area of active hostilities” and stating that war targeting rules would henceforth apply. In doing so, the US Government weakened the protections afforded to civilians in Somalia, increasing the likelihood of their death or injury in US military operations: previously, before launching an attack AFRICOM required “near certainty” that civilians would not be killed or injured. Following the directive, that requirement was loosened to “reasonable certainty,” and AFRICOM dramatically increased the number of aerial attacks it launched in Somalia.⁴

¹ US Africa Command, *U.S. Africa Command statement on Amnesty International report*, 19 March 2019, <https://www.africom.mil/media-room/pressrelease/31651/u-s-africa-command-statement-on-amnesty-international-report>

² U.S. Africa Command, *U.S. Africa Command commander-directed review reveals civilian casualties*, 5 April 2019, <https://www.africom.mil/media-room/pressrelease/31697/u-s-africa-command-commander-directed-review-reveals-civilian-casualties>

³ Amnesty International, *The hidden US war in Somalia: Civilian casualties in Lower Shabelle*, 18 March 2019, <https://www.amnesty.org/en/documents/afr52/9952/2019/en/>

⁴ For further discussion on this directive, see: Amnesty International, *The hidden US war in Somalia: Civilian casualties in Lower Shabelle*, pp. 25 – 27, <https://www.amnesty.org/en/documents/afr52/9952/2019/en/>

According to a retired US Brigadier General interviewed by Amnesty International, since the issuance of the directive, individuals are also now considered to be lawfully targetable based solely on four criteria: age, gender, location, and geographical proximity to Al-Shabaab. Brigadier-General Donald Bolduc told Amnesty International that all military-aged males observed with known Al-Shabaab members, inside specific areas – areas in which the US military has deemed the population to be supporting or sympathetic to Al-Shabaab – are now considered legitimate military targets. AFRICOM denied that this was an accurate reflection of US targeting standards, but if the Brigadier-General is accurate in how the policy is practically applied during operations, then US forces appear to be acting in violation of international humanitarian law (IHL), as well as the military's own laws and policies regarding who is lawfully targetable during conflicts and may be counting civilian casualties as Al-Shabaab fighters.

For example, in a strike on the hamlet of Farah Waeyes, Lower Shabelle, AFRICOM claims that "all individuals injured or killed were members or affiliates of Al-Shabaab," while Amnesty International has documented that two civilian men were killed, and five women and children injured, in addition to Al-Shabaab casualties.

Amnesty International's research suggests that **US government forces who planned and carried out these air strikes may have committed violations of international humanitarian law, and some attacks should be investigated as possible war crimes.**⁵

In some of the strikes documented by Amnesty International, **US forces appear to have either targeted civilians or failed to verify that targets were military objectives before proceeding with the attack, which would violate their obligations under international humanitarian law.** In other attacks, evidence indicates that US forces failed to take feasible precautions to distinguish between civilians and fighters or to choose appropriate means or methods in conducting strikes in order to minimize the harm caused to civilians and civilian objects, as required by international humanitarian law, sometimes resulting in apparently indiscriminate or disproportionate attacks. Further, the findings of the research, and the responses received from AFRICOM to our allegations, raise serious concerns about the methodology employed by the US to assess strike outcomes and to determine the civilian or "combatant" status of individuals killed or injured in its attacks.

JUSTICE, ACCOUNTABILITY AND REPARATION

Since at least 2016, the US government has claimed that its military operations in Somalia are conducted at the request of the Government of Somalia, under the right of collective self-defense.⁶ As such, Amnesty International considers the USA to be a party to the non-international armed conflict between the Federal Government of Somalia and the armed group Al-Shabaab. However, when asked by Amnesty International, both the Office of the Secretary of Defense and AFRICOM refused to confirm or deny whether the US is at war in Somalia. As a party to the conflict, the US government is required under international law to conduct prompt, thorough, independent, impartial, transparent, and effective investigations into allegations of arbitrary deprivation of life and of violations of international humanitarian law, such as the acts described by our research.⁷

Somalia also has a duty to investigate allegations of unlawful killings, as part of its obligation to protect the right to life of everyone under its jurisdiction.⁸ This duty applies not only to allegations of unlawful killings by

⁵ For a detailed description and legal analysis of these five cases see pp.34 – 57 of Amnesty International, *The hidden US war in Somalia: Civilian casualties in Lower Shabelle*.

⁶ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html> article 51 and; Department of Defense, *Statement from Pentagon Press Secretary Peter Cook on Airstrike in Somalis*, 7 March 2016, <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/687305/statement-from-pentagon-press-secretary-peter-cook-on-airstrike-in-somalia/> and; AFRICOM *U.S. Conducts Airstrike in Support of Federal Government of Somalia*, 15 October 2018, <https://www.africom.mil/media-room/pressrelease/31273/u-s-conducts-airstrike-in-support-of-the-federal-government-of-somalia> and; United States government *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related national Security Operations*, 2018, available at: <https://assets.documentcloud.org/documents/4411804/3-18-War-Powers-Transparency-Report.pdf>.

⁷ ICRC, Customary IHL, Rule 158; Article 2(3) ICCPR. See Human Rights Committee, General Comment 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, paras 15, 16 and 18; General Comment 36 on Art 6: The Right to Life (2018), CCPR/C/GC/36, para. 27-28; See also UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principles 9 to 20; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para 3; Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) (published by OHCHR in 2017), para. 20.

⁸ Human Rights Committee, General Comment 36, paras 27

its own forces, but also to killings by other States and forces, particularly by those such as US military forces which are acting with the Somalia government's consent.⁹

Our research found, however, that **the US and Somalia governments have failed to adequately investigate allegations of civilian casualties resulting from US operations in Somalia**, including all of the drone and air strikes documented by Amnesty International.

In the first instance, **it is near impossible for Somalis affected by US air strikes to report the killing or injury of family or community members**, given the location of these attacks, the lack of reporting structures, and the security risks associated with doing so. Amnesty International found that neither the US or Somali authorities have any mechanism in place through which people affected by US air strikes can safely report the death or injury of their loved ones. **A lack of transparency also characterizes all aspects of US air strikes in Somalia**, including the process employed by AFRICOM to assess the credibility of allegations of civilian casualties, and, when an allegation is deemed credible, how this is then investigated.¹⁰ A failure to investigate adequately denies individuals and families the right to justice, accountability and reparation, including compensation and guarantees of non-repetition. Amnesty International was unable to find any information to suggest that compensation or even solatia (condolence) payments had been made by the USA or Somalia following any of the air strikes in Somalia in the past two years.

The USA and Somalia must provide full reparation for victims of violations of international humanitarian law and for victims of violations of the right to life.

RECOMMENDATIONS

The USA and Somalia have a moral imperative and a legal responsibility to remedy this situation. Survivors of air strikes and the families of survivors and victims have a right to remedy.

Specifically, we call on both Governments to:

- conduct independent and impartial investigations into all credible allegations of civilian casualties resulting from US air strikes or other military operations conducted by the US, Somali or other forces. **Investigations should include proactively seeking to speak with eyewitnesses, survivors and families of victims despite security and access constraints.**
- **implement an effective mechanism to ensure a safe and accessible means for families and communities to self-report civilian casualties arising from US air strikes and other military operations.** Since the air strikes are nearly always carried out in rural areas out of the control of the Somali government, posing challenges to implementation of accountability mechanisms, both governments should take effective steps to address such challenges, including by distributing information publicly about remedies available to victims, and ensuring that mechanisms are geographically accessible to all affected by US air strikes. Development of any such mechanism should also take into account and address communication restrictions facing civilians in Somalia, for example due to threats from Al-Shabaab or the ban on internet-enabled mobile phones in Al-Shabaab territory.
- Acknowledge civilian casualties caused by US attacks and offer compensation and explanation to survivors and families of civilians killed in US strikes regardless of whether or not the casualties were caused by a lawful attack.

⁹ ICRC, Customary IHL, Rule 150, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> and; UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, available at: <https://www.refworld.org/docid/4721cb942.html> and; Human Rights Committee, General Comment 36, paras 19 and 28.

¹⁰ For further details on this lack of transparency and accountability see pp. 27 – 31 of Amnesty International, *The hidden US war in Somalia: Civilian casualties in Lower Shabelle*.

- Provide victims of violations of international humanitarian law by US forces, and their families, access to justice and to full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition from the US government.
- Publicly disclose:
 - Detailed information on any agreements between the Somali and US governments governing US military operations in the country;
 - Detailed information on US air strikes including the number of strikes conducted, targets and any allegations of civilian casualties;
 - The results of all investigations into US air strikes, including the number of civilians killed and injured.

We further call on the Government of Somalia to:

- Finalize the establishment and operationalization of the Somalia National Human Rights Commission and ensure the commission is functioning and has the necessary resources to investigate allegations of civilian casualties, including those resulting from US air strikes.
- Extend an open invitation to relevant UN special procedure mandate holders to visit the country, including the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.