

REPORT

‘We Heard It Coming’: US Lethal Operations in Somalia

Khalil Dewan
Abdinor Hassan Dahir

TRT WORLD research centre

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“We heard it [drones] coming. At first, we ran towards the bushes to hide from the attack- but my sister was killed by the strike” – ***Sadia, from Qoryoley, Lower Shabelle survived a 2019 strike in Somalia.*** [1]

“We were sleeping when the drone strike hit – around midnight. The drone fired strikes into the village. Three of my family members died: My son, my son-in-law and my nephew. We lost all our properties and left the area after burying the dead. Now, we are in an IDP camp [Weydow]. We have lost everything.”- ***Abshiro, from Awdheegle, Lower Shabelle survived a 2019 strike in Somalia.***[2]

“We should be frank and truthful about everything; three missiles fired from drones,which were taking part of the attack, hit village homes. One of them killed a woman and injured a man. We do not want to lie.” – ***Mohamed Aweys Abukar, Daarusalaam Village Commissioner.***[3]

“These weapons are targeting people least understood by the western world. It is a tragicsituation when the public understands extrajudicial killing as an acceptable means of warfare, even in places where we are not at war.” – ***Lisa Ling, ex- US Air Force Sergeant who assisted to find 121,000 targets on the drone programme.***

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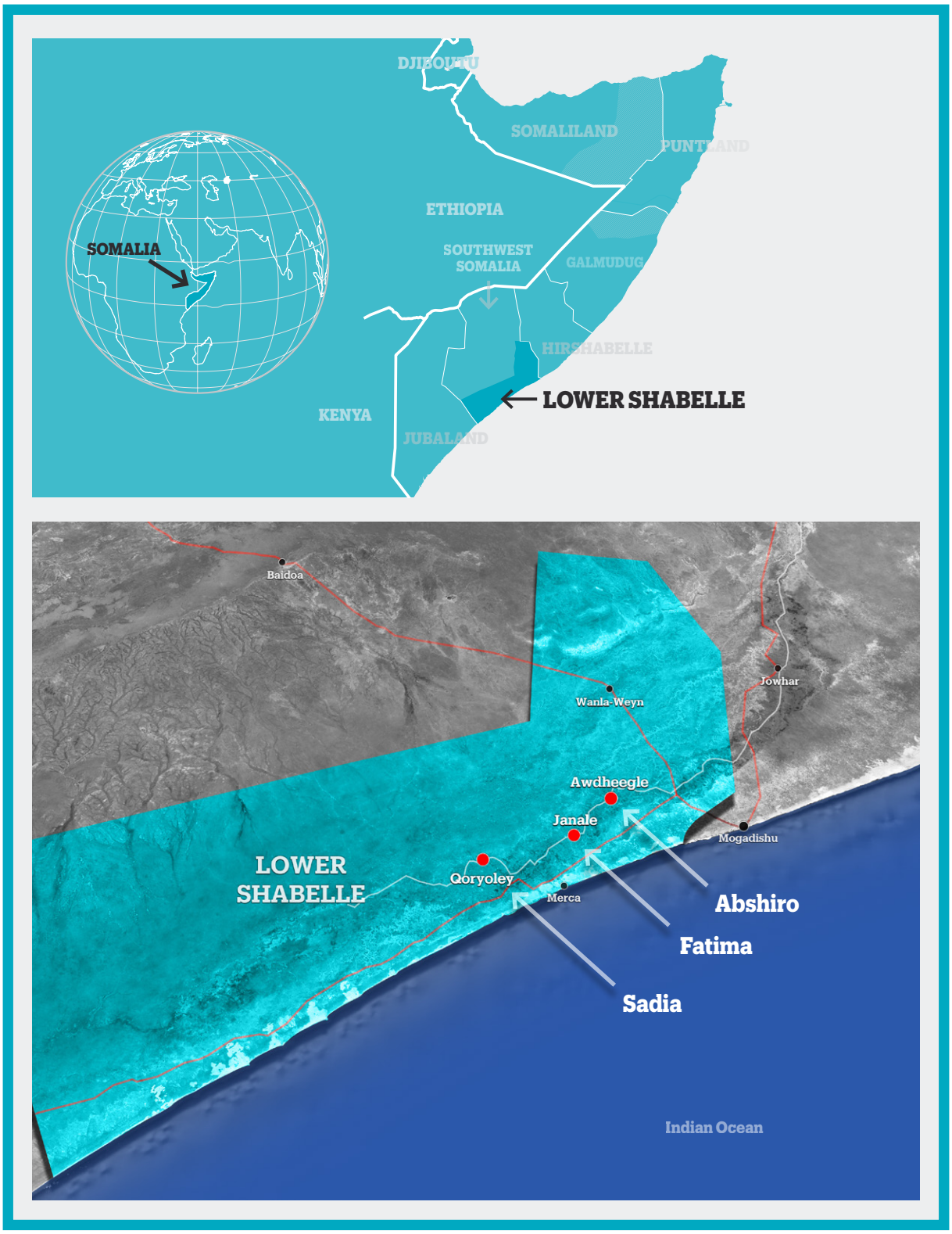
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Executive Summary

- On 6 March 2019, the Trump administration eliminated section 3 of Executive Order 13732 of 1 July 2016 (US policy on pre- and post-strike measures to address civilian casualties) which required the US government to publicly disclose, on an annual basis, its official count on the 'approximate' number of civilians killed in US lethal force operations outside of declared battlefields.[4] Notably, the provision required data information on all strikes by the US, including all agencies tasked with counter-terrorism operations, such as the CIA.
- Trump's decision to revoke Section 3 significantly reduces transparency over the US's most secret activities in the global War on Terror. This Executive Order was put forth at a time when there was no domestic requirement to publicly report statistical information on civilian and combatant casualties.
- Since the revocation of the Executive Order's reporting requirement, Congress passed Section 1057 under the National Defense Authorization Act (NDAA), which specifically requires the Department of Defense to report to Congress by May 1 all US military operations that were confirmed or reasonably suspected to have resulted in civilian casualties. Section 1057 is an important step forward in transparency in the way that the US government tracks civilian harm. Importantly, Congress required greater specificity on civilian casualty data– including civilians killed, injured, and geolocation data which Section 3 of the EO did not cover.
- However, relying on the NDAA has its own problems: it lacks crucial information on the true cost of US lethal force operations beyond those carried out by the US Defense Department. For example strikes carried out by the CIA are left out. Moreover, Section 1057 does not include the approximate combatant death count to compare against the civilian casualties data.
- The eradication of Section 3 paves the way for a return to greater secrecy over civilian casualties from the CIA and other agencies taking part in counter-terrorism related targeted killings.
- If the Trump Administration's targeting trend expands further, there is a risk of dismantling restrictions on the use of force as understood by the international community. At a time when drones have become the weapon of choice for targeted killings, it's important for states to abide by historical principles and recognized international frameworks that protect the fundamental human right to life.


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LOWER SHABELLE
Qoryoley
Merca
Abshiro
Fatima
Sadia
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Methodology

The research for this report was conducted between March 2019 and August 2019 using interviews, fieldwork and open source research methods. Researchers at TRT World Research Centre investigated and documented three first hand testimonies of extrajudicial killings that occurred between January 2019 and March 2019. In addition, seven other testimonies were on file for future reference. For investigative casework gathering, a snowball methodology was adopted to acquire subjects for interview, which permitted a triangulation and verification process.

It must be stated that individual testimonies documented cannot act as a definitive account of events as per each lethal force incident in this report. Rather, it should be read as highly suggestive until more information is provided by external sources such as AFRICOM (United States Africa Command), or the US Department of Defense. Any assessment of civilian casualties killed or injured documented in this report is purely based on testimony.

For this report, TRT World Research Centre reviewed material available online. This included a review process of publications by international human rights organizations, investigative journalism platforms, and academic journals covering counter terrorism operations.

The names of the interviewees have been replaced with a pseudonym upon request by the interviewees. Due to reprisal concerns for our interviewees, information identifying the testimonies have been limited including age, gender and current location. TRT World Research Centre retains the names on file, continues to remain in contact, and took special attention in dealing with the trauma of the drone strike victims.

No remuneration was provided to the interviewees.

It is not the purpose of this report to document a comprehensive record of drone strikes and joint raids by the US government in Somalia. Amnesty International, The Bureau of Investigative Journalism (TBIJ), Human Rights Watch and others have meticulously recorded wide-spread civilian casualties.

Reporting Targeted Killings in Somalia

There were several difficulties endured when going about reporting and fact-finding in Somalia. While documenting witness accounts, researchers found that the word *"Diyaarad"* in Somali was used to refer to a plane or aircraft. But, witnesses did know that drones conducted surveillance and made a whizzing sound which supported researchers to characterize weapon systems. It is vital to put in context, that the majority, if not all of the Somalis impacted by US targeted killings, do not own a smart phone. As a consequence, it is an unreasonable expectation to see a Twitter, Facebook or YouTube post about the latest lethal attack on a remote village. However, one aspect of some of the testimonies documented shows that they reported an aircraft had hovered making a buzzing sound around their farm lands and crops– their livelihood - in the days preceding the attacks. Additionally, they believe that America, as opposed to another international

actor - was behind the attacks based on years of engagement in Somalia. US lethal activity have generally focused on Lower Shabelle region, where scores of cases can be traced and documented by human rights organisations.

Ultimately the burden of proof is on AFRICOM to provide transparency on the cases documented in this report. TRT World Research Centre was transferred from one department to the next while seeking information. At times, researchers on the project felt that AFRICOM tried to ignore the requests, or repeatedly referred to press releases already reviewed. At one point, CDR Candice Tresch, Department of Defense Spokesperson said in an email "the AFRICOM press releases remain a good source to begin your research". Tresch continued in a separate email explaining that "when follow-on assessments differ from the original announcement, updates are posted". AFRICOM have yet to provide follow-up assessments regarding the cases put forward for clarification. There is a large volume of work alleging a trend of US targeted killings causing civilian casualties – by human rights organisations and reporters.[5] It is impossible, unless cited in a Press Release, or announced by the US President, to clarify whether a personality strike (based on a kill list) or signature strike (based on meta data – not knowing who is being targeted) was conducted. Based on the interviews conducted for this report, in these cases it is likely that the US - whether acting alone or jointly with the Somali National Army - struck civilians and possibly not Al-Shabaab.

In the majority of conflict impacted countries or territories, researchers would have the liberty of accessing a wealth of open source data including pictures and videos uploaded on open source networks including social media. Twitter, Facebook and YouTube, in addition to diligent local journalism. Drone strikes do not leave behind large craters, or significant traceable damage that is visible from satellite open source methods. Any attempt to enter Al-Shabaab territory as a researcher or foreign journalist would invite unwanted attention, and the potential to be accused of being a spy, or imprisoned or even killed by Al-Shabaab. In the lower Shebelle region of southern Somalia where majority of the strikes takes place, Al-Shabaab, who (de facto) control the territory, have banned the use of the internet and smart phones..

Acknowledgements

TRT World Research Centre would like to thank all the Somali drone strike survivors who agreed to be interviewed by our researchers. This is a special act of bravery that permits the uncovering of human rights abuses by the US actions as part of its perpetual War on Terror since 9/11. It is hoped that this endeavor will sow the seeds for any future litigation on part of the victims and transparency over the drone programme. TRT World Research Centre thanks all external reviewers for looking over this report. This report was co-authored by Researcher Khalil Dewan and Deputy Researcher Abdinor Hassan Dahir. Primary fieldwork was conducted by Dahir.

Introduction

US Actions in Somalia: 2004 – 2019

139 minimum confirmed strikes,

1,163 reported killed, 94 reported injured.[6]

"We heard it coming", Sadia, a survivor of an alleged US drone strike in Somalia's Lower Shabelle told us while documenting her testimony. These words triggered TRT World Research Centre's investigation into the uptick of civilian casualties in Somalia under President Donald Trump's administration.

US Africa Command, AFRICOM, has repeatedly said that its operations have not killed or injured any civilians. Such a bold statement amid increasing complaints of civilian casualties by Somalis requires greater scrutiny over US counter terrorism operations including drone strikes, airstrikes, joint raids with Somali Special Forces – including those conducted under the purview of "advise and assist".[7]

US and joint counter-terrorism operations reached global attention in 2017 and 2018 when local Somalis accused US and Somali Special Forces of civilian casualties.[8] Adding to civilian injury and killing, there have been reports of destruction to village homes, agriculture and livestock – a reference point included in almost all of the testimonies documented by TRT World Research Centre. It is unclear why such an unnecessary and disproportional engagement is executed in Somalia. It may be due to intelligence failures between the US and Somali Special Forces or not adhering to the rules of engagement sufficiently to prevent civilian casualties.

This report focuses on civilian casualties in three case incidences in 2019 across Somalia. In addition, a detailed analysis of the International Law framework with special focus on International Human Rights Law and US policy on targeted killings.

Since 2007, some 139 confirmed strikes have been executed in Somalia, killing some reported 1163 individuals along with 94 injured according to the Bureau of Investigative Journalism (TBIJ). The US Joint Special Operations Command (JSOC) has been conducting airstrikes and raids in Somalia for over a decade against the non-state armed group Al-Shabaab. JSOC is regularly deployed for surveillance, attack and capture missions in Somalia.

Drone strikes in Somalia have tripled under Trump, outnumbering those in Yemen and Libya combined. Following Amnesty International's investigation released in March 2019, which yielded credible evidence of 14 cases of civilian casualties resulting from just five US strikes between April 2017 and December 2018, it is hoped that this endeavor by TRT World Research Centre will contribute to the ongoing push for increased transparency and accountability.

Since taking office, the Trump administration's position on the legal and policy basis governing its lethal strike practices have been shrouded in secrecy. Indeed, in the first two years in office, the Trump Administration has reportedly undertaken several changes to the US drone programme, including expanding the geographic scope of drone operations, increasing the pace and tempo of strikes, lowering the threshold to use lethal force against suspected targets, broadened the CIA's role to use lethal force, and reduced the level of vetting and decision-making authority for operations. These changes have already resulted in increasing civilian casualties, although glimpses of a policy shift in its counter-terrorism practices has been long time coming.

Barack Obama's 2013 Presidential Policy Guidance mapped the procedure for authorizing drone strikes beyond official theatres of war. A redacted version was released as a result of litigation brought by the American Civil Liberties Union's in 2015. These strikes beyond war zones increased drastically during Obama's presidency, causing a surge in civilian casualties. The guidance put restrictions in place for strikes outside "areas of active hostilities" and allowed strikes only when there is "near certainty" that non-combatants will not be killed.

For years the US Government explained that it only uses lethal forces in what the U.S. government describes as "areas outside of active hostilities," the vast majority of which take place in extensive and ongoing operations in Libya, Pakistan, Somalia, and Yemen. The phrase "areas of active hostilities," is a characterization which presumes the application of international humanitarian law, but which has no significance or equivalent in international law. After years of lengthy litigation, the U.S. Government finally released a basic guidance, known as the Presidential Policy Guidance (PPG) on the actors and institutional processes it considers govern its lethal operations in places outside of Afghanistan, Iraq, and Syria. The decision by the Trump administration to rescind many, if not all the rules contained in the PPG, has already paved the way for a dramatic expansion of strikes in places like Somalia and Yemen, where safeguards designed to limit lethal force and enhance civilian protection presumably applied. The malleability of these policy safeguards were made clear when the Obama administration purportedly lifted the PPG requirements in Libya in 2016 and declared parts of the country an "area of active hostilities"— making the policy no longer applicable to strikes.

The flexibility of these rules, demonstrated under the Obama administration,[9] paved the way for the Trump administration to similarly declare that the policy no longer applied to parts of Somalia and Yemen as well.[10] The designation allows certain people to be considered lawful targets, weakens protections of civilians in US lethal operations, and increases the likelihood that civilians may be injured or killed based on their location, age, and gender, which raises the question of who does the US administration consider to be a legitimate target in Al-Shabaab's controlled areas and how is that determination made?

Lethal force executed beyond war zones is normally governed by laws that comply with the strict standards of international human rights law. The rules attached to human rights only allow force to be used as a last resort, when necessary to protect human life. The US government is carrying out drone strikes beyond recognised war zones, using more permissive law of war rules in places where they should not apply. This provides less stringent targeting rules, which are already interpreted loosely by the US administration. In the fast-paced world of counter-terrorism, the application of the law should not be misused. Historical principles of distinction, necessity and proportionality, and laws and international conventions, should not be blurred when combating terrorism.

In an exclusive interview with a former US Air Force drone sergeant, Lisa Ling, who assisted in finding 121,000 targets for the drone programme told TRT World Research Centre: "These weapons are targeting people least understood by the western world. It is a tragic situation when the public understands extrajudicial killing as an acceptable means of warfare, even in places we are not at war".

"Weaponised drones are a means of slaughter and terror, nothing more. The weapons must be removed, as long as drones are armed the mission of these devices have been used in violation LOAC [Laws of War] and International Human Rights law. If we are not committed to sending troops or informing the public about what is done in our name with our tax dollars, it is obvious to me we shouldn't be doing it"

Conflict History of Somalia

The Republic of Somalia gained independence in 1960. It is comprised of the former British protectorate in the North and Italian colony in the south. In the first decade following independence, the country enjoyed multiparty democratic governance. As a result the Somalis were dubbed the first African democrats.

The then President Abdirashid Sharmarke was assassinated in 1969 and a military junta, led by General Siyad Barre, took over the country. Following the coup d'état, the military regime suspended the constitution, disbanded the parliament and political parties.

For over 20 years, General Barre ruled Somalia. Barre's regime became growingly authoritarian and repressive, marked by mass arrests, torture and execution of opposition members and the extrajudicial killing of civilians.

In early 1991, armed groups organized by clan membership overran Barre's regime. The collapse of the regime resulted the downfall of the Somali state, dragging the country into civil war. Thousands of civilians have been killed in post-Barre Somalia, mostly in the capital Mogadishu, as rival clan militias have contested for power and patronage.

In 1992, a major famine engulfed the lives of nearly 300,000 people and displaced around 2 million others from their homes. The famine was primarily a result of the use of food as a weapon by warlords as a means of consolidating their grip on power. Images of the suffering people prompted a joint UN-US forces deployment, ostensibly to deliver humanitarian aid to the indigent population. Although the mission initially succeeded in delivering aid, the troops were unable to bring peace and eventually were pulled out of the country in 1994. The conflict persisted throughout 1990s and early 2000s.

In mid-2006, the Islamic Courts Union (ICU)—a group of mixed Sharia and clan-based courts—was born in resistance to the warlords. The ICU soon drove the warlords out of Mogadishu and gained control of much of the country's South and Central regions. However, the ICU had failed to negotiate with the newly formed Transitional Federal Government (TFG) thus resulting confrontations between them over legitimacy and control of Somalia.

Ethiopia responded to a perceived security threat by the ICU and intervened in Somalia militarily in December 2006 at the request of the TFG. The ICU were overthrown within short period, however, the group splintered into smaller units and resorted to urban insurgency and guerilla warfare. For several months following the intervention, armed clashes continued between ICU factions and Ethiopian forces.

Human rights groups, including Amnesty International and Human Rights Watch, have accused the Ethiopian soldiers of war crimes in Somalia, including indiscriminate civilian killings, systematic rape and torture.[11] The continued presence of Ethiopian troops fueled an anti-Ethiopian insurgency which continued unabated partly due to the rise of Al Shabaab, or "The Youth" in Arabic.

Al-Shabaab

During the Ethiopian occupation, Al Shabaab transformed itself from a relatively small group to a full-fledged insurgency, seizing large swathes of territory in southern and central Somalia including the capital Mogadishu.

In 2011, a joint AMISOM (African Union Mission in Somalia) and Somali Army offensive pushed Al Shabaab from Mogadishu and significantly decreased the group's operational capabilities. However, the group mere resorted back to guerrilla tactics both inside and outside of Somalia.[12] In late 2009, Al Shabaab killed three cabinet ministers of the TFG along with dozens of civilians in a bomb attack at a medical school graduation ceremony in Mogadishu[13]. In 2017, Al Shabaab conducted an attack in Mogadishu using an explosive-laden truck, killing over 500 civilians and injuring more than 1000 others. Regionally, the group has staged attacks against neighboring as well as AMISOM force contributing countries. In 2010, it claimed responsibility for a bombing that killed 75 people in the Ugandan capital, Kampala. In 2013, Al Shabaab killed 67 people in a Nairobi shopping mall attack, and in 2015, Al Shabaab fighters killed 148 students in an attack on a university in the city of Garissa.

Al Shabaab seeks to overthrow Somalia's UN-supported federal government, seeking to establish its own state based on a harsh interpretation of Islamic law. Human rights organizations accuse Al Shabaab of committing human rights abuses and violations of international humanitarian law in areas under its control. Furthermore, the group has been accused for using people as human shields, forcibly recruiting child soldiers, and blocking humanitarian aid from reaching people in its territory.

Although the group officially pledged allegiance to Al-Qaeda in 2012, in February 2008, The US State Department designed Al Shabaab as foreign terrorist entity. Since then, the U.S. military has been conducting counter-terrorism operations in Somalia. US air strikes killed two of the group's former leaders, Aden Ayrow and Ahmed Godane, in 2008 and 2014 respectively.



MOGADISHU, SOMALIA - MAY 18: Somali security forces are seen at the streets of Mogadishu, Somalia on May 18, 2019. People in Mogadishu have been struggling with the harsh conditions caused by the Al-Qaeda-affiliated terrorist group al-Shabaab's attacks. (Cem Genco - AA)

AMISOM

The African Union Mission in Somalia (AMISOM) is a peacekeeping force authorized by the UN Security Council (February 2007). Its mandate was to support a national reconciliation congress and protect the newly formed Transitional Federal Government - set up in 2004 in neighboring Kenya. In other words, the primary aim of AMISOM was to protect the TFG, reduce the threat of Al Shabaab and other armed groups and support the stabilization efforts in Somalia.

AMISOM's initial timeframe was 6 months, however, the mission has been extended ever since. For its 12 years existence, AMISOM, together with Somali forces, has managed to achieve a level of stability in which Somali and international actors could implement a variety of political and social programmes. In 2010, AMISOM helped push Al Shabaab from Mogadishu and secured the peaceful conduct of Somalia's 2012 election, which paved the way for the creation of both state and federal government structures.

In 2017, the United Nations Security Council adopted a resolution on the piecemeal transfer of security responsibilities to the Somali Security Forces. The transfer of security responsibilities, however, were conditioned on the abilities of the Somali National Army, security as well as political and security development in the country.[14]

A 2017 UNSC resolution proposed a gradual drawdown of AMISOM forces in Somalia with a full withdrawal scheduled for 2021. Since then, AMISOM has withdrawn more than a thousand soldiers. Currently, there is a 21,500-strong African Union force in the country, contributed to by Uganda, Burundi, Kenya, Sierra Leone, Ethiopia, and Djibouti. However, a significant AU troop withdrawal is not expected in the foreseeable future as Somalia's embryonic armed forces are not trained up and prepared to take the charge of maintaining peace and security.

Feature Testimonies: Civilian Casualties

TRT World Research Centre investigated three cases of possible American military incidents in Somalia that occurred between January 2019 and March 2019. Research was conducted on the three cases, including primary interviews and corroboration with the US Department of Defence and AFRICOM. TRT World Research Centre went to great lengths to verify the details of the strikes as much as possible in the time frame provided in producing this report. The US government acknowledged two of the three case incidences[15], and claimed that no civilians were killed. A third case documented in the report was not fully acknowledged - at the time of investigating - via press release after formally requesting information.[16]

Case 1 :
Abshiro, 11 March 2019

Location of Attack:
Awdheegle / Darusalam - Lower Shabelle

No. of Civilians Killed: ***7 Based on Testimony***

No. of Civilians Injured: ***1 Based on Testimony***

Type of strike: ***Possible US Air or Drone Strikes***

Source: ***Testimony / Interview, US AFRICOM***

At midnight, an unmanned aerial vehicle according to the Darusalam Village Commissioner operated by the United States attacked Abshiro's village near the vicinity of Awdheegle in the Lower Shabelle region. One of Abshiro's sons was killed in the strike, while a second son was severely injured.

Following the strikes, the next night, a likely US-Somali raid attacked a neighboring village inflicting huge damage to the livestock and properties including farmland. However, testimony capture did not permit factual gathering regarding what occurred on that night.

TRT World Research Centre, interviewed Abshiro[17], who witnessed the attack and provided the following testimony:

"We were sleeping when the drone strike hit – around midnight. The drone fired strikes into the village. Three of my family members died: My son, my son-in-law and my nephew. We lost all our properties and left the area after burying the dead. Now, we are in an IDP camp [Weydow]. We have lost everything."

"Seven died, among them were three of my relatives".

"The US conducted the attack against us. What were the Americans looking for? Al-Shabaab were not with us! Many of our people and farm animals were killed in the attack. I did not have enough time to at least release my animals from being attacked – they're our livelihood."

"The next night, a neighboring village was also raided by white and black men", Abshiro said. "That assault contained both missile strike and infantry (men landed from planes - likely a Bell Boeing MV-22 Osprey). They were Americans. The people who saw the soldiers the next night said they were Americans."

"A long time ago, Al Shabaab was present in the area, I think the Americans were probably searching for them. But the white man's [the Americans] plan was misguided. The Al-Shabaab were not that far away from us. They control the whole area including Awdheegle and Barriire. However, our village was between a disputed area between the Somali government and Al Shabaab. It was normal that Somali soldiers used to come to our village on one day, and Al Shabaab the next day. We were between them. They killed us wrongfully."

Based on Abshiro's testimony with the TRT World Research Centre, it suggests that the US executed an attack unlawfully against non-combatant and civilians, in an area where al-Shabaab were not present or based. If the US believed that it was targeting Al-Shabaab, then this would indicate that proper precaution was not taken, constituting an unlawful lethal action under international law.

In AFRICOM's Press Release published on 12 March regarding an attack on the 11 March, it reported that a collective self-defense strike was executed in support of the Federal Government of Somalia to degrade Al-Shabaab. AFRICOM assessed that the strike killed some 8 militants, and at the time of reporting "no civilians were injured or killed in this airstrike".[18]

However, TRT World Research Centre's investigation finds evidence contrary to that of AFRICOM's assessment that no civilians were killed in the strike. The testimony of ABSHIRO presents that 7 civilians were killed and one injured.

In response to TRT World Research Centre's allegation, AFRICOM said in an email: *"U.S. Africa Command conducted a collective self-defense airstrike in the vicinity of Dara Salaam, Lower Shabelle Region, Somalia, on March 11, 2019, in support of the Federal Government of Somalia's continued efforts to degrade al-Shabaab. At this time, it is assessed no civilians were injured or killed in this airstrike."*

Local media in Somalia reported that a joint attack was executed in Darusalaam, approximately 7 kilometers from Awdheegle district in Lower Shabelle region. Daarusalaam Village Commissioner, Mohammed Aweys Abukar, claimed that one civilian woman died in the raid. Abukar went on to add that some 6 Al-Shabaab militants were killed in the attack. On 12 March, Radio Risaala quoted Abukar saying: "We should be frank and truthful about everything; three missiles fired from drones, which were taking part of the attack, hit village homes. One of them killed a woman and injured a man. We do not want to lie."[19]

Case 2 :
Fatima, 11 February 2019

Location of Attack: ***Tuuwaarreey Village, Near Jannaale Town, Lower Shabelle***

No. of Civilians Killed: ***Possibly 13 Based on Testimony***

No. of Civilians Injured: ***N/A***

Type of strike: ***Possible US Air Strike or Drone in Addition to Joint-US & Somali Raid***

Source: ***Testimony / Interview, US AFRICOM Press Release***

On 11 February, Fatima, a 48 year old mother of 10, witnessed a US drone strike, which destroyed her home and property in the vicinity of Tuwaareey, a farming vicinity near Jannaale in the southeastern Lower Shebelle region of Somalia. Fatima was preparing breakfast on a Monday morning when airstrikes struck her village. TRT World Research Centre documented the following testimony:[20]

"I was at home and preparing breakfast for my children at 7:00 am on a Monday morning. The attack caused huge damage to the area." At the time of speaking with Fatima, the witness said "my daughter and her two kids are still missing since that day. I do not know if they are alive or not. My daughter was living in the small village next to mine, which are both in the same vicinity. My farmland was destroyed, including my harvested grain". At the time of investigating the incident for this report, it was not possible to verify what happened to Fatima's daughter or two grandchildren. Fatima told TRT World Research Centre that she fled the village following the attack, and traveled to an IDP camp.

In a separate interview in June 2019[21], Fatima reiterated that she is still not in touch with her daughter and two grandchildren. It is possible that they may have been killed in the attack or fled the area to a different IDP camp. Fatima estimated that some 10 civilians were killed in the airstrikes – among them were Fatima's younger sister and two of her cousins (one male and one female).

"The strikes took place in Tuuwaarreey village, near to Jannaale town. There were no Al Shabaab around us people – farmers. The attack was conducted with a 'Diyaarad' (plane) and the civilians were being targeted. There was an Al Shabaab base nearby to our village, but they were not present at the time of the attack", Fatima continued.

US AFRICOM published a Press Release on the 13 February regarding the 11 February attack[22], reporting that two airstrikes were executed to degrade Al-Shabaab. In US AFRICOM's Press Releases, a distinction was not made whether a manned or unmanned aircraft conducted the strike.

"The airstrikes on February 11 were executed as Somali forces were leading an operation in an area where al-Shabaab conducts terrorist activities, as well as exploits the local populace for illegal taxes. Somali-led operations like this are vital to maintaining pressure on the terrorist network."

"U.S. Africa Command currently assesses the first airstrike on February 11 killed eight militants and the second airstrike killed four militants. At this time, it is assessed no civilians were injured or killed in either airstrike", the Press Release stated.

A local news media outlet, Goobjoog News, reported a lethal activity in the vicinity of Janaale in the Lower Shabelle region on the 11 February 2019. "The attack took place at midnight as Somali army officials confirmed to us. The report added that military planes first conducted airstrikes on an Al Shabaab base, followed by a direct gun-fight between Al Shabaab fighters and Somali soldiers who landed after the strike."[23] In addition, the report states "[t]here is no confirmation of the casualties caused by this strike, but the Somali army and the U.S. soldiers have been recently launching operations against Al Shabaab."[24]

In response to TRT World Research Centre's investigative research, AFRICOM said in an email response:

"[The strikes were in] support of the Federal Government of Somalia's consistent efforts to degrade al-Shabaab, U.S. Africa Command conducted two airstrikes targeting al-Shabaab in the vicinity of Janaale, Lower Shebelle Region, Somalia, on February 11, 2019. At this time, it is assessed no civilians were injured or killed in either airstrike."

TRT World Research Centre's investigation finds evidence contrary to that of AFRICOM's assessment that no civilians were killed in the strike. The testimony of Fatima presents that a possible 13 civilians were killed based on testimony. Based on the interview documented for this incident, the US may have failed in taking adequate precautions to avoid any civilian casualties while pursuing Al-Shabaab. There was a lack of precision in targeting, notably in a location that is not declared a battlefield. It is likely that if the US had not executed this lethal action, the civilians would not have been affected. Under international law, indiscriminate attacks or injury to non-combatants may equate to war crimes. Thus, the US government and relevant departments must ensure an independent and impartial investigation is conducted on this lethal action.

Case 3 :
Sadia, 23 February 2019

Location of Attack:
Qoryoley – Lower Shabelle

No. of Civilians Killed:
1 Killed Based on Testimony

No. of Civilians Injured: ***N/A***

Type of strike: ***US Air or Drone Strike***

Source: ***Testimony / Interview***

In the middle of the night on 23 February 2019[25], the US military conducted an air strike in the town of Qoryoley in the Shabeelaha Hoose (Lower Shabelle) region. The attack took place just before midnight.[26]

"It was just before midnight, about 11:00 pm. We heard the diyaarad [drones] coming. At first, we ran towards the bushes to hide from the attack but my sister was killed by the strike. We returned back, and found her body. We managed to bury her the next morning, and we left the area. My sister was newly married and a young woman with a promising future in a good family.

"We lost our property, belongings and animals [farm live-stock]. Now, we are displaced people inside our own country.

"I'm not sure who to blame for the killings, but I can say that the attack was conducted by a Diyaarad – maybe it was the US or Somali government.

"They did not discriminate between civilians and combatants. There were no Al-Shabaab or militia near us. All those killed or injured were not fighters.

"The attackers were looking for Al Shabaab, but they did not discriminate civilians from the combatants.

"To my knowledge, there were no Al Shabaab near to us. However, we heard rumors that Al Shabaab were hiding in the bushes, which is not far. Everyone in the area were civilians."

In an email exchange with AFRICOM, they replied:

"All U.S. Africa Command airstrikes conducted in February 2019 are detailed, with locations, on our public website – please see our press release section."

AFRICOM published a press release on 24 February regarding two airstrikes executed on 23 February in the "vicinity of Kunyow Barrow".[27] However, according to testimony documented by TRT World Research Centre, the strikes took place in Qoryoley which is some 167.08 kilometers from the vicinity of Kunyow Barrow as put forward by AFRICOM.



A local media station, Gundhig reported in the morning of the attack on 24 February that the "air strike, which happened at midnight last night, targeted al-Shabaab operated areas, including Kuunya Barrow, Awdheegle, and the Dacaaraha village, which is near to Qoryoley and Janaale."[28] In a follow up report on the same, Gundig reported pictures of civilian casualties which included a 20-days old baby and a religious school teacher.[29] As a result, it is likely that the testimony recorded by TRT World Research Centre reflects one of three attacks that took place on 23 February. The following are pictures from the attack site in Qaryooley:

TRT World Research Centre's investigative research finds evidence contradicting AFRICOM's publically reported strikes. The above interview establishes that there was one confirmed civilian killed, with the full extent of the civilian casualties unknown. The fact that one civilian was killed by a lethal strike suggests that a strike took place, in addition to on-the-ground witness testimony. AFRICOM needs to come clean over the mission conducted in this case, and undergo an independent and impartial investigation to assess civilian casualties. If there was more than one attack, it should ensure full transparency by providing public information on all of them.



Open Source: *Gundhig published this picture following the attack in Qoryoley.*



Open Source: *Gundhig reported that a newborn baby girl was killed in the attack, covered with a green blanket.*

Targeted Killings & International Law

"Every human being has the inherent right to life. ... No one shall be arbitrarily deprived of his life" – Article 6(1) of the International Covenant on Civil and Political Rights

The Existence of an Armed Conflict in Somalia

Understanding the United States' legal authority to engage in strikes in Somalia is challenging. This is in part because the US approach appears to blend various legal frameworks pertaining to the use of force, the laws of armed conflict, and international human rights law to its operations in different countries and against different actors.

An appropriate starting point of the analysis begins with understanding how to classify the conflict in Somalia, and whether the US may be considered a party to the conflict taking place there. The existence of an armed conflict is determined by objective legal criteria.

As of December 2016, the United States considered itself to be engaged in an armed conflict as a matter of international law with Al-Shabaab, although it has carried out specific strikes against members of the so called Islamic State (IS) since 2017. Under international law, a non-international armed conflict (NIAC) exists when there is protracted armed violence (which reaches a minimum level of intensity and duration) between governmental authorities and organized armed groups or between such groups within a State." (Tadic). A non-international armed conflict is taking place in Somalia, involving different local, regional, and international actors. Firstly, there has been a NIAC between the Federal Government of Somalia and Al-Shabaab since at least 2007. Al-Shabaab has the characteristics of a sufficiently organized armed group, and the violence between Al-Shabaab and the government meets the requisite level of intensity as recognized in international law. Second, the Federal Government is supported by the African Union Mission in Somalia (AMISOM), Kenya, Ethiopia, and the US, which was invited to join the NIAC by the Somali government in 2007. However, Somalia's consent appears to be specifically include strikes against non-Somali fighters. Numerous drone strikes have been confirmed as targeting Somali fighters in breach of this specification, and so it is likely that many strikes will not have been undertaken as part of this non-international armed conflict.

The more difficult question is whether US lethal force operations may be classified as a separate NIAC between the United States and the non-state armed group Al-Shabaab. In a March 2018 Congressional testimony General Thomas D. Waldhauser, Command of US Africa Command said about Somalia: "I wouldn't characterize that we're at war. It's specifically designed for us not to own that". Indeed, it is unclear whether the increase in US strikes and lethal ground operations have reached a significant level of intensity, in spite of the dra-

matic escalation of strikes under the Trump administration. Moreover, Al-Shabaab has not directed any attack against the United States whether on or outside of its soil.

The legal threshold that classifies a war with armed groups is set out in the Tadic case; it requires "protracted armed violence" between state forces and organised armed groups or more. Although the Obama administration accepted this view, it had a broader view of how the test is applied geographically. In such cases, where groups such as Al-Qaeda in the Arabian Peninsula (AQAP) or Islamic State in Yemen, or Al-Shabaab in Somalia do not resemble an organised force, the US-coined "area of active hostilities" label is being used to replace legal requirements.

A senior administration official commented that a factor taken into consideration for "areas of active hostilities" is the "scope and intensity of the fighting", a notion in compliance with the Tadic test. However, the Obama administration held that "designated provinces are not the same as a determination that an armed conflict is taking place in the country at issue." Thus, like the Obama administration before him, Trump is using this temporary battlefield policy-label as a means to legitimise drones, raids and other military force in countries with which the US is not at war.

The US administration advances that it is undertaking lethal operations in self-defense and collective self-defense at the request of the Somali federal government.[30] The following will discuss which legal framework governs US targeting operations against individuals in Somalia.

International Humanitarian Law

If there is an armed conflict to which the United State is party, any assessment of the legality of its lethal operations would be governed by International Humanitarian Law (IHL) with International Human Rights Law (IHRL) applying as a backdrop. Within the exceptional situation of armed conflict, the United States may only target members of an enemy's armed forces, military objectives, or civilians directly participating in hostilities. Importantly, US drone operators must abide by the law of war principles of distinction, proportionality, and precaution. All feasible precautions are required to ensure civilians are not targeted – in any case of doubt they should be considered as protected personnel.[31]

If drone strikes in Somalia are taking place outside the context of an armed conflict, they should be governed by International Human Rights Law.

International Human Rights Law

International Human Rights Law is applicable at all times in the context of armed conflict and peace time settings. This includes non-international armed conflicts (NIAC). These rights cannot be derogated from at any time, and represent norms of international law even in the context of armed conflict.

The next section of the report will assess the legal requirements as per the US government's legal justification.

Laws of War cannot Apply Outside of Officially Designated War Zones

However, the laws of war – otherwise known as International Humanitarian Law - cannot apply outside the context of armed conflict, although US drone strikes are being executed in Pakistan, Somalia and Yemen, territories in which the US has not officially declared war. Philip Alston, Special Rapporteur on Extrajudicial Arbitrary Executions has stated that the appeal of applying IHL is clear, as it attains more permissive rules for killing in comparison to IHRL or domestic law.[32] Although IHL attains limitations on the usage of lethal force to be necessary, an administration may invoke the existence of an armed conflict as it will provide extensive executive powers and international legal support within the global order from allies.[33] The US are applying IHL and armed conflict framework upon Al-Qaeda, Taliban and associated forces, assuming the right to execute drone strikes anywhere in the world. Conversely under IHL analysis, the very same NSA (non-state armed group) and entities that drones are targeting, can legitimately target the drone military personnel.[34] This is a critical examination, yet one which should not permit NSAs to engage upon a justificatory level on part of the US administration by way of providing legal recognition as an organised force. Accordingly, the US has applied the armed conflict framework and IHL within the policy and are thus governing strikes with IHL. However, it is questionable whether IHL is indeed applicable.

A. Outside War Zones, Only International Human Rights Law Governs Drone Strikes

The first justification for targeted killings is that the US is engaged in war, or armed conflict, implying that the application of International Humanitarian Law as a means of governing strikes is the most appropriate. However, the Supreme Court in Hamdan v Ramsfeld ignored the Prosecutor v Tadic two part test in establishing whether the hostilities between al-Qaeda and the US classify as an armed conflict.[35] The Hamdan case claimed that the US is in a Non-International Armed Conflict (NIAC) with al-Qaeda without addressing international legal criterion. Thus, it is highly questionable to assert whether there is a global NIAC beyond the territorial boarders of Afghanistan, in which the perpetrators of 9/11 operate.[36]

When analysing vis-à-vis a traditional lens of international law, the US cannot be considered to be at war or armed conflict with al-Qaeda beyond Afghanistan as they are not sufficiently classed as a State, nation, belligerent or insurgent force.[37] Customary interna-

tional law deems an insurgency to be the lowest form of an armed conflict. It is questionable whether al-Qaeda has satisfied the criterion to provide recourse for the application of laws of war as asserted by US justifications. Under traditional legal criteria used to determine if an entity is an insurgency al-Qaeda has not satisfied the following:

- Represent an identifiable group of people or to have a relatively stable base of support within a given population.
- Have resemblance of a government.
- An organised military force.
- Have control over significant territory as its own.[38]

The utmost applicable threshold of armed conflict is a belligerency in which the force must satisfy the criteria of an insurgency. Additionally, they must attain recognition as a belligerent, nation, or state that is in armed conflict with another state that is recognised within the international legal order.[39] Al-Qaeda has not reached the threshold of an insurgency and, similarly, not been given recognition as a belligerent. Therefore, al-Qaeda has not reached the status of a government, organised military with uniforms and do not control a territory of their own.[40] Further, the Geneva Convention Additional Protocol 1977, Article 1(1) requires an armed conflict between armed forces and an organised armed fighting group which attains a responsible command in which has control over a territory to enable "sustained and concerted military operations and to implement the Protocol".[41] Hence, targeted killings against terrorism suspects under the common vernacular of "al-Qaeda, Taliban and associated forces" in essence do not effectively engage in armed conflict against the United States with an "organised armed group" or a group with a "responsible" command and certainly have no intention of implementing international legislation.[42] Al-Qaeda is not a military force and thus has not carried out "sustained and concerted military operations" in Pakistan, Somalia or Yemen for targeted killings to be governed under IHL. However the Geneva Protocol Article 1(2) recognises isolated and sporadic acts of violence that do not amount to the threshold of an armed conflict in which IHL is applicable.

The US policy of targeted killings outside the context of armed conflict is in tension with the legal establishment of a transnational Non-International Armed Conflict against Al-Qaeda, the Taliban and associated forces, withstanding a justification on how the entities fulfil the criteria of a party under Non-International Armed Conflict of IHL, including the means of any violence exceeding the threshold necessary for armed conflict to occur.[43] Al-Qaeda have operated in several countries beyond Afghanistan and Iraq, however it is reasonably questionable whether the state, outside the realm of armed conflict where drone strikes are executed, have asserted that they are in armed conflict with the entities so as to trigger the use of lethal force. There is no sign of reference from the Yemeni or Somali government stating there is an armed conflict within their respective states. However in Pakistan, Ben Emmerson QC, UN Special Rapporteur on Human Rights and Counter-Terrorism was informed by Pakistani officials that the state does not consider the conflict in the Federally Administered Tribal Areas (FATA) within Pakistan to amount to an armed conflict, whether international or national, but rather, the engagement is considered under a law enforcement paradigm.[44] Effectively, al-Qaeda, the Taliban and associated forces have not reached the threshold of an insurgency or recognition as a belligerent, thus all fighting between the US and other entities does not reach the legal criterion of a war or armed conflict. Therefore the law of war asserted by Harold Koh[45], Eric Holder[46] and President Obama[47] is inapplicable to the targeted killing drone justification. Thus all drone strikes executed outside the context of an armed conflict should be governed by International Human Rights Law.

B. Use of Lethal Force under Self-Defence Justification

The second justification for targeted killings is self-defence. As cited earlier, the US have triggered self-defence in response to 9/11 as an armed attack. Suspects are targeted on the basis on intelligence indicating the planning of terrorist attacks, thereby constituting an imminent threat the national security of the US and her allies. The use of lethal force in countries outside the context of armed conflict can only be lawful if terrorism suspects are considered as Direct Participants in on-going Armed Attacks (DPAA)[48]. Without Security Council authorisation for the use of lethal force, it would be prima facie a contravention of Article 2(4) of the UN Charter,[49] which prohibits "the threat or use of force against the territorial integrity or political independence of any state". This can only be contravened under two exceptions for drone strikes to be lawful.

- If the use of lethal force is executed with the consent of the host state.
- If the use of lethal force is in self-defence in response to an armed attack or a concrete specific and imminent threat, where the host state is unable or unwilling to neutralise such threats.[50]

Consent

The pinnacle determination on the legality of the use of force is consent of host states permitting drone strikes. Although there is not a legal concern of consenting to lethal force within a host States territory, [51]it does not avert the participant states from human rights obligations. If there is consent to drone strikes from a hoststate, the drone strikes would not amount to unlawful use of force against the state in question through the lens of jus ad bellum.[52] Similarly, can a state consent to lethal force of an attacking state if there is general weakness of the host state so as to arrest or suppress activities on its territory or seek to inflict lethal harm outside its borders?[53] Such circumstances may illustrate the situation of Somalia, Pakistan or Yemen. Although a host State may consent to drone strikes to use lethal force to assist against entities within an internal conflict with Non-State Actors (NSA), such as in Pakistan, if so the self-defence justification is not required[54]. This is due to jus ad bellum of self-defence only applying to States and not NSAs[55], in comparison to the US self-defence justification under Article 51 triggering use of lethal force on NSAs. The International Court of Justice (ICJ) held in the Israeli Advisory Wall Opinion that states cannot apply Article[51] against armed attacks on NSAs that are not attributable to a state[56], and further buttressed in the Nicaragua v US[57] and Congo v Uganda[58]. Yet, the US holds that the customary international law of self-defence applies, including upon NSAs, in which is supported by the post 9/11 Security Council Resolutions 1368 and 1373. [59]

At this juncture, Philip Alston asserted that although it is reasonably accepted that Article 51 has not overridden customary law, "the reality is that it will only trigger in rare circumstances that [NSA] whose activities do not engage the responsibility of any State will be able to conduct the kind of armed attack that would give rise to use extraterritorial force. In such circumstances, the UN Charter would require that Security Council (SC) approval should be sought".[60] However the US thus far has not reported to the SC. Therefore, drone strikes occurring within Somalia, Pakistan and Yemen, targeting NSAs will not amount to use of lethal force against the state but a targeted killing policy on behalf of the government of the host State. Subsequently, the use of force is limited to the authority of the particular host state at question, pursuant to International Human Rights Law, under the law enforcement framework to analyse whether killings are lawful, necessary and proportional.

Absence of Consent

The absence of consent from host States outside the context of armed conflict to US drone strikes, will only be lawful if considered as self-defence in response to the attacks of 9/11 or a pre-emptory, anticipatory self-defence targeted killing against an NSA. For the lethal force to be lawful in this case, the host State must be 'unwilling or unable to stop armed attacks against the first State'. [61] President Obama asserted in relation to targeted killings, if the "relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to U.S. persons", then lethal force will be executed.[62] If these conditions are not met, then it would be a contravention of sovereignty by way of Article 2 (4) of the UN Charter.

In some circumstances lethal force is executed without consent of the host state, or consent has been retracted coupled with evident protest. By illustration, the only injured state protesting the use of lethal force by US drone strikes and have also witnessed the filing of several cases claiming extrajudicial killings and the violation of the sovereignty is Pakistan. Subsequently, on the 11th April 2013 The Peshawar High Court case stated:

"...[t]hat the drone strikes carried out against a handful of alleged militants, who are not engaged in combat with the US Authorities or Forces, amounts to breach of International Law and Conventions on the subject matter, therefore, it is held that these are absolutely illegal [and] blatant violation of the Sovereignty of the State of Pakistan because frequent intrusion is made on its territory / airspace without its consent rather against its wishes as despite the protests lodged by the Government of Pakistan with USA on the subject matter, these are being carried out with impunity".[63]

Therefore, although there are assertions that a particular state, such as Pakistan, may have provided covert consent to strikes, if there is evident protest, then the consent would cease. This is illustrated in the Congo v Uganda case, whereby Congo requested military support from Uganda, however such lethal force was found to be a violation by the International Court of Justice when Uganda failed to extract troops following Congo's wishes.[64] The Pakistan government officials and Peshawar High Court Judgement on drones is a well-grounded claim similar to Congo, in which any consent previously provided would be considered withdrawn.

International Human Rights Law in Application

> ***Targeted killings "threatens to eviscerate the human rights law prohibition against the arbitrary deprivation of life"*** [65]
>
> *[Philip Alston]*

Targeted killings outside the context of an armed conflict are governed by International Human Rights Law (IHRL). States are obligated to ensure the right to life, including the presumption of innocence and fair trial when attributing blame for wrongful acts under this framework.[66] Thus, drone strikes fired with the intent to kill and deprive the life of an individual cannot be lawful under IHRL, which only permits the use of lethal force if there is "no other means, such as capture or non-lethal incapacitation, of preventing that threat to life".[67] Any intentional use of lethal force via drones that is not permitted by way of the exceptions to the right to life will be classed as extrajudicial killings. [68]Although circumstances arise when non-lethal means is not applicable, in response to an imminent threat, the deprivation of life is permitted; however this is subject to whether the killing is necessary and proportional which will be analysed in this chapter.

Applicable Legislation

The International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights and the African Charter of Human and People's Rights prohibit the arbitrary deprivation of life. Article 6.1 of the ICCPR, ratified by the US, observes that; "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".[69] A right considered to be part of jus cogens.[70] Thus the circumstance of a targeted killing will violate an individual's right to life.[71]

The above-mentioned Peshawar High Court case ruled on the legality of US drone strikes and held that "... drone strikes, carried out in the tribal areas (FATA) particularly North & South Waziristan by the CIA & US Authorities, are blatant violation of basic Human Right and are against the UN Charter".[72] Therefore, there is no denying that the right to life in cases such as this is being violated. However, the scope of the violation of the right to life so as to classify it as extrajudicial killing is dependent upon the extraterritorial application of IHRL treaties to trigger obligations upon the US.[73]

Extraterritorial Applicability of IHRL

Although the US have consistently denied that human rights obligations apply extraterritorially in the context of armed conflict or in peace time,[74] the majority of the international community, Human Rights Committee and the ICJ assert that the ICCPR applies extraterritorially.[75] Further, the Israeli Wall Advisory Opinion stated that "while the jurisdiction of states is primarily territorial, it may sometimes be exercised outside the national territory".[76] The main question in these cases is whether suspects or individuals deemed a threat enjoy human rights protections vis-à-vis US drone strikes outside the context of armed conflict in foreign states?

International Human Rights treaties neglect to refer to extraterritoriality, although they ostensibly maintain a global aspiration.[77] The most important human rights treaties attributing a jurisdiction clause are the European Convention on Human Rights (ECHR) and the ICCPR. In particular, Article 2 (1) of the ICCPR provides that: "Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant..." Even with a divergent interpretation of the provision, there cannot be any disagreement on the applicability of customary international law of the right to life.[78] Furthermore, the principle criterion for the applicability of human rights obligations is dependent on whether

drones have "effective control" over a territory or a suspect. Although the United States is not party to the European Convention, and asserts that the ICCPR does not obligate the US activities extraterritorially, the US assume that the well-developed jurisprudence stemming from the two bodies has no relevance in determining the US obligations in relation targeted killings extraterritorially.[79]

The extraterritorial applicability of human rights treaties in relation to targeted killings and drones has not been analysed in court in any jurisdiction. Consequently, analysis and analogy could be made with the European Court of Human Rights (ECHR) cases, as it has been an example for other human rights bodies and thus the jurisprudence in the cases has been benchmarked across the world.[80]

US Domestic Legality: AUMF

The Authorization for Use of Military Force (AUMF) legislation – enacted following the 9/11 attacks - is the primary domestic basis for the justification of targeted killings. Under this legislation, the US President is authorized to permit the use of "...necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on 11 September 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States". Thus, the AUMF employs language to legitimise the US position that the state is in an armed conflict context not only with Al-Qaeda and Taliban, but similarly with associated forces such as Al-Shabaab. Such a vague and undetermined notion of "associated forces" consists of entities / NSAs operating anywhere in the world. Hence, the whole world is effectively a potential battleground under US policy. This poses great justification tensions in terms of the execution of drone strikes on entities / NSAs that have no connection to the 9/11 attacks, as analysed in chapter one, section B (i) on the use of lethal force in response to an armed attack. Thus it can be asserted that the AUMF does not possess the legal remit which the US Administration seeks, Hence rendering domestic law short of providing a full justification for the operations in question.

The US President attains the authority to provide intelligence findings to the CIA for executing actions without Congressional oversight and authorization; however such action cannot contravene domestic law. Subsequently, this allows the President to permit the CIA to use lethal pre-emptive self-defense targeted killings against suspects in response to a concrete, specific and imminent threat, without first obtaining Congressional approval. The US administration is relying on classified legal memoranda detailing the legal rationale for lawful targeting of suspects outside conflict zones which has not been disclosed. If such a legal memorandum is incorrect in the application of self-defense and domestic law, then personality and signature drone strikes may be considered illegal and classed as extrajudicial killings. Although assassination is prohibited by virtue of the Executive Order (EO) 12333 as a matter of national policy, the AUMF 2001 has provided recourse to all necessary means to target and kill suspects, resisting section 2.11 of the EO prohibiting assassination by holding that "no person employed by or acting on behalf of the [US] Government shall engage in, or conspire to engage in, assassination". The EO forbids the indirect participation, holding that no agency of the intelligence services shall participate in or request others to execute activities under the EO. However state practice on targeted killings appears to be contravening that.

US Justification: War & Self Defence

The targeted killing policy of the US has been shrouded in secrecy. The justification for the usage of drones remains covert and therefore there is not a wealth of public knowledge on the targeted killing programme detailing the US 'legal' position. Statements addressing the targeted killing policy have, however, been addressed by Harold Koh, former Legal Adviser to

the Department of State, Eric Holder, former Attorney General Attorney General and fromer CIA Director John Brennan, among others. In May 2013, President Obama addressed the National Defense University in a speech outlining the targeted killing program, acknowledging the killings of three US citizens –most notably the case of Anwar al-Awlaki - which set a precedence for legal inquiry.

Among the officials and legal advisers of the US administration, Harold Koh asserted two primary justifications; firstly the US are engaged in **"war"** and secondly **"self-defence"**.[81] The justification claims the US are at war with "al-Qaeda, Taliban and associated forces",[82] which is questionable as it relates to US drone strikes operating outside the context of armed conflict. On 25 March 2010, Harold Koh, the Legal Adviser of the US Department of State addressed the legality of targeted killing in the context of international law:

"What I can say is that it is the considered view of this Administration—and it has certainly been my experience during my time as Legal Adviser—that US targeting practices, including lethal operations conducted with the use of unmanned aerial vehicles, comply with all applicable law, including the laws of war."[83]

Moreover, President Obama reiterated in his speech at the National Defense University on 23 May 2013, that the United States went to war with Al-Qaeda and have been at war for over a decade.

The President continued: "[a]fter I took office, we stepped up the war against al Qaeda, but also sought to change its course. We relentlessly targeted al Qaeda's leadership."[84] The legal rationale asserted is one of war, justifying the application an armed conflict framework which provides recourse to IHL. The drone strikes within Afghanistan are lawfully targeting terrorism suspects in the context of self-defence as a response of the armed attacks of 9/11.[85]

US Obligations under International Law

The testimonies documented for this report on attacks allegedly committed by US forces against civilians in Somalia equates to violations under International Human Rights Law (IHRL) and International Humanitarian Law (IHL). These frameworks of jurisprudence set out clear obligations for the US administration on the use of lethal force in the context of an armed conflict – non-international in character – and also within the context of peacetime.

TRT World Research Centre calls on the US administration and AFRICOM to run impartial and independent investigations of all the testimonies of all civilian casualties documented in this report. Those US military or intelligence personnel, and those acquiescing the lethal targeted killing programme must be held to account. Victims of human rights violations must be provided with adequate compensation and have access to justice by the Somali government.

The US administration have a positive obligation as per international law to conduct prompt, thorough, independent, impartial and transparent investigations into any allegations of arbitrary deprivation of life and of violations of the Law of Armed Conflict (LOAC).

Part of the debate includes the assessment over which body of jurisprudence applies in assessing the legality of a strike. This comes from the backdrop of the US administration, who since 2002, have failed to provide an adequate legal and factual justification for drone strikes. The US administration's secrecy over the drone programme has made it particularly difficult, though international law is very clear on the jurisprudence that applies in the context of an armed conflict – non-international in character – and in peace time settings.

All drone strikes conducted outside the context of an armed conflict must be governed by International Human Rights Law (IHRL).



MOGADISHU, SOMALIA - MAY 18: Somali security forces are seen at the streets of Mogadishu, Somalia on May 18, 2019. People in Mogadishu have been struggling with the harsh conditions caused by the Al-Qaeda-affiliated terrorist group al-Shabaab's attacks. (Cem Genco - Anadolu Agency)

Displacement of Civilians Via Drones

Since the fall of the Said Barre military regime in 1991, prolonged civil war, droughts, famine and terrorism have led to the internal displacement of more than two million people in Somalia.[86] Officials and humanitarian organizations have signaled that foreign air operations in Somalia is significantly contributing to the increase of the displacement. According to the UN and NGOs operating in the country, the increase of the US air operations against Al Shabaab have aggravated a humanitarian crisis in Somalia. [87]Warsame, a local humanitarian NGO worker, told TRT World Research Centre that "*[p]eople used to flee either from Al Shabaab cruelty or the Al Shabaab-Somali Army-AMISOM conflict. Now the rise of the US air strikes have added one more layer to the displacement crisis.*"

An official from the Somali Ministry of Humanitarian Affairs and Disaster Management told TRT World Research Centre: "*There is one leading reason behind the surge of IDPs. It is the Somali army offensives against Al Shabaab supported by AMISOM forces and US military airstrikes to liberate Al Shabaab controlled territories... the air strikes are targeted against Al Shabaab. However, it is possible that strikes sometimes miss the target and hit civilians, thus causing collateral damage.*"

Regarding the regions affected by the US drone operations in the country, the official added: "The leading region of people displaced by the US air operations is the Lower Shabelle. IDPs are particularly coming from areas including Bariire, Beled Amin, Moordiinle, Sabiib, bakheyle, Caanoole and Mareerey. These areas are now mostly liberated from Al Shabaab."

Conclusion

In this report, TRT World Research Centre has extracted credible evidence, based on three different case incidences that occurred between January 2019 and March 2019– carried out by manned or unmanned weapon systems in the Lower and Middle Shebelle region where some 21 civilians were reportedly killed. The US government acknowledged two of the three case incidences[88], and claimed that no civilians were killed. The other case incident was not acknowledged.[89]

TRT World Research Centre's report findings directly undermines AFRICOM's assertion that no civilians were killed in these strikes in Somalia, despite a change to its policy in Somalia on March 2017 that effectively weakened non-combatant and civilian protections. The Trump administration introduced the idea of temporary battlefields or "area of active hostilities" permitting strikes if there is "reasonable certainty" that civilians will not be injured or killed – in juxtaposition to a previous standard of "near certainty". Furthermore, the US government has accelerated the number of strikes in Somalia.

The cases documented shows signs that US forces – in some cases in conjunction with Somali forces – had no respect for international law and did not distinguish between armed combatants and non-combatants or civilians. The fact that AFRICOM in two out of three case incidences documented by TRT World Research Centre failed to pick up civilian casualties, raises questions over the methodology of post-strike assessments.

Furthermore, the report has demonstrated how the rise of the United States Military operations, especially via the unmanned aerial vehicle, in Somalia is increasingly contributing to the rise of IDPs. This in turn escalates the already perilous humanitarian situation in Somalia, according to aid and humanitarian agencies interviewed for this report. All of the witnesses who provided testimonies for this report mentioned they have been displaced by the US drone strikes in their respective villages and currently live in IDPs camps in Banadir or Lower Shabelle regions. In this case, an increase of drone strikes will equate to more families abandoning their homes in addition to destruction of their livelihoods.

Recommendations

United States of America, AFRICOM, DoD & State Department

- Publically disclose any internal investigation on any of the alleged civilian casualty cases documented in this report. (See Appendix of cases). If any preliminary enquiries have been made, publically disclose the nature and summary of the findings.
- The US government and relevant entities must consider publishing a factual narrative of strikes from an interactive (live-feed) transcript based on pilot-commander-legal adviser communication. In effect, this will provide an ethno-methodological opportunity to conduct a conversational analysis to evaluate legal reasoning on targets outside battlefield settings.
- The US government must ensure to conduct impartial, independent, thorough and transparent investigations into all cases where manned or unmanned weapon system strikes resulted in unlawful or extrajudicial killings in Somalia.
- Congress must think about how to address the transparency issue by creating legislation that will cater for both operations inside declared war zones and outside battlefield settings. This will provide utmost transparency over civilian and combatant casualties across all US departments engaged in lethal counter-terrorism operations.
- In consideration of the doubling of civilian casualties as per US in Syria, Iraq, Yemen and other places, it is clear that the US commitment to reporting on civilian casualties is fairly weak. The US Congress must create a new NDAA amendment that requires reporting and monitoring of civilian casualties to ensure the US government is living up to its transparency requirements.
- The US government and all concerned entities must ensure to comply with International Human Rights Law (IHRL) and where applicable International Humanitarian Law (IHL).

Somalia

- The Somali government - with consent or without of US lethal counter terrorism use of force - have an obligation to ensure strikes conducted on its territory comply with international law. Regardless of its legal framework assessment on whether International Human Rights or International Humanitarian Law governs drone strikes, Somalia's obligation to protect against the deprivation of civilian life remains binding at all times.
- Somali victims and others are owed independent, impartial and thorough investigations to ensure US lethal use of force are compliant with international law. An effective mechanism must exist to provide victims of state or external state human rights abuses to seek access to justice without being judged for their affiliations or tribal social labels for living under – forcefully or by choice - an armed group.
- Any policy on governing US use of lethal force inside the parameters of Somalia must be disclosed. If the Somali government has conducted any investigations on civilian casualties, it must be made available to the public. .
- The Somali government must begin to question whether US operations under the pretext of the War on Terrorism is fueling internal conflict dynamics – and whether its approach to serving US objectives is serving its own national stability.

External Intelligence or State Support for US Strikes in Somalia

- Any state or intelligence agencies must ensure that any support for US drone strikes is compliant with international law – with special attention to the jurisprudence pertaining to the right to life.
- All those entities providing external assistance to US strikes – manned or unmanned weapon systems - must consider publishing all information or standards adopted.

Open Source Professionals, Journalists and Investigators

- Proactively seek to work with human rights organizations and journalists to capture photographic and video evidence found on open source networks of state and non-state actors in Somalia. The use of open source intelligence and social media intelligence methods may permit the gathering of crucial evidence for potential future prosecutions.
- Social media platforms such as YouTube should reconsider deleting or removing sensitive communication channels in Somalia. Online data could serve as potential evidence for litigation of human rights cases. At the very least, a policy should be considered to store these videos and transfer to relevant legal organizations or human rights groups for review.



MOGADISHU, SOMALIA - MARCH 23: Explosion site is seen after a terror attack carried out by Al-Qaeda-affiliated terrorist group al-Shabaab with a bomb-laden vehicle near two ministry buildings in the Somalia capital Mogadishu which killed at least 5 people on March 23, 2019.
(Sadak Mohamed - Anadolu Agency)

Appendix: Civilian Casualty Cases Documented by TRT World Research Centre

Year of Incident	Name	Location of Incient	Issue	Sections of Report Where Mentioned
2019	Abshiro	Awdheegle / Darusalam – Lower Shabelle	7Killed, 1 Injured	P. 13, 14
2019	Fatima	Tuuwaarreey Village, Near Jannaale Town – Lower Shabelle	13 Killed	P. 15, 16
2019	Sadia	Qaryooley – Lower Shabelle	1 Killed, Injured N/A	P. 16, 18

Endnotes

1 Pseudonym – all real names of cases in this report have been changed.
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2 Interview with TRT World Research Centre, April, August 2019.

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