

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on the situation of human rights in Somalia; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL USA 12/2019

29 April 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on the situation of human rights in Somalia; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 35/15, 39/23, and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning five airstrikes, involving the use of armed drones and manned aircraft, reportedly conducted on 16 October 2017 in Farah Waeyes Settlement, on 12 November 2017 in Darusalaam, on 6 December 2017 in Illimey, on 2 August 2018 in Gobanle and on 9 December 2018 in Baladul-Rahma in which 14 civilians were killed and eight more injured. We are also concerned about civilian casualties resulting from the more than 100 strikes by US drones and manned aircraft since early 2017.

According to the information received:

On 16 October 2017, a US armed drone targeted a suspected Al-Shabaab vehicle travelling between the towns of Awdheegle and Barire. The strike killed two civilians, and injured five civilians, including two children, who were residing next to the road at the time of the attack.

On 12 November 2017, the US military conducted an air strike in farms to the southeast of the village of Darusalaam, killing three civilian men, described as local farmers, who were sleeping under a tree.

On 6 December 2017, five civilians, including two children, were killed when a vehicle carrying suspected Al-Shabaab fighters in the isolated hamlet of Illimey exploded. The explosion injured a further two civilians, including an 18-month-old girl. All those in the vehicle were also killed. Up to ten structures were partially or completely destroyed in the blast and resulting fires.

On 2 August 2018, a US drone strike killed three civilians, and one suspected Al-Shabaab member, who were driving in a rural area approximately 1 km east of Gobanle village.

On 9 December 2018, US forces conducted an air strike near the village of Baladul-Rahma, killing one civilian farmer and wounding another.

Without prejudging the accuracy of the information received, we are expressing serious concern about the alleged killings of 14 civilians and injuries caused to eight more by airstrikes involving the use of armed drones and manned aircraft.

In this connection, as far as the events may be considered to take place in a situation of armed conflict, we would like to recall that common Article 3 of the Geneva Conventions, which is applicable to both international and non-international armed conflicts, provides that persons taking no active part in the hostilities, including members of armed forces who have laid down their arms, and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, acts of violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture are prohibited at any time and in any place whatsoever with respect to the above-mentioned persons.

Furthermore, customary international law requires States to take all feasible precautions to avoid, and in any event, to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects (see Annex, Study on customary international humanitarian law, International Committee of the Red Cross (ICRC), hereinafter the “ICRC Study”, Rule 15).

International humanitarian and human rights law also provides that States must investigate allegations of war crimes committed either by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction, and, if appropriate, prosecute the suspects, and make full reparation for the loss of injury caused (See Annex, the ICRC Study, Rules 150 and 158; Principles 9 and 18 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65).

In addition, we would like to draw the attention of your Excellency’s Government to Articles 3 of the Universal Declaration of Human Rights (UDHR), and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992, which respectively guarantee the right of every individual to life and security; prescribe that these rights shall be protected by law; and provide that no one shall be arbitrarily deprived of his or her life. Furthermore, we would like to remind your Excellency’s Government of the specific obligations owed to children.

Accordingly, States are under an obligation to investigate allegations of human rights violations; to ensure – if any violation is revealed – that those responsible are brought to justice; to take measures to prevent recurrence; and make reparation to victims or their relatives (See Annex, Human Rights Committee, General Comment 31).

In the absence of evidence put forward by the State responsible for the killing that would establish that the victims were lawful targets, and that the force was lawful under international human rights and humanitarian law, these killings may amount, prima facie, to extrajudicial executions. The State responsible for the killing is under an obligation to conduct a prompt, independent and impartial inquiry and to provide a detailed public explanation of the results.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any assessment made prior to the killings. Please specify the targeting criteria used and the procedural safeguards, if any, employed to ensure that these killings complied with international law.
3. Please provide information on any investigation carried out by the United States' authorities into these killings resulting from airstrikes, involving the use of armed drones and manned aircraft, including the basis for the decision to authorize the killings instead of non-lethal measures, such as capture, as well as details on all casualties caused by the airstrikes.
4. Please indicate whether the families of the victims have been informed about the reason why their members were targeted; what measures are being taken to protect them against any further lethal targeting; and whether any of the alleged victims will be provided with reparation.
5. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#) and [72/180](#), in particular with international human rights law, refugee law, and humanitarian law.
6. With regard to the allegations of targeted assassination of alleged terrorists by drones or other lethal force; please explain in details of how those

measures and the targeting of these individuals including children comply with the prohibition of summary and arbitrary execution. Please outline legal framework(s) governing targeted assassination of alleged terrorists.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that a copy of this letter has been sent to the Government of Somalia, for their information.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Bahame Nyanduga  
Independent Expert on the situation of human rights in Somalia

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we wish to bring to your attention relevant provisions of the Study on customary international humanitarian law of the International Committee of the Red Cross (hereinafter the “Study”).

Pursuant to Rule 15 of the Study, in the conduct of military operations, constant care must be taken to spare the civilian population, and all feasible precautions must be taken to avoid, and in any event minimize, incidental loss of civilian life or injury to civilians.

In this context, we would like to remind your Excellency’s Government that International humanitarian law provides broad protection for children. In the event of armed conflict, either international or non-international, children benefit from the general protection provided for civilians not taking part in the hostilities. Non-combatant civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, they are accorded special protection. Children who take direct part in hostilities do not lose that special protection.

Furthermore, States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, or over which they have jurisdiction; prosecute the suspects, where appropriate (Rule 158 of the Study), and make full reparation for the loss or injury caused (Rule 15 of the Study).

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Resolution 1989/65 Economic and Social Council) provide that there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (Principle 9); that Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions, in any territory under their jurisdiction, are brought to justice (Principle 18); and that the families and dependents of victims shall be entitled to fair and adequate compensation within a reasonable period of time (Principle 20).

The obligation to investigate gross violations of international human rights law and serious violations of international humanitarian law effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible is further enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II, paragraph 3).

In his report on armed drones, presented to the 68<sup>th</sup> session of the General Assembly (A/68/382), the Special Rapporteur on extrajudicial, summary or arbitrary executions specifies in paragraph 101 that “Whenever there are reasons to query whether violations of international humanitarian law may have occurred in armed conflict as a

result of drone strike, such as the incorrect designation of persons as targetable or disproportionate civilian harm, accountability demands at least a preliminary investigation. Civilian casualties must be determined and should be disclosed”.

In his report on armed drones, presented to the 68<sup>th</sup> session of the General Assembly (A/68/389), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism states in paragraph 41 that “[t]he single greatest obstacle to an evaluation of the civilian impact of drone strikes is lack of transparency, which makes it extremely difficult to assess claims of precision targeting objectively (see A/HRC/14/24/Add.6). As the United Nations High Commissioner for Human Rights pointed out during an address to the Security Council on 18 August 2013, “the current lack of transparency creates an accountability vacuum and affects the ability of victims to seek redress”. In the same report, the Special Rapporteur makes, *inter alia*, the following recommendation: “[h]aving regard to the duty of States to protect civilians in armed conflict, the Special Rapporteur considers that, in any case in which civilians have been, or appear to have been, killed, the State responsible is under an obligation to conduct a prompt, independent and impartial fact-finding inquiry and to provide a detailed public explanation. This obligation is triggered whenever there is a plausible indication from any source that civilian casualties may have been sustained, including where the facts are unclear or the information is partial or circumstantial. The obligation arises whether the attack was initiated by remotely piloted aircraft or other means, and whether it occurred within or outside an area of active hostilities”.

In its General Comment no. 31 (Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13(2004), the UN Human Rights Committee has established that: “The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive”.

“Article 2, paragraph 3 [of the ICCPR], requires that (...) States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights (...) A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

“Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparations to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation (...) the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of

non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations”.

“In general, the purposes of the Covenant would be defeated without an obligation integral to Article 2 to take measures to prevent a recurrence of a violation of the Covenant. (...) Beyond a victim-specific remedy, [this includes] the need of measures (...) to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party’s laws or practices”.

Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice (...) notably in respect of (...) violations (...) such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations”.