Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Independent Expert on the situation of human rights in Somalia

REFERENCE:
AL OTH 51/2019

4 September 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Independent Expert on the situation of human rights in Somalia, pursuant to Human Rights Council resolutions 35/15 and 39/23.

In this connection, we would like to bring to the attention of your Excellency’s Government information we have received concerning the killings of Mr. Roble Mahdi Eidle and Mr. Sa’ed Abdulahi, and the injuries sustained by three civilian women during a crossfire between members of the Rapid Response Unit and clan militia at El-Afweyn District, Sanaag region.

According to information received,

On 27th July 2019, two civilian men, Mr. Roble Mahdi Eidle (22 years old), and Mr. Dauleh Sa’ed Abdulahi, (32 years old) were allegedly killed and three civilian women Ms. Su’ah sh. Mahmoud Sh. Hussein (18 years old), Ms. Najah Saalah Aden Deriye (17 years old), and Ms. Muna Muse Dualeh (19 years old), were injured at approximately 16:00 local time during a crossfire between members of the Rapid Response Unit (RRU) of the Somaliland Police and a clan militia. The RRU is a paramilitary force which was established in 2012 to counter terrorism, has been deployed to address the conflict over grazing land in El Efweyn between the Habar-Yonis Sacad-Yonis and the Habar-Jaclo Biciido sub-clans (both from the Isaak clan).

The clash erupted when the RRU intervened to prevent members of the Habar-Yonis Sacad-Yonis sub-clan from burying their dead during a locally imposed curfew in the district. Following the killing of a member of the RRU by an unidentified armed man, the RRU allegedly used excessive force and indiscriminately fired its weapons against civilians and civilian objects in retaliation for the killing of the RRU member.

Mr. Mahdi Eidle was hit by a bullet at the back of his eye which came out from the eye socket while he was on his way to home. The bullet that hit Mr. Dauleh in the left shoulder travelled through the other side and penetrated his ribs and lungs. Ms. Hussein was hit on her small intestines, Ms. Deriye was hit on her upper left arm and Ms. Dualeh on her hip and right breast.
It is alleged that the families of the victims reported the incident to the Mayor of the El-Afweyn district and to the Somaliland police. However, no investigation has been undertaken into the incidents thus far. In addition, the families of the victims were allegedly arrested on 30 July 2019 after requesting that an independent investigation be carried out. They were subsequently transferred to Hargeisa Prison without a court order. No charges have been brought against them.

We express serious concern at the killings of Mr. Mahdi Eidle and Mr. Dauleh, and for endangering the life of unarmed civilian populations by the Rapid Response Unit. We call upon the authorities in Somaliland to initiate an immediate, independent and thorough investigation and to bring the perpetrator(s) to justice. We further wish to express concern about the ongoing detention, without charges against the victims’ relatives.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the right of every individual to life, security, the right not to be arbitrarily deprived of life, and the right to freedom of liberty, the right to security and the right to fair trial as set out in articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) and articles 6, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

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.

Since 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 response to the following observations:

1. Information and/or any comment(s) you may have on the above-mentioned allegations.

2. Provide the details, and where available, the results of the investigations and judicial or other inquiry being undertaken in relation to the above killings of civilians and injuries to others.

3. Provide information on the health care provided to those injured in these incidents.

4. Provide information on the training and the frequency of such training provided to law enforcement officials; on the internal procedures within the police and army regulating the use of force, including weapons, in the context of civilian policing; as well as existing accountability mechanisms within the police, the military and judicial measures for violations of human rights committed by these personnel in the conduct of their duties. Regulatory frameworks and accountability mechanisms are all the more
warranted when the use of force may result in violations of the right to life and serious bodily harm injury.

5. Provide information on the various types of equipment that are available to The Rapid Response Unit and other security agencies in charge of law enforcement to ensure that force can only be used when and to the extent that is strictly necessary and proportionate, and if adequate equipment is not available, what plans the Somaliland authorities have to avail itself of such equipment.

6. Provide information on the factual and legal basis for the arrest and detention of the victims’ relatives and how these measures are compatible with Somaliland’s obligations under its constitution, national law and international human rights law.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). 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 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
Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to article 6(1) of the International Covenant on Civil and Political Rights, which guarantees the inherent right to life of every individual and provides that this right shall be protected by law and that no one shall be arbitrarily deprived of his life.

Right to life

In General Comment No. 36, the Human Rights Committee reiterates that the right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces as well as by private parties or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Use of force and firearms

With regards to the reported excessive use of force by members of the Rapid Response Unit, we would like to stress that under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 (Basic Principles), and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary. Law enforcement officials includes military authorities who exercise police powers.

Investigations

Furthermore, according to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent.
Compensation

Additionally, principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) states that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Preventative measures and training

We further highlight that according to Human Rights Committee General Comment No. 36 States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a matter consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents amongst others. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) (1979) and the Basic Principles law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.

Furthermore, according to article 2 of the Basic Principles, Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.

Freedom of liberty and right to security

The right to liberty and security of persons is enshrined in ICCPR Article 9, and ensures the freedom from arbitrary arrest or detention. An arrest will be arbitrary if it includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality (CCPR/C/GC/35 para. 12). Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of Art. 9 (CCPR/C/GC/35 para 17).

Right to a fair trial

The right to a fair trial is guaranteed in Article 14 of the ICCPR. Article 14 Paragraph 3 includes several minimum standards that must be guaranteed anyone facing criminal charges. These include access to a lawyer (14(3)(b) and (d)), the right not to be compelled to confess guilt (14 (3)(g)), and the right to be brought promptly before
a judge or other officer authorised by law to exercise judicial power (Art. 9 (3) and CCPR/C/GC/35 para. 32). Lastly, adequate facilities for the preparation of the defence under Art. 14 (3)(b) includes the to documents and other evidence. As indicated by the Human Rights Committee, access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory CCPR/C/GC/32 para. 33. The right of access to information under ICCPR Art. 19(2) supplements this right. It ensures right of access to information held by public bodies, and includes records held by a public body regardless of the form in which the information is stored, its source and the date of production, CCPR/C/GC/34 para. 18. Lastly, Article 14 ensures the right to publicity of judgments. “All trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large”, CCPR/C/GC/32 para. 28. Any restriction must be compatible with the requirements laid out in Art. 14 (1). In all cases, the judgement rendered in a criminal case or in a suit at law shall be made public, including the essential findings, evidence and legal reasoning, CCPR/C/GC/32 para. 29.