

Al-Shabaab's responsibility to protect civilians in Somalia

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For 20 years armed groups have been permanent fixtures of the conflicts in Somalia and have been direct participants in human rights and humanitarian law violations. Now there are some international moves to hold them to account.

The role of these armed groups and the consequences of their actions on the welfare of civilians have all been extraordinarily negative. Unfortunately, the accountability of these groups for civilian protection has been largely ignored while their notoriety has more to do with Western concerns over terrorism, piracy and security than the protection of civilians.

The occasionally contradictory strategies employed by regional actors and the international community have so far concentrated on boosting the legitimacy and capacity of the Transitional Federal Government (TFG); designating and isolating the militants as 'terrorist' groups; expanding provision of humanitarian assistance even if that means working with networks and groups which violate civilians' human rights; and seeking to re-establish peace and stability including by supporting

the fledging African Union's peacekeeping mission in Somalia (AMISOM). Recently, however, some of these actors have taken some steps – albeit fragmented and limited in scope – to focus on the protection of civilians including those uprooted from their homes.

The ongoing conflict between groups such as al-Shabaab and Hizbul Islam on the one hand and the weak TFG and its military allies on the other continues to cause the death of numerous civilians and to displace hundreds of thousands of civilians from their homes and livelihoods. For example, in January 2010 over 25,000 civilians were displaced by fighting over the control of the town of Beledweyne in central Somalia.

While they are not the only guilty party, al-Shabaab has been particularly brazen in its use of civilians as human shields; recruiting children and young persons;

suicide missions; attacking and shelling civilian areas; exacting extreme forms of *shari'a* penalties even for minor offences; attacking and intimidating journalists, humanitarian workers and peacekeepers; and imposing undue restrictions on humanitarian access.

The UN and other humanitarian organisations run their operations from outside Somalia, mainly from Kenya, relying heavily on nationals for the actual delivery of aid within Somalia. According to the former Special Representative of the Secretary General (SRSG) on the human rights of IDPs, this approach has resulted in a disproportionate exposure of local staff to danger and remains unsustainable in the long run.

Though the autonomous regions of Somaliland and Puntland had been spared from some of the worst violations by armed groups, they are now increasingly being infiltrated by members of armed groups, triggering a phenomenon of forced return of IDPs by authorities who fear that al-Shabaab forces are hiding among

displaced persons. These groups are also seeking to expand their horizons outside Somalia, increasingly recruiting the Somali diaspora.

Sanctions and accountability

In April 2010, the UN Security Council designated al-Shabaab for targeted sanctions for its obstruction of humanitarian aid. UN Security Council Resolution 1844, adopted in November 2008, had expanded the arms embargo with targeted sanctions against those who impede and obstruct delivery of humanitarian assistance. The Somalia Sanctions Monitoring Group has presented a list of individuals and entities to be considered for targeted sanctions.

Designation of such groups as terrorist organisations and the imposition of sanctions including freezing of their assets have specific operational consequences for attempts to extend 'humanitarian space' through engagement with these groups. There are numerous instances where al-Shabaab has asked humanitarian organisations to sign agreements which would allow the latter to distribute aid; such a relationship, however, may risk the use of aid for political purposes and undermines efforts at accountability for abuses. On 19 March 2010, the UN Security Council adopted Resolution 1916 lifting restriction on funds "necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia". This was done to ensure that humanitarian operations in areas under the control of al-Shabaab and Hizbul Islam are not construed as violating UN sanctions if humanitarian organisations are forced to make payment to the insurgents.

There are a number of developments taking place to impose some sort of accountability and responsibility on armed groups in Somalia, including al-Shabaab. Among these are the revival of discussions on Somalia at the Human Rights Council; the strengthening of the role of the Independent Expert¹; the Office of the High Commissioner for Human Rights (OHCHR)'s plan to document human rights violations; the decision of the African Commission on Human and Peoples' Rights

to conduct a fact-finding mission to Somalia; increasing attention to civilian protection by the UN Security Council and the Peace and Security Council of the African Union; the possibility of transnational justice and accountability mechanisms through an international inquiry or a possible role by the International Criminal Court; and the inclusion of accountability and impunity in current discussions on constitutional arrangements for Somalia after the TFG.

Recently, the Security Council has been further refining and building on these measures. In 2010, for instance, it held a "stand-alone interactive dialogue" on human rights situations in Somalia which brought together the SRSG on Somalia, the Independent Expert, representatives of UN agencies, of governments, and of the TFG and AMISOM.² The outcome of the dialogue included the adoption of a resolution condemning the attacks on civilians, humanitarian workers and peacekeepers by al-Shabaab and Hizbul Islam; expressing concern over the plight of displaced persons uprooted by the conflict; calling for a better accountability mechanism; and urging closer cooperation between the SRSG and the Independent Expert.³ OHCHR recently announced that it will work on documenting human rights violations including by these militant groups.

All regional and international efforts in Somalia have sought to address the issue of impunity but with very limited success. It is included as an issue to address within the internationally funded constitution-forming process but so far domestic accountability mechanisms have not produced any concrete outcomes – and there is little hope of solutions from the international criminal justice establishment in a context where the national framework is extremely weak. The need to address impunity should remain an important component

of the new constitutional debate as a reflection of political commitment on the part of the stakeholders.

Conclusions

Though all parties to the protracted conflict in Somalia have been implicated in violations of human rights and humanitarian law, the armed groups continue to engage in egregious abuses that have claimed numerous innocent lives and led to the displacement of hundreds of thousands of civilians. These groups threaten and directly attack humanitarian organisations and peacekeepers. They have also restricted humanitarian assistance by limiting the operation of humanitarian organisations and even expelling them from Somalia. Holding al-Shabaab and its allies accountable for these violations has been extremely challenging but recent developments appear to offer concrete opportunities to highlight al-Shabaab's failure to ensure protection of civilians and to further refine the tools for accountability.

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1. Appointed by the UN Secretary-General on the situation of human rights in Somalia http://ap.ohchr.org/documents/dpage_e.aspx?m=48

2. Stand-alone interactive dialogue on Somalia, 29 September 2010. See <http://www.ohchr.org/en/countries/africaregion/pages/soindex.aspx>.

3. Human Rights Council, Resolution 15/28, Assistance to Somalia in the field of human rights, 7 October 10.



Sheikh Omar IDP camp in Jowhar, Somalia.