

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Thomas Amolo  
Director of Political Affairs  
Ministry of Foreign Affairs  
Nairobi, Kenya

Dear Mr. Amolo,

Human Rights Watch's [research](#) has found that the governments of Kenya, Ethiopia, the Transitional Federal Government of Somalia, and the United States have closely cooperated in a detention operation along the Kenyan-Somali border following the armed conflict between the Union of Islamic Courts and the joint forces of the Transitional Federal Government and Ethiopia.

All parties to the armed conflict in Somalia-including the various Somali forces and participating Ethiopian and US military forces-must abide by international law, including provisions relating to the treatment of civilians and combatants captured in the context of the conflict. Individuals detained in Kenya upon fleeing Somalia should be treated in accordance with international human rights law, including the protections codified in the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and, when applicable, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Detainees are entitled under Kenyan and international law to be protected from torture and other mistreatment under all circumstances and at all times. This includes individuals suspected of affiliation with groups responsible for serious violations of international law, including the Union of Islamic Courts, Al Qaeda, and Ethiopian insurgency movements such as the Oromo Liberation Front or the Ogaden National Liberation Front. All countries, including Kenya, are prohibited from expelling or transferring any individuals to countries where they might be subjected to torture or other forms of mistreatment.

#### Arbitrary Detention

Human Rights Watch's recent research in Kenya indicates that since late December 2006, Kenyan security forces arrested at least 150 individuals from some 18 different nationalities at Liboi and Kiunga border crossing points with Somalia. The Kenyan authorities then transferred these individuals to Nairobi where they were [detained](#) in prisons and other detention facilities in and around Nairobi for periods that exceed the length of time permitted for pre-trial detention under Kenyan law. Article 9 of the ICCPR, which Kenya ratified in 1976, prohibits arbitrary detention.

While in detention in Nairobi, US and/or other national intelligence services interrogated several foreign nationals who were denied access to their consular representatives. At least 85 people were then secretly deported from Kenya to Somalia in what appears to be a joint rendition operation of those individuals of interest to the Somali, Ethiopian, or US governments.

The conditions of detention of the 150 people detained in Kenya appear to violate Kenyan and international legal standards. From early January through early March 2007, Kenyan regular and anti-terrorism police engaged in an apparent policy of holding individuals detained in connection to the Somalia crisis in incommunicado detention, with no regard to the legal procedures underway respecting several of these individuals in the Kenyan courts, the court orders of the Kenyan judiciary, or the standards embodied in the ICCPR. For instance, the Human Rights Committee-the international body that monitors compliance with the ICCPR-has stated that incommunicado detention may violate ICCPR Article 7 (prohibiting torture and ill-treatment) and Article 10 (safeguards for persons deprived of their liberty).

According to eyewitness and first-hand accounts, Human Rights Watch has learned that the Kenyan police denied many detainees access to family members, legal counsel, diplomatic representatives, and representatives of human rights groups, including members of the Kenyan National Human Rights Commission. On a number of occasions, family members inquired at police stations where they had

reasonable grounds to believe their relatives were held, but police officials deliberately misinformed them, and told them their relatives were not held at that location.

In addition, dozens of individuals were held in prisons and other detention facilities in and around Nairobi for several weeks, long exceeding the standard 24-hour period for detention without charge and even the 14-day limit provided for pre-trial detention for capital offenses under Kenyan law.

Information obtained by Human Rights Watch indicates that Kenyan security forces and foreign intelligence services closely cooperated during the detention and interrogation phase of the operation in Kenya. Several credible witnesses reported being questioned and sometimes threatened by members of US or other national intelligence services while simultaneously being denied access to their consular representatives.

For example, Canadian consular officials were refused access to Canadian national Bashir Ahmed Makhtal while he was in detention at a Nairobi police station in January 2007, but in the same period he was interrogated by several individuals from the Kenyan anti-terrorism police unit as well as by people he believed to be from Ethiopian security services.

Several US nationals-Daniel Joseph Maldonado and Amir Mohamed Meshal-and several UK nationals were also interrogated by members of the US security and British services respectively, which appeared to be operating in close cooperation with Kenyan security services, but were simultaneously denied access to US and UK consular officials.

### **Illegal Rendition or Expulsion in Violation of National and International Law**

Human Rights Watch is particularly concerned that many of the individuals detained by the Kenyan security services were subsequently rendered from Kenya into the custody of Somali and Ethiopian authorities in Somalia. Given the ongoing conflict in Somalia, the lack of a functioning justice system, and widespread human rights abuses, Human Rights Watch has serious concerns about the security and conditions of detention in Mogadishu and other locations in Somalia.

Most of the 85 people known to have been expelled from Kenyan detention were suddenly and secretly deported from Kenya to Mogadishu and Baidoa, Somalia, on three flights on January 20, January 27, and February 10 respectively. Members of the Kenyan security services were present on all three flights to Somalia. The January flights were reportedly chartered by African Express Airways from Jomo Kenyatta International Airport, and the February 10 flight was chartered by Bluebird Aviation from Wilson Airport.

For example, the Canadian citizen Bashir Ahmed Makhtal was among at least 34 people secretly deported from [Kenya](#) to [Somalia](#) on January 20, 2007 on an African Express Airways flight to Mogadishu that included at least 11 people believed to be of Ethiopian Oromo origin, at least four individuals of Ethiopian Somali origin, and at least three alleged Eritrean nationals.

Although the exact location and conditions of detention of Bashir Makhtal and the other individuals deported with him are unknown, we are concerned that these people and others have now been transferred to Ethiopia. It is essential that all of these individuals are able to access consular representatives, when relevant, as well as independent international monitors, such as delegates from the International Committee of the Red Cross (ICRC).

The evidence shows that Kenyan authorities were coordinating the deportation flights. In one case documented by Human Rights Watch, the Kenyan Ministry of State for Immigration and Registration of Persons provided a declaration on January 26, 2007 authorizing the deportation of Tuwein Kamilya Mohamed-a citizen of the United Arab Emirates-on the grounds that her presence in Kenya was "contrary to national interest." Ms. Mohamed was expelled the following day on the African Express Airways flight of January 27, 2007 to Mogadishu, and Human Rights Watch has been unable to locate her since her transfer to Somalia.

At the time of their deportation, a few individuals were the subject of habeas corpus applications in the Kenyan courts. This includes Tunisian national Inez Chine, who was deported on February 10 to Baidoa despite the fact that a habeas corpus application was filed in the Kenyan courts on January 31.

Family members and human rights groups, including Human Rights Watch, are making efforts to trace the locations of many of these individuals. These efforts however are difficult given that the Ethiopian and Somali authorities have yet to acknowledge that dozens of individuals were detained under their authority or to provide full access to international monitors seeking to visit detention facilities. Of those individuals believed to be in Ethiopia, at least one, US national Amir Mohammed Meshal-who was previously detained in Kenya and deported to Baidoa, Somalia on February 10, 2007-now appears to be held at a maximum security prison in Addis Ababa.

### **Risk of Torture and Other Cruel, Inhuman and Degrading Treatment**

Human Rights Watch is extremely concerned that many of the individuals expelled from Kenya to Somalia and then [Ethiopia](#) in January and February face a serious risk of torture and other mistreatment at the hands of the Transitional Federal Government of Somalia, the Ethiopian authorities, or both. Article 3 of the Convention against Torture, which Kenya ratified in 1997, states that no state party "[s]hall expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Evidence suggests that some of the detainees were subsequently transferred to Ethiopia following their deportation to Somalia. Human Rights Watch fears that many of the detainees will face mistreatment and possibly torture or execution in Ethiopian custody. Human Rights Watch has previously documented that Ethiopian forces routinely engage in torture of criminal, political and military detainees, and in its recent human rights country report on Ethiopia, the US State Department noted that in Ethiopia "[t]here were numerous credible reports that security officials often beat or mistreated detainees. Opposition political parties reported frequent and systematic abuse of their supporters by police and regional militias. . . in detention centers police often physically abused detainees."

A large number of the individuals who were expelled are Ethiopian nationals from the Oromia and Somali regions of Ethiopia. Several Eritrean nationals were also among the individuals secretly deported from Kenya on the January 20 flight to Mogadishu. Ethiopian security services may suspect some individuals of having connections to Ethiopian insurgency movements, in which case they may face torture or even summary execution if delivered into Ethiopian custody. Human Rights Watch is equally concerned about the security of

other individuals who may be linked, or perceived to be connected, to the Union of Islamic Courts and who have now been delivered into the custody of the Transitional Federal Government.

Human Rights Watch is also concerned that among the individuals expelled to Somalia by the Kenyan government were some individuals who, based on the identification documents we have collected, appear to have been Kenyan citizens. In addition, a few of the foreign nationals had Kenyan residency or possessed valid Kenyan visas. For the Kenyan government to deport its own citizens or others legally residing in Kenya to Somalia without any judicial procedure presents a serious breach of their due process rights. For Kenyan citizens, such action could effectively render them stateless, a serious violation of international law. Article 12 of the International Covenant on Civil and Political Rights states that "[n]o one shall be arbitrarily deprived of the right to enter his own country."

#### **New Detentions in Kenya**

Finally, Human Rights Watch has received credible reports that the Kenyan security services have detained additional people in recent weeks. Based on the recent patterns of detention, we are concerned that these individuals may face the prospect of incommunicado detention in Kenya or the risk of rendition to Ethiopia or other countries where they may be tortured and mistreated.

We urge the Kenyan government to ensure that any individuals detained in Kenya within the context of [counterterrorism](#) operations or detention operations linked to the Somalia conflict are permitted access to legal counsel as required under Kenyan and international law and to independent international monitors such as the ICRC.

We also urge the Kenyan government to publicly and privately call on the government of Ethiopia and the Transitional Federal Government of Somalia to immediately acknowledge those individuals detained in their respective countries and permit international access by diplomatic representatives and independent monitors such as the ICRC.

Furthermore, we call on the Kenyan government to undertake immediate efforts to secure the prompt return to Kenya of those Kenyan nationals who have been illegally deported as well as those foreign nationals who were Kenyan residents.

We would be pleased to provide further information should you require it, and look forward to hearing from you at your earliest convenience.

Sincerely,

Peter Takirambudde  
Executive Director, Africa Division

#### **Cc:**

Mr. Thuita Mwangi, Permanent Secretary, Ministry of Foreign Affairs  
Hon. John Michuki, Minister for Internal Security  
Hon. Martha Karua, Minister for Justice and Constitutional Affairs

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