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Kenya: Unlawful transfers of “terror suspects” must be investigated

Amnesty International and several other international and Kenyan organizations today called on the Kenyan government to conduct an independent and impartial investigation into the unlawful transfer of people from Kenya to third countries – including Somalia, Ethiopia and the United States.

The organizations (see list below) said that the transfers are illegal under international law, and called on the Kenyan government to ensure that such unlawful transfers of people from Kenya to other countries are stopped.

At least 140 people (nationals of at least 17 different countries, including Kenya) were arrested by Kenyan authorities between December 2006 and February 2007.

Most were arrested as they fled to Kenya from Somalia as a result of the escalation in fighting in Somalia. At the time, the Kenyan government stated that these arrests were to prevent the threat of ‘terrorists’ fleeing the conflict in Somalia crossing into Kenya. The individuals were detained in several police stations in Kenya. Most detainees were held for weeks without charge and some were reportedly tortured or otherwise ill-treated. Some were beaten by the Kenyan police and forced to undress before being photographed. They were denied the right to challenge their detention, denied access to lawyers and not allowed any contact with their families. They were not allowed to claim asylum and were denied access to the UN High Commission for Refugees, which is their right.

In January and February, at least 85 of these people were unlawfully transferred – without recourse to any legal process – to Somalia and then on to Ethiopia. More than 40 were still detained incommunicado and in secret in Ethiopia at the end of 2007 although recent reports indicate that some of the individuals have since been released.

Publicly, the Kenyan government has maintained that no Kenyan citizen was unlawfully transferred to Somalia, Ethiopia or any other third country. This is despite clear evidence to the contrary. One of the Kenyans believed to have been unlawfully transferred is Mr. Mohamed Abdulmalik, who was arrested by Kenyan police on 13 February 2007 and held incommunicado in police stations in Mombasa and later transferred to police custody in Nairobi. He was not charged with any offence.

Nothing was heard of Mr. Abdulmalik until 26 March 2007, when the US Department of Defense issued a press statement announcing Mr. Abdulmalik’s detention at Guantánamo Bay. The US Ambassador to Kenya, Michael Ranneberger, confirmed that Mr. Abdulmalik was “moved to the Cuban camp with the full consent of the Kenyan government ... [as] part of collaboration between the two governments to fight global terrorism”.

At the time of Mr. Abdulmalik’s detention, the practice of “extraordinary rendition” – whereby foreign “terror suspects” are sent to third countries where they are at serious risk of torture -- was widely known. The Kenyan government knew that if they were to transfer Mr. Abdulmalik to US custody, he would face a real risk of either “extraordinary rendition” or transfer to detention sites

such as Guantánamo Bay, Bagram Airbase in Afghanistan and/or “black sites” located outside of U.S. territory – which would involve a real and foreseeable risk of torture or other ill-treatment.

Although Mr. Abdulmalik has been held at Guantánamo Bay for more than one year, his U.S. lawyer was only allowed to meet with him for the first time in April 2008. Mr. Abdulmalik has to date not been able to exercise his right under international law to challenge the lawfulness of his detention.

Now that Mr. Abdulmalik is in Guantánamo Bay, it is the responsibility of the Kenyan government to make representations to the US at the highest level as a matter of urgency on his behalf. The Kenyan government must call on the US government to either charge Mr. Abdulmalik with a recognisable criminal offence and provide him with a fair trial in an ordinary civilian court in strict compliance with international standards -- or release and return him to Kenya, should he so wish.

The Kenyan government must also:

- ensure a thorough, effective, independent and impartial investigation into the arrests, detention, and transfer of these individuals, and their treatment during detention;
- ensure that the results of any investigations lead to any perpetrators of human rights violations being held to account;
- publicly identify those still being held in third countries, along with their precise location, and call on the governments holding them to either release them immediately or charge them with a recognisable criminal offense.

Signed by:
Amnesty International
Redress
Reprieve
Human Rights Watch
OMCT
Muslim Human Rights Forum
Cageprisoners
East Africa Law Society
International Commission of Jurists-Kenya
Kenya Human Rights Commission
Independent Medico-Legal Unit and Kituo Cha Sheria

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