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Hon. Moses Wetangula
Minister of Foreign Affairs
Old Treasury Building
Harambee Avenue
P.O. Box 30551
Nairobi
Kenya

24 September 2010

Dear Hon. Minister

THE ARREST AND DETENTION OF MBUGUA MUREITHI AND AL-AMIN KIMATHI

We are writing on behalf of Amnesty International and Human Rights Watch to express concern regarding the arrest and detention in Uganda of Mbugua Mureithi, a Kenyan criminal defence lawyer, and Al-Amin Kimathi, a human rights activist with the Muslim Human Rights Forum, a non-governmental organization registered in Kenya.

We urge your government to call on Uganda to respect its obligations under international human rights law with regard to measures taken to investigate, prosecute and bring to justice alleged perpetrators of the July 2010 Kampala bombings. We also urge your government to fully comply with international human rights obligations, particularly in relation to the transfer from Kenya to Uganda of alleged perpetrators of the July Kampala bombings.

As you may be aware, Mbugua Mureithi and Al-Amin Kimathi were arrested on September 15 by police officers from Uganda's Rapid Response Unit (RRU) and detained at the unit's headquarters in Kireka, Kampala. The police publicly announced twenty-four hours later that they were being held in relation to suspicion of involvement in the July bombings. Both men were detained incommunicado without access to, or communication with, their families or lawyers. Representatives of human rights organizations who were concerned about their situation and sought to see them, including Amnesty International, were prevented from doing so.

Our organizations understand that both men had lawfully entered Uganda on September 15 to observe judicial proceedings of the six Kenyan suspects who were charged and detained in connection with the bombings. Mr. Mureithi and Mr. Kimathi work on behalf of the families of some of the suspects and they had previously entered and departed Uganda without incident.

During their detention in Kireka, both Mr. Mureithi and Mr. Kimathi were extensively interrogated by police officers about alleged funding of terrorist activities. Mr. Kimathi's personal laptop was confiscated, searched in his absence and its contents copied.

Mr. Mureithi was released from RRU detention on 17 September only to be detained overnight in Entebbe and deported to Kenya on 18 September. Because we understand him to have been lawfully in Uganda at the time of his arrest and deportation, his expulsion without due process appears to be inconsistent with Article 13 of the International Covenant on Civil and Political Rights (ICCPR) to which Uganda has been party since 1995. A number of pages in Mr. Mureithi's Kenyan passport were also mutilated by Ugandan immigration authorities, marked with an "X", effectively invalidating the passport.

On 21 September, six days after he was arrested, and therefore well beyond the 48-hour maximum for detention without judicial supervision under section 23(4) of the Uganda Constitution, Mr. Kimathi was brought before Nakawa Magistrate's court and charged with terrorism, murder and attempted murder in relation to the July bombings, on the same charge sheet applied to the other 36 suspects. The charge sheet does not provide any detailed allegations in relation to Mr. Kimathi to indicate the conduct he is accused of, or how it is connected to the crimes described in the charge sheet. Indeed, the only amendment to the original general criminal charge sheet was to add the names of Mr. Kimathi and another person as the 37th and 38th suspects in the case. The lack of any precise charges against Mr. Kimathi fails to respect his right under Article 14(3) (a) of the ICCPR "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."

In August 2010, Mr. Mureithi, on the instructions of the Muslim Human Rights Forum, which had in turn been requested by the families of the first three suspects of Kenyan nationality to be arrested, filed an application in the Kenyan High Court. The application challenged the transfer of the three suspects from Kenya to Uganda by Kenyan and Ugandan authorities on the basis that the transfer failed to respect the established legal procedures governing such transfers.

It is our understanding that the arrest and transfer of these and additional suspects in the following days failed to respect the mutual statutory extradition arrangements between Kenya and Uganda. Under Kenyan law, the arrangements are contained in the Extradition (Contiguous and Foreign Countries) Act (Chapter 76 Laws of Kenya). The extradition procedures entail authentication and reciprocal backing of warrants of arrests issued by the courts in each country. The process also entails judicial hearings and the right to habeas corpus for the alleged criminal fugitive.

According to Mr. Mureithi, who was representing several of the Kenyan suspects and has filed habeas corpus applications on their behalf, in none of those cases has the Kenya Government said that it was executing any warrants issued by Ugandan courts. In fact the affidavits in response to the habeas corpus applications have merely stated that Kenya is handing over the subjects to "assist Ugandan authorities with investigations of the 7/11".

These circumstances raise serious concerns that Kenya has unlawfully transferred its own citizens to Uganda without respecting their right to due process. The Muslim Human Rights Forum was raising these legitimate concerns in recent weeks before Mr. Kimathi was arrested. The Muslim Human Rights Forum had worked on similar issues in the past, notably in 2007, when it documented the arbitrary detention, secret expulsion, and unlawful transfer of dozens of men, women, and children who had fled from Somalia to Kenya in 2006 and early 2007.

Amnesty International and Human Rights Watch are concerned that, in the absence of any other reasonable detailed explanation from Ugandan authorities, the circumstances described above strongly suggest that Mr. Mureithi and Mr. Kimathi were arbitrarily detained because they sought to exercise their work as lawyer and human rights defender respectively.

As you know, the work of human rights defenders has been recognized by both the United Nations and the African Commission on Human and Peoples' Rights as deserving of special protection.¹

¹ See the UN *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* ("Declaration on Human Rights Defenders"), which was adopted by consensus by UN member states in 1998. Article 9(3) (b) and (c) of the UN Declaration, provision is made for the right of human rights defenders to attend hearings, proceedings and trials so as to form an opinion about their compliance with

Furthermore, the arrest and detention of Mr. Mureithi raises serious concerns about Uganda's commitment to the fair administration of justice. The African Commission has specifically called on members to ensure that lawyers perform their work and interact with their clients free of harassment and intimidation.²

Ugandan officials have violated Mr. Kimathi's right not to be deprived arbitrarily of his liberty by detaining Mr. Kimathi without bringing him before the court, well beyond the 48-hour maximum period permitted for non-judicially-supervised detention under article 23 of the Uganda Constitution. Holding Mr. Kimathi incommunicado for six days after his arrest, apparently without access to or supervision by any judicial authority or access to independent legal counsel of any kind, without specific authorization under national law for such restrictions on access, is also inconsistent with regional and international human rights standards.³

Amnesty International and Human Rights Watch recognize that Kenya seeks to support the government of Uganda in its effort to investigate, prosecute and bring to justice those responsible for the July 2010 Kampala bombings, and welcome your commitment to meet this responsibility. However, States have repeatedly and unanimously emphasized, in the 2006 United Nations global counter-terrorism strategy and other legal instruments, that in countering terrorism all states must ensure full respect for human rights and the rule of law. Our research in various contexts around the world has also shown time and again how failure to ensure full respect for human rights can actually impede the state's ability ultimately to bring those responsible for such attacks to justice, in trials that are credible and fair. In addition to the treatment of Mr. Mureithi and Mr. Kimathi we are concerned that most of the 13 suspects of Kenyan nationality were transferred outside of the established legal process from Kenya to Uganda.

Amnesty International and Human Rights Watch call upon the Kenyan government to urge Uganda to ensure that:

- Mr. Kimathi and his legal counsel are immediately and formally informed of the detailed particulars and basis of the charges against him or he be released.
- Mr. Kimathi has full access to visits by and communications with his legal counsel and family in accordance with international human rights standards, and that the confidentiality of his communications with legal counsel is fully respected.

In addition, we urge Kenya to ensure:

- That an independent and impartial inquiry is established into human rights violations associated with the arrest and transfer outside of established legal procedures of suspects from Kenya to Uganda.

national and international law and standards and to offer legal assistance and other advice in defending human rights. The African Commission on Human and Peoples' Rights has called upon its member states to "promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders".

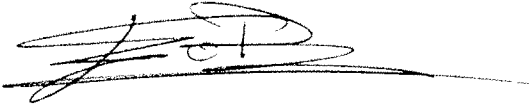
² The *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* developed by the African Commission on Human and Peoples' Rights include Article I(b) ["States shall ensure that lawyers: 1. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; 2. are able to travel and to consult with their clients freely both within their own country and abroad; 3. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.]; Article I(g) ["Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."]

³ See, for instance, the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173 of 9 December 1988; UN Human Rights Committee, *Freemantle v Jamaica* (2000), UN Doc CCPR/C/68/D/625/1995, para 7.4, finding a violation of article 9(3) of the ICCPR after four days detention without access to a judge or lawyer.

A corresponding copy of this letter with relevant calls to the Ugandan government has been sent to Uganda's Minister of Interior.

We look forward to receiving a response from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'E. van der Borgh', with a long horizontal line extending to the right.

Erwin van der Borgh
Director – Africa Programme
Amnesty International

A handwritten signature in black ink, appearing to read 'Rona Peligal', written in a cursive style.

Rona Peligal
Africa Director
Human Rights Watch