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Kenya: Draft anti-terrorism legislation may undermine Kenyan constitution and international law

Amnesty International is seriously concerned that Kenya's Suppression of Terrorism Bill 2003 contains measures that violate Kenyan law, human rights treaties to which Kenya is a party, and may result in human rights violations.

The Kenyan government is presently gathering suggestions and comments on the Suppression of Terrorism Bill 2003 following widely expressed concerns and strong criticism that it contained measures that would impact negatively on human rights. The Bill, which was initially published last year, has now been shelved, pending presentation of a revised version to Parliament.

"The proposed legislation, in its present form, would suspend certain safeguards that protect the rights of those prosecuted or detained under it, and therefore violate fundamental rights protected under the Kenyan Constitution, and under international human rights standards," Amnesty International said in a memorandum to the Kenyan government.

The organization is particularly concerned about the following:

- the vague and broad definition of "terrorism" and "terrorist" act or action;
- extensive powers given to the police and customs officers to stop search and seize, detain and arrest;
- incommunicado detention and the denial of the right to legal representation during interrogation;
- making detention the rule and bail the exception, thus impacting on the right to personal liberty;
- immunity of state officials from prosecution or civil suits under the Bill;
- curtailing of the freedoms of association and expression;
- the vague definition of the crime of incitement to commit a "terrorist" act wholly or partly outside Kenya;
- lack of safeguards and due process in decisions to extradite.

In its memorandum Amnesty International asserts that the Bill could encourage the creation of a two-tier justice system, providing the legal framework for arbitrary arrests, illegal detention and searches and a flawed judicial process. "The creation of a distinct system of arrest, detention and prosecution relating to 'terrorism' may violate the right of the people to equal justice before the courts," the organization said.

"The Kenyan government should ensure that any new draft legislation addressing 'terrorism' or

'acts of terrorism' is consistent with Kenya's international human rights obligations," Amnesty International said.

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