



## **“Why Am I Still Here?”**

**The 2007 Horn of Africa Renditions and the Fate of  
Those Still Missing**

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## The 2007 Horn of Africa Renditions and the Fate of Those Still Missing

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# Map of Ethiopia, Kenya, and Somalia



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## Summary

Ishmael Noor, a 37-year-old shepherd from the Ogaden region in Ethiopia, looked up with tears in his eyes. He said that in 2004, Ethiopian forces—who had already killed his mother, father, brothers, and sisters—murdered his wife days after they were married. They then slaughtered his goats, beat him unconscious, and slashed his shoulder to the bone.

In December 2006, Noor crossed through Somalia into Kenya, heading for the nearest refugee camp in search of medical care. But when he did not have enough money to pay a 1,000 shilling (\$15) bribe, the Kenyan police bundled him into a car and took him to Nairobi. A few weeks later, he was herded onto an airplane with some 30 others, flown to Somalia, and handed over to Ethiopian military officers—the same forces that he had previously fled. Several days after that, Noor was flown to Ethiopia.

Noor's story fits a larger pattern. In early 2007, at least 90 people were rendered from Kenya to Somalia, and then on to Ethiopia. Many were held incommunicado and without charge for months, and some were held for more than a year. A few—including a Canadian and nine who assert Kenyan nationality—remain in detention even now. The whereabouts of others—including several Somalis, Ethiopian Ogadenis, and Eritreans—are unknown.

These renditions and detentions followed a US-backed Ethiopian military intervention in Somalia. In late 2006, the Ethiopian military, in support of Somalia's Transitional Federal Government, ousted Islamist authorities from the Somali capital Mogadishu. The fighting caused thousands of Somalis to flee across the border into Kenya, including some who were suspected of terrorist links.

Kenyan authorities arrested at least 150 men, women, and children from more than 18 countries—including the United States, the United Kingdom, and Canada—in operations carried out near the Somali border. Suspecting the detainees of having links to terrorism, the Kenyans held them for weeks without charge in Nairobi. Over

the course of three weeks from January 20 to February 10, 2007, the Kenyan government rendered dozens of these individuals—with no notice to families, lawyers or the detainees themselves—on flights to Somalia, where they were handed over to the Ethiopian military. Ethiopian forces also arrested an unknown number of people in Somalia.

Those rendered were then transported to detention centers in the Ethiopian capital Addis Ababa and other parts of Ethiopia, where they effectively disappeared. Denied access to their embassies, their families, and international humanitarian organizations such as the International Committee of the Red Cross (ICRC), the detainees were even denied phone calls home. Several detainees have said that they were housed in solitary cells—some as small as two-by-two meters—with their hands cuffed in painful positions behind their backs and their feet bound together any time they were in their cells.

In Addis Ababa, a number of prisoners were questioned by US intelligence agents. From February to May 2007, Ethiopian security officers daily transported detainees—including several pregnant women—to a villa where US officials interrogated them about suspected terrorist links. At night the Ethiopian officers returned the detainees to their cells.

After US officials would end their interrogation of a detainee, the Ethiopian government usually sent them home. Of those known to have been interrogated by the US government, just eight Kenyans remain in Ethiopia. (A ninth Kenyan in Addis Ababa was rendered to Ethiopia in July 2007 after American interrogations reportedly stopped.) These men, who have not been subjected to interrogation since May 2007, would likely have been repatriated long ago but for the Kenyan government's longstanding refusal to acknowledge their claims to Kenyan citizenship or to take steps to secure their release. In August 2008, Kenyan authorities visited these men for the first time, some 18 months after they were first rendered to Ethiopian custody.

The Ethiopian government has also used the rendition program for its own purposes. For years, the Ethiopian military has been trying to quell domestic Ogadeni and Oromo insurgencies that receive support from neighboring countries, such as

Ethiopia's archrival, Eritrea. The Ethiopian intervention in Somalia and the multinational rendition program provided them a convenient means to gain custody over people whom they could interrogate for suspected insurgent links. Once these individuals were in detention, Ethiopian military interrogators and guards reportedly subjected them to brutal beatings and torture.

Noor was one of their victims.

The questions Noor's Ethiopian interrogators asked were frequent, he told Human Rights Watch, and always the same: "Are you al Qaeda? Are you an Ogadeni rebel? Are you part of the Somali insurgency?" Each time he said no, he was beaten, sometimes to the point of unconsciousness. When he resisted answering their questions, they targeted his testicles.

Then, in February 2008, some 14 months after his original arrest, the Ethiopians evidently decided Noor was no longer worth the trouble. They dumped him, along with 27 others, just over the Somali border. The men were met by a Somali officer who told him that he was very sorry, that their arrest was a mistake, and that they were all innocent.

Now Noor is back in a refugee camp, limping, and urinating blood—still waiting for the healthcare he came searching for nearly two years ago.

Others are even less fortunate. Bashir Makhtal, for example, a dual Canadian-Ethiopian citizen who was rendered to Somalia on the same plane as Noor, remains in Ethiopian custody because of his alleged connections to the Ogaden National Liberation Front (ONLF). Now reportedly being tried by a military court, Makhtal is still being denied access to his attorney, and has received just one consular visit during his 18 months of detention. Mohammed Abulmalik, a Kenyan arrested in Mombasa in February 2007, taken to Nairobi, and then disappeared for over a month, ultimately ended up in the detention center in Guantanamo Bay, where he is still being held without charge. Several Kenyans are also being held in Addis Ababa, and the whereabouts of other detainees are unknown.

Human Rights Watch remains deeply concerned about those individuals mistreated in the Horn of Africa rendition program. It is long past time for the Ethiopian government to provide basic due process rights to the people who remain in its custody, and for Ethiopia, Kenya, Somalia, and the United States—the governments implicated in what are enforced disappearances under international law—to disclose the identities, fates, and whereabouts of past and present detainees.

## **Recommendations**

### **To the Ethiopian Government**

- Immediately release the nine Kenyans, the Canadian, and any others who are being arbitrarily detained, or promptly prosecute them for cognizable criminal offenses in a court that meets international fair trial standards. Ensure that detainees have access to lawyers, family members, and international humanitarian agencies.
- Disclose the identity, fate, and whereabouts of any persons rendered to Ethiopia from Kenya or Somalia since January 2007.
- Promptly open an independent judicial inquiry into the military's use of arbitrary arrest and detention, and torture and other ill-treatment of suspected insurgents.
- Provide appropriate compensation to all individuals arbitrarily detained or abused in Ethiopian custody.

### **To the Kenyan Government**

- Take immediate steps to secure the release of the nine Kenyans arbitrarily detained in Ethiopian custody.
- Disclose the identities and last known whereabouts of all persons rendered from Kenya to Somalia or Ethiopia since January 2007.
- Repudiate the use of rendition or deportation without due process as a counterterrorism tactic.
- Promptly open an independent judicial inquiry into the role of Kenya's security forces in the arbitrary arrest, detention, and rendition of dozens of men, women, and children since January 2007.
- Formally request that the US either prosecute Guantanamo Bay detainee Mohammed Abdulmalik in a civilian court that meets international fair trial standards or promptly release and return him to Kenya.
- Provide appropriate compensation to all individuals arbitrarily detained in Kenya or unlawfully rendered to foreign custody.

## **To the US Government**

- Disclose information about US knowledge, encouragement, or participation in the 2007 Horn of Africa renditions.
- Repudiate the use of rendition without due process as a counterterrorism tactic.
- Withhold counterterrorism and security-related funding from the Ethiopian security forces until the Ethiopian government publicly discloses the identities, fates, and whereabouts of all persons rendered by Kenya or Somalia to Ethiopian custody since January 2007.
- Withhold counterterrorism and security-related funding from the Kenyan security forces until the Kenyan government publicly discloses the identities and last known whereabouts of all persons rendered to Somalia or Ethiopia since January 2007.
- Either take immediate steps to prosecute Mohammed Abdulmalik in a civilian court that meets international fair trial standards or promptly release and return him to Kenya.

## **To the Somali Government**

- Disclose the identities and last known whereabouts of persons rendered from Somalia to Ethiopia since January 2007.
- Repudiate the use of rendition without due process as a counterterrorism tactic.

## **To the Canadian Government**

- Formally request that the Ethiopian government either prosecute Bashir Makhtal in a civilian court that meets international fair trial standards or promptly release and return him to Canada.

## **To Other Governments**

- Refuse to cooperate in secret detention and unlawful rendition, and disclose all information about past cooperation with such efforts.

## **Methodology**

Human Rights Watch conducted research for this report from February 2007 to September 2008. Locating and arranging interviews with former rendition victims is extremely difficult. That said, we held in-depth interviews with 12 men and women who had been arrested and rendered to Somalia and Ethiopia, including several of the detainees released in February 2008. In August 2008, Human Rights Watch also spoke by telephone to several detainees still incarcerated in Addis Ababa with the assistance of an informed and reliable intermediary who was able to vouch for their identity. Human Rights Watch has also interviewed family members of several of the men who are still missing. We have corroborated information from our own interviews with accounts from other rendition victims provided by reporters and researchers for other organizations, flight logs, and additional secondary material.

In August 2008, we sent formal letters to both the Ethiopian and Kenyan governments (attached as Appendices A and B) requesting additional information, but both governments failed to respond to our requests. Officials in the Counterterrorism Division at the US Federal Bureau of Investigation refused to meet with us or provide any official comment on our findings, and instead referred us to the US State Department. The State Department declined our email request for official comment.

## Arrest, Detention, Rendition, and Torture

### Conflict in Somalia

In June 2006, an alliance of Islamic courts (Islamic Courts Union, ICU) took control of Mogadishu, the capital of Somalia, driving the then-ruling Somali warlords from power.<sup>1</sup> Although many Mogadishu residents welcomed the security brought by the ICU, the bellicose, Islamist bent of some ICU leaders set off alarm bells in Washington and Addis Ababa.

Among the leadership of the ICU was Sheikh Hassan Dahir Aweys, a former leader of the militant Islamist group known as al-Itihaad, which the United States designated a terrorist group shortly after September 11, 2001.<sup>2</sup> US officials warned that the ICU was sheltering suspects responsible for the 1998 US embassy bombings in Kenya and Tanzania, stoking fears that Somalia was fostering Islamic radicalism.<sup>3</sup>

Ethiopia had its own reasons for concern. Ethiopia's archrival Eritrea supported the ICU, and joint ICU-Eritrean support for Ethiopian insurgency groups, such as the Ogaden National Liberation Front (ONLF) and Oromo Liberation Front (OLF), added to the Ethiopian government's fears.<sup>4</sup>

In December 2006, following the passage of UN Security Council Resolution 1725 authorizing an African Union intervention in Somalia, a US-backed Ethiopian offensive ousted the ICU from Mogadishu and installed the weak Somali Transitional

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<sup>1</sup> In December 2004, several Islamic law (sharia) courts joined forces under the leadership of Sheikh Sharif Sheikh Ahmed, a schoolteacher from Mogadishu, to form the Islamic Courts Union (ICU). By October 2006, the ICU was in control of seven of the ten regions of south-central Somalia.

<sup>2</sup> For a further analysis of the rise of the Islamic Courts Union in Somalia and related US concerns, see Human Rights Watch, *Shell-Shocked: Civilians Under Siege in Mogadishu*, vol. 19, no. 12(A), August 2007, <http://hrw.org/reports/2007/somalia0807/>, pp. 19-22.

<sup>3</sup> Mike Pflanz, "Al-Qaeda taking over Mogadishu, says US," *The Daily Telegraph*, December 16, 2006 (quoting US Assistant Secretary of State for African Affairs Jendayi Frazer).

<sup>4</sup> Although the relationship between ICU leaders and Ethiopian insurgencies has never been fully explained, the ONLF and OLF both had a presence in Mogadishu in 2006. In addition, both the ONLF and OLF had previously received Eritrean training as well as logistical and military support. See Human Rights Watch, *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region*, June 2008, <http://hrw.org/reports/2008/ethiopia0608/>, pp. 29-30; see also Human Rights Watch, *Shell-Shocked*, pp. 17-18, 22-23. For a history of the conflict between the Ethiopian government and the ONLF, see Human Rights Watch, *Collective Punishment*, pp. 13-32.

Federal Government in its place. The fighting caused hundreds of people to head towards the Kenyan border, including some suspected of terrorist and insurgent links.<sup>5</sup>

## Arrests and Detentions in Kenya and Somalia

As hundreds fled the fighting, Kenyan military and police officers stepped up security along the Kenyan border. During late December 2006 and January 2007, Kenyan security forces arrested at least 150 individuals of some 18 different nationalities—including US, UK, and Canadian citizens—at the Liboi and Kiunga border crossing points with Somalia. Men, women, and children, some as young as seven months old, were then transferred to prisons and other detention facilities in and around Nairobi.

Most were held for weeks without access to a lawyer, family members, or diplomatic representatives, and without charge (with one exception), in violation of international law. Their detentions were neither in compliance with Kenyan immigration law<sup>6</sup> nor criminal law, which requires a criminal suspect to be charged as soon as is practicable (presumed to be within 24 hours in all non-capital cases and 14 days in all capital cases).<sup>7</sup>

A 23-year-old pregnant woman from Kenya who was arrested in Kiunga said she was held in a filthy jail cell along with a nine-year-old boy. She told Human Rights Watch that when Kenyan police officers learned that her husband had been killed in the fighting in Somalia, they joked about it, saying that now they would date her. When family members tried to visit her, they were turned away. “I used to cry every night,” she said. “It was hell.”<sup>8</sup>

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<sup>5</sup> See Human Rights Watch, *Shell-Shocked*, pp. 23-26.

<sup>6</sup> Under Kenyan immigration law, those unlawfully in Kenya can be detained pending removal pursuant to an order in writing from the Minister. See Immigration Act (Kenya), sec. 8, as amended 1972. Kenyan law also gives immigration and police officers the authority to arrest those believed to be unlawfully present. Immigration Act, sec. 12. But pursuant to the Kenyan Constitution, art. 72(2), *infra* n. 7, the individual must either be charged with a crime or subject to a removal order as soon as is reasonably practicable, which is presumed to be 24 hours in non-capital cases. Human Rights Watch is only aware of three deportation orders being issued in these cases, none of which were issued within the 24-hour time limit. Human Rights Watch telephone interview with Harun Ndubi, Kenyan lawyer, September 23, 2008.

<sup>7</sup> Constitution of Kenya, art. 72(2), as amended 1998. If the defendant has not been brought to court within these time periods, then the government has the burden of proving that it was not reasonably practicable to bring the defendant to court sooner.

<sup>8</sup> Human Rights Watch interview with former detainee, Nairobi, February 23 and 26, 2007 (name withheld).

Several detainees reported being interrogated by plainclothes Kenyan police officers who worked for the Anti-Terrorism Police Unit (ATPU), a specialized wing of the Kenyan police that was set up in 2003 and receives several million dollars in US support each year.<sup>9</sup>

Kenyan security forces and foreign intelligence services also closely cooperated during this initial detention and interrogation phase. US nationals Daniel Maldonado and Amir Meshal, and four UK nationals, were questioned by US and UK intelligence agents, respectively, while at the same time being denied access to a lawyer or even an opportunity to make a phone call.<sup>10</sup>

In some cases, family members, aided by human rights organizations such as the Muslim Human Rights Forum, hired lawyers for these detainees. Lawyers filed more than 30 habeas petitions on their behalf. But in several cases, the authorities blatantly disregarded court orders and ongoing judicial proceedings by moving detainees to other places of detention or rendering them to Somalia.<sup>11</sup>

Others were arrested by the Ethiopian military in Somalia before they ever made it across the border into Kenya. Individuals reported being beaten—sometimes brutally—by the Ethiopian forces that captured them.<sup>12</sup> One detainee described being taken to a US outpost near the Kenyan border, but still inside Somalia, where two plainclothes US officials interrogated him for several hours before he was flown to Kismayo and Addis Ababa.<sup>13</sup>

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<sup>9</sup> Human Rights Watch has learned that the ATPU is expected to receive some US\$3 million in direct and indirect US aid in fiscal year 2008.

<sup>10</sup> Raymond Bonner, “A Lark Back to Africa Turns Into Somali Nightmare,” *International Herald Tribune*, April 16, 2007; Judy Peet, “Family Asks Congress’ Aid to Rescue Son,” *The Star-Ledger*, May 17, 2007; Al-Amin Kimathi and Alan Butt, eds., Muslim Human Rights Forum, *Horn of Terror: Revised Edition*, September 2008, pp. 28-29; Muslim Human Rights Forum, *Horn of Terror: Report of US-Led Mass Extra-ordinary Renditions from Kenya to Somalia, Ethiopia, and Guantanamo Bay*, July 6, 2007, p. 10.

<sup>11</sup> Muslim Human Rights Forum, *Horn of Terror*, July 6, 2007, p. 8; Muslim Human Rights Forum, *Horn of Terror: Revised Edition*, September 2008, pp. 22-23.

<sup>12</sup> Human Rights Watch interviews with former detainees, Nairobi, July 20, 2008, and Ifo Refugee Camp, Kenya, July 23 and 24, 2008 (names withheld); Human Rights Watch telephone interview with former detainee, September 9, 2008 (name withheld).

<sup>13</sup> Human Rights Watch telephone interview with former detainee, September 9, 2008 (name withheld). This account is consistent with other descriptions of a US presence in Ras Kamboni, Somalia, in January 2007. See Human Rights Watch, *Shell-Shocked*, p. 25, n. 82.

## Renditions to Somalia and Ethiopia

Over the course of three weeks—on January 20, January 27, and February 10, 2007—Kenyan officials secretly—without notifying relatives or lawyers—flew at least 85 people, including 19 women and 15 children, from Kenya to Somalia.<sup>14</sup> The January flights were chartered by African Express Airways from Jomo Kenyatta International Airport to Mogadishu; and the February flight was chartered by Bluebird Aviation from Wilson Airport to Baidoa, about 250 kilometers northwest of Mogadishu in Somalia.

Individuals described being called out of their cells in the early hours of the morning, transported to the airport, and then handcuffed, blindfolded, and boarded onto planes, without ever being told where they were being taken or why.

When the planes arrived in Mogadishu and Baidoa, Kenyan authorities handed the detainees over to Ethiopian military forces. As one detainee described the scene in Mogadishu:

The plane was surrounded by Ethiopian military when we got off. We were brought to an open area near the plane and blindfolded. Two soldiers grabbed me and yelled at me: “You are a terrorist. We will kill you. We will sell you.” Then they took me to a so dusty room in the airport with the others where we spent two nights.<sup>15</sup>

Some were flown to Addis Ababa within days, where they were held in various detention facilities. Other detainees reported being driven from Mogadishu to Baidoa, where they were held for months without charge, and interrogated and tortured by men in Ethiopian military uniforms. From there, Ethiopian authorities transported them to a military detention facility in Awassa, Ethiopia, and finally on to another military detention facility in Ambo, Ethiopia, where the torture reportedly continued.

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<sup>14</sup> Although the flight manifests list only 85 individuals, there are indications that many more may have been rendered from Kenya to Somalia in early 2007. See, for instance, Muslim Human Rights Forum, *Horn of Terror: Revised Edition*, September 2008, p. 10, n. 3. For copies of the flight manifests, see *Horn of Terror: Revised Edition*, pp. 52-55.

<sup>15</sup> Human Rights Watch Interview with former detainee, Nairobi, July 20, 2008 (name withheld).

In February 2007, Kenyan officials arrested a then-34-year-old Kenyan, Mohammed Abdulmalik, as he was crossing into Kenya from Somalia.<sup>16</sup> Abdulmalik was then transported to Nairobi, where he was held without charge, without access to a lawyer or family members, and without ever being brought before a judge. Reportedly moved out of his Nairobi jail cell on February 27, he effectively disappeared until March 26, 2007, when the US Department of Defense issued a press release saying that Abdulmalik had been transferred to Guantanamo.<sup>17</sup>

In July 2007, Kenyan officials also secretly expelled another group of three men overland into Somalia, all of whom were ultimately taken into Ethiopian custody. The Ethiopian authorities released two of these men in July 2008, but one, Adbikadir Mohamed Adan, remains in custody in an Ethiopian prison in Addis Ababa.<sup>18</sup>

Those arrested by Ethiopian forces in southern Somalia reported being taken to Kismayo, then to Baidoa and on from there.<sup>19</sup>

## **US Intelligence in Addis Ababa**

A US government official confirmed to Human Rights Watch that agents of both the Central Intelligence Agency and the Federal Bureau of Investigation questioned detainees in Addis Ababa in early 2007.<sup>20</sup>

Former detainees interviewed by Human Rights Watch have consistently described US intelligence agents as operating out of a villa. Every morning, Ethiopian guards reportedly called some number of detainees out of their cells, blindfolded them, and

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<sup>16</sup> Official Report, [Kenyan] National Assembly, April 3, 2007, p. 285 (Mr. Munya, Assistant Minister, Office of the President, acknowledging Abdulmalik's arrest and subsequent deportation). Although Kenyan authorities have denied that Abdulmalik has Kenyan citizenship, Human Rights Watch spoke to family members and neighbors who confirmed that Abdulmalik was born in Kenya to parents with Kenyan citizenship.

<sup>17</sup> US Department of Defense Press Release, no. 343-07, March 26, 2007. Kenyan authorities have claimed that they deported Abdulmalik to Somalia and do not know how he ended up in US custody in Guantanamo. See Official Report, [Kenyan] National Assembly, April 3, 2007, pp. 285-286.

<sup>18</sup> Human Rights Watch telephone interview with Al-Amin Kimathi, August 28, 2008; Human Rights Watch telephone interview with detainee, August 27, 2008 (name withheld).

<sup>19</sup> Human Rights Watch interview with former detainees, Nairobi, July 30, 2008 (names withheld); Human Rights Watch telephone interviews with former detainee, August 17 and 19, 2007, and September 9, 2008 (name withheld).

<sup>20</sup> Human Rights Watch telephone interview with FBI official, September 19, 2008 (name withheld).

drove them to the villa to be interrogated by US personnel. Every night the guards returned the detainees to various detention sites throughout Addis Ababa, where they were held without access to international monitors such as the ICRC, lawyers, or consular representatives, and were not allowed to contact their family members to inform them of their whereabouts.

One detainee said that during one of these interrogation sessions, the US officials yelled in his ear so loudly that he was convinced he would lose his hearing.<sup>21</sup> Another described being forced to stand for some five hours between interrogations with his hands cuffed in a painful position behind his back.<sup>22</sup> Others said that the US officials photographed and fingerprinted them, and then asked numerous questions. One detainee told Human Rights Watch:

They wanted to know where I was from, what I was doing in Somalia, why I was there. They didn't believe me for such a long time. They also kept on showing me pictures of people I didn't know and trying to get me to identify them.<sup>23</sup>

One detainee described being returned each night to a villa guarded by Ethiopian police, where the lights were kept on around the clock, music was blaring, and his hands and legs were tied together so that he could not move around his cell.<sup>24</sup>

Another detainee described being held for nearly two months in solitary confinement in a two-by-two meter corrugated metal cage. He said that he was moved to a communal cell in April 2007, around the same time that the US personnel stopped interrogating him.<sup>25</sup>

By May 2007, interrogations by foreign intelligence officials had reportedly ended. Within a few months, almost all of the detained foreign nationals had been sent

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<sup>21</sup> Human Rights Watch telephone interview with detainee, August 27, 2008 (name withheld).

<sup>22</sup> Human Rights Watch interview with former detainee, July 9, 2007 (name and place withheld).

<sup>23</sup> Human Rights Watch telephone interview with detainee, August 27, 2008 (name withheld).

<sup>24</sup> Human Rights Watch telephone interview with former detainee, September 9, 2008 (name withheld).

<sup>25</sup> Human Rights Watch telephone interview with detainee, August 27, 2008 (name withheld).

home, leaving a Canadian-Ethiopian named Bashir Makhtal, several Kenyans, and an unknown number of Somalis and Eritreans.<sup>26</sup>

US government officials did not respond to Human Rights Watch's request for additional comment. But US officials have previously argued that they were following the law and justified in their actions because they were investigating past attacks and current threats of terrorism.<sup>27</sup>

Some former detainees described being interrogated by other foreign intelligence officers as well. Human Rights Watch was not able to confirm these allegations.<sup>28</sup>

## US Aid to the Region

In addition to its direct role in interrogations, the US government provided indirect support to Kenyan and Ethiopian actions through the millions of dollars channeled specifically to Kenyan and Ethiopian counterterrorism initiatives and other security-related programs.

In fiscal year 2007, the United States sent Ethiopia some \$12 million and Kenya \$5 million in security-related assistance.<sup>29</sup> Both countries also shared in the \$14.2 million provided to Ethiopia, Kenya, Djibouti, and Tanzania as part of a new East Africa Regional Security Initiative.<sup>30</sup>

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<sup>26</sup> One of the Kenyans reportedly escaped in February 2008. Although the Kenyan government has long disputed these men's claims of Kenyan citizenship, documents provided to Human Rights Watch by Al-Amin Kimathi of the Muslim Human Rights Forum strongly suggest that these men are in fact Kenyan, or at least have credible claims to Kenyan citizenship.

<sup>27</sup> Anthony Mitchell, "US Questions Terrorism Suspects at Secret Prison," Associated Press, April 3, 2007 (citing unnamed US government officials).

<sup>28</sup> Human Rights Watch telephone interviews with current and former detainees, August 27 and September 9, 2008 (names withheld). Human Rights interview with former detainee, July 9, 2007 (name and place withheld).

<sup>29</sup> These figures are the sum total of US government funding provided through the following programs: Foreign Military Financing (FMF), International Military Education and Training (IMET), Nonproliferation, Anti-terrorism, Demining and Related (NADR), Peacekeeping Operations (PKO), Regional Defense Combating Terrorism Fellowship Program (CTFP), and Department of Defense funding pursuant to Section 1206 of the FY2006 National Defense Authorization Act (NDAA). See Congressional Budget Justification, Summary Tables, FY 2009, <http://www.state.gov/documents/organization/101408.pdf> (accessed September 10, 2008), pp. 13-14; Nina Serafino, Congressional Research Service Report for Congress, Section 1206 of the National Defense Authorization Act for 2006, May 15, 2008, p. 4.

<sup>30</sup> Nina Serafino, Congressional Research Service Report for Congress, Section 1206 of the National Defense Authorization Act for 2006, May 15, 2008, p. 4.

In fiscal year 2008, an estimated \$9.4 and \$18.4 million in security-related funds are expected to flow from the United States to Ethiopia and Kenya, respectively. More than \$1 million is specifically allocated to Kenya's Anti-Terrorism Police Unit, the unit that reportedly took the lead in the arrests, detentions, and interrogations in Kenya.<sup>31</sup>

## The Ethiopian Role

The Ethiopian government served as the detaining authority for foreign nationals of interest to US and possibly other foreign intelligence officers. For four months between February and May 2007, Ethiopian police and military officers transported detainees back and forth from their cells to interrogation sessions by US officials.

Between March and May 2007, Ethiopian authorities also brought several of these detainees to military court, where they were asked a series of biographical questions and then sent back to their prison cells. To our knowledge, none of the detainees were represented by a lawyer, and none were charged with a crime.

When US officials lost interest in those held, so did their Ethiopian counterparts. Within a month of the last reported interrogation by a US intelligence officer, almost all of the foreigners from outside the region—including several Swedes, an American, a Dane, and a South African—were released. Of those known to have been interrogated by the United States, only eight remain in Ethiopian custody.<sup>32</sup>

The Ethiopians also used the rendition program for their own purposes.

For years, the Ethiopian military has been trying to quell domestic Ogadeni and Oromo insurgencies that receive support from neighboring countries such as Eritrea.<sup>33</sup> The multinational rendition program allowed them to take custody of a number of people with suspected insurgent links.

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<sup>31</sup> In addition, approximately \$1.9 million-worth of security and law enforcement courses are expected to benefit the ATPU as well as other law enforcement agencies. Data provided to Human Rights Watch by US congressional staff.

<sup>32</sup> These are the eight still-detained Kenyans that were rendered from Kenya in January and February 2007. One more Kenyan was rendered in July 2007, making a total of nine Kenyans in Ethiopian custody as of this writing.

<sup>33</sup> For a detailed discussion of abuses perpetrated by the Ethiopian military against suspected insurgents, see Human Rights Watch, *Collective Punishment*. See also Human Rights Watch, *Shell-Shocked*, pp. 18-23.

Most of these men were never taken to Addis Ababa, but instead were brought from Baidoa to military detention in Awassa, Ethiopia, and then further military detention in Ambo. At each stage, Ethiopian military interrogators and guards reportedly subjected detainees to brutal beatings and torture. Detainees said that guards pulled out their toenails, held loaded guns to their heads, crushed their genitals, and forced them to crawl on their elbows and knees on gravel until they were bloodied and exhausted. They were forced to sign (or fingerprint) papers they could not read. One detainee released in 2008 explained:

They handcuffed me and tied my legs together and sat me against the wall. I was told that I was a member of the ICU. I was told that I was a terrorist. I was told that I was a member of the ONLF. I told them they were wrong. Then they started beating me. They used a big wooden stick and a metal rod and beat me on my knees, on my elbows, and on my wrists. Eventually I fainted. When I woke there were burns on the back of my left shoulder. I think they may have used electricity.<sup>34</sup>

Whereas international attention focused on the Western nationals caught up in the rendition program, little attention has focused on these men, who suffered horrific abuse and torture. Several, such as Noor and Yusuf, whose stories are detailed below, were released in February 2008 after months in detention, with only an apology. Both are now living in refugee camps on the Kenyan border, fearing for their safety and still suffering from the torture.

### **The “Disappeared”**

In April 2007, the Ethiopian Ministry of Foreign Affairs acknowledged that Ethiopia was holding in its custody at least 41 individuals who had been transferred from Kenya. It subsequently released all the women and children, as well as several men, between April and August 2007. But Ethiopian officials have never acknowledged the detention of the other rendition victims, even though all accounts indicate that the more than 85 men and women flown to Somalia from Nairobi were handed over to Ethiopian military forces then operating in Somalia as soon as they landed. Human

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<sup>34</sup> Human Rights Watch interview with former detainee, Nairobi, July 20, 2008 (name withheld).

Rights Watch's request for information from the Ethiopian authorities (see Appendix A) was never answered.

As discussed in the section "International Legal Standards" below, an enforced disappearance occurs when state officials or agents arrest or detain an individual followed by a refusal to disclose the fate or whereabouts of the person or a refusal to acknowledge the deprivation of their liberty, which places the person outside the protection of the law.<sup>35</sup>

Nine Kenyan nationals and one Canadian-Ethiopian remain in Ethiopian prisons, some 15 to 21 months after they were first arrested. The whereabouts of 22 Somalis, Ethiopian Ogadenis, Eritreans, and Kenyans rendered to Somalia in early 2007 remain unknown.

The following men are known to be in custody in Addis Ababa:

- Bashir Makhtal, a dual Canadian-Ethiopian citizen, born in Ethiopia and granted refugee status by Canada in 1991. Kenyan officials arrested Makhtal at a border crossing in December 2006, secretly flew him to Mogadishu on January 20, 2007, and handed him over to Ethiopian authorities. Three days later, Ethiopian officials flew Makhtal from Mogadishu to Addis Ababa, where he was placed in solitary confinement and kept separate from other detainees.<sup>36</sup> Makhtal's grandfather was reportedly a founding member of the ONLF, which undoubtedly made Makhtal a prime suspect for the Ethiopians.<sup>37</sup>

A now-released detainee who last saw Makhtal in July 2007, as Makhtal was being escorted from the toilet at a prison in Addis Ababa, described his

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<sup>35</sup> See UN Declaration on the Protection of All Persons from Enforced Disappearances, adopted December 18, 1992, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992), preamble.

<sup>36</sup> Human Rights Watch interview with Suleiman Abdi, Ifo Refugee Camp, July 23, 2008; Human Rights Watch interview with Ishmael Noor, Ifo Refugee Camp, July 24, 2008. Abdi was traveling with Makhtal at the time of their arrest; both Abdi and Noor were on the same plane with Makhtal from Nairobi to Mogadishu; and Ethiopian forces brought Noor and Makhtal together on the same plane to Addis Ababa. Suleiman Abdi and Ishmael Noor are pseudonyms.

<sup>37</sup> Debra Black, "Ottawa Finally Meets with Prisoner," *Toronto Star*, July 22, 2008.

condition: “He was limping. He had a deep cut in one of his legs. He looked weak. He looked so famished.”<sup>38</sup>

Still in Addis Ababa, Makhtal is reportedly slated for trial before a military tribunal for terrorism-related activities and could face the death penalty. In July 2008, Makhtal received his very first consular visit in Ethiopia, some 16 months after he had been rendered there. In August 2008, a representative of the Canadian government who met with Ethiopian Prime Minister Meles Zenawi said that Makhtal would have legal representation at his trial.<sup>39</sup> But his lawyer continues to be denied access and, as far as Human Rights Watch knows, no subsequent consular visits have been allowed.

- Eight Kenyans rendered to Ethiopia in January and February 2007: Said Khamis Mohammed, Kassim Mwarusi, Ali Musa Mwarusi, Swaleh Ali Tunza, Hassan Shaaban Mwazume, Bashir Chirag Hussein, Abdallah Khalfan Tondwe, and Salim Awadh Salim.<sup>40</sup>

Seven of these men (all but Salim Awadh Salim) were told that they were going to be released in May 2007, only to be moved to a private house that served as a detention facility in the outskirts of Addis Ababa. They were held there for almost a year, before being moved back to an old police station where they had been held previously. There, they rejoined Salim.

In February 2007, another Kenyan escaped from detention. The Ethiopian police reportedly retaliated against the remaining Kenyans, subjecting them to a brutal beating. Officers were said to have broken the leg of Swaleh Ali Tunza, a 40-year-old Kenyan who now fears he may ultimately lose his leg. Another detainee, 50-year-old Bashir Chirag Hussein, is reportedly weak and in constant pain, due in part to the beatings by the Ethiopian police. A third, Abdallah Khalfan Tondwe, said that he can no longer use his left hand.

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<sup>38</sup> Human Rights Watch interview with former detainee, Ifo Refugee Camp, July 24, 2008 (name withheld).

<sup>39</sup> Paul Koring, “Canadian in Ethiopian Jail to Get Lawyer, Envoy Says,” *Globe and Mail*, August 6, 2008; “Canadian in Ethiopia Could Face Death Penalty,” *CBC News*, June 6, 2008.

<sup>40</sup> The Kenyan government has long disputed these men’s claims of Kenyan citizenship. But documents provided to Human Rights Watch by Al-Amin Kimathi of the Muslim Human Rights Forum strongly suggest that these men are in fact Kenyan, or at least have credible claims to Kenyan citizenship.

Beatings reportedly compounded the injuries Tondwe suffered in a car accident when being transported from Mombasa to Nairobi after his initial arrest.<sup>41</sup>

The detainees described insufficient food, inadequate healthcare, and unsanitary conditions in detention. None of the detainees have ever been permitted visits by family members or an international humanitarian organization such as the ICRC, and none have had access to a lawyer since they were brought to Ethiopia.

In phone interviews with Human Rights Watch, the Kenyan detainees spoke of their plight. “I can’t sleep well. I miss my family. Please, I need you to help us to go home,” said one detainee.<sup>42</sup>

“I am Kenyan. My mother is Kenyan. My father is Kenyan. Everyone else has been sent home. Why am I still here? Why isn’t Kenya helping us?” said another.<sup>43</sup>

In August 2008, Kenyan police officers visited these men for the first time since they were deported. The officers reportedly told the eight Kenyans that they would be released within weeks.<sup>44</sup>

- Adbikadir Mohamed Adan—a Kenyan-Somali arrested in July 2007 in Kenya. Kenyan officials reportedly drove Adan and two others across the border, where they were eventually turned over to Ethiopian custody. The other two men were released in June 2008, but Adan remains incarcerated in an old police station in Addis Ababa. He is reportedly being held in solitary confinement in a two-by-two-meter cell, separated from the other Kenyans in the facility.<sup>45</sup>

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<sup>41</sup> Human Rights Watch telephone interview with detainee, August 27, 2008 (name withheld).

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> “We Will Only Act After Getting Report,” *Sunday Nation*, August 6, 2008 (Kenyan Minister of Foreign Affairs Moses Wetang’ula confirming that a team of Kenyan officers traveled to Ethiopia to interview the Kenyans reportedly in Ethiopia custody); Weekly Muslim News Update, “Expedite the Return of the Detainees,” *Friday News Bulletin*, September 5, 2008 (quoting Kenyan Internal Security Minister George Saitoti as saying that he expected the Kenyans in Ethiopia to be repatriated “within a week”); Human Rights Watch telephone interview with detainees, August 27, 2008 (names withheld).

<sup>45</sup> Human Rights Watch telephone interview with Al-Amin Kimathi, Muslim Human Rights Forum, August 26, 2008.

The whereabouts of another 22 men who were rendered from Kenya to Somalia in January 2007 remain unknown. These men were listed as passengers on the January 20 and 27 flight manifests, yet have not been heard from since. They may have been released; they may still be in Ethiopian custody; or they may have been transferred elsewhere.<sup>46</sup>

1. Tafara Basisa—rendered 1/20/07 to Mogadishu (reportedly Ethiopian Oromo)
2. Lama Takal—rendered 1/20/07 to Mogadishu (reportedly Ethiopian Oromo)
3. Badada Lami—rendered 1/20/07 to Mogadishu (reportedly Ethiopian Oromo)
4. Tesfale Kidane—rendered 1/20/07 to Mogadishu (reportedly Eritrean)
5. Saleh Idris—rendered 1/20/07 to Mogadishu (reportedly Eritrean)
6. Hussein Ali Said—rendered 1/20/07 to Mogadishu (reportedly Kenyan)
7. Salama Ngama—rendered 1/20/07 to Mogadishu (reportedly Kenyan)
8. Saidi Shifa—rendered 1/20/07 to Mogadishu (reportedly Kenyan)
9. Tsumo Solomon Adan Ayila—rendered 1/20/07 to Mogadishu (reportedly Kenyan)
10. Mugeta Tasiifa—rendered 1/20/07 to Mogadishu (nationality unknown)
11. Nur Mohammad Zain—rendered 1/20/07 to Mogadishu (nationality unknown)
12. Mohammad Hassan—rendered 1/20/07 to Mogadishu (nationality unknown)
13. Abdullahi Mohammad—rendered 1/20/07 to Mogadishu (nationality unknown)
14. Sakata Sakare—rendered 1/20/07 to Mogadishu (nationality unknown)
15. Shariff Jamal—rendered 1/20/07 to Mogadishu (nationality unknown)
16. Jamal Abdal—rendered 1/20/07 to Mogadishu (nationality unknown)
17. Ahmed Hassan—rendered 1/20/07 to Mogadishu (nationality unknown)
18. Mohammad Abdullah—rendered 1/20/07 to Mogadishu (nationality unknown)
19. Abdijani Ahmed—rendered 1/20/07 to Mogadishu (nationality unknown)
20. Abdurashid Mohamed—rendered 1/27/07 to Mogadishu (reportedly Kenyan)
21. Abdi Kadir Maalin—rendered 1/27/07 to Mogadishu (reportedly Somali)
22. Hassan Shaban—rendered 1/27/07 to Mogadishu (nationality unknown)

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<sup>46</sup> This list has been updated based on Human Rights Watch's information as of September 29, 2008. In addition to those that appeared on the flight manifests and are listed here, the names of two others reportedly held in Mogadishu—Mohamed Said Mohamed and Nasru Toko, both said to be Kenyans—were relayed in text messages from fellow detainees to their relatives on January 21 and 22, 2007. Telephone interview with Al-Amin Kimathi, September 29, 2008.

## Case Studies

### Ishmael Noor

“I have suffered three times. I lost my family. I was beaten and tortured. And then I was arrested and tortured again. Now I am a refugee whose life hangs in the balance. I have nothing left to lose,” Noor told Human Rights Watch.<sup>47</sup>

Noor, a 37-year-old shepherd from the Ogaden region of Ethiopia, is now living in a refugee camp along the Kenya-Somali border.

Noor told Human Rights Watch that in 2004, days after his marriage, Ethiopian forces murdered his wife. They had already killed Noor’s mother, father, brothers and sisters. Two months later, members of the Ethiopian army attacked him while he was bringing his goats and sheep to a local watering hole. Noor said that they slaughtered some of the animals with a knife and shot the rest. They then beat him unconscious and slashed his shoulder to the bone.

A young girl who saw the attack alerted some local villagers, who slowly nursed him back to health. Noor spent two months recuperating, before starting on what turned out to be a three-month journey out of Ethiopia, through Somaliland, and into southern Somalia. He eventually ended up in Doble, a small Somali town near the Kenyan border where his half-sister lived. “At times I was so desperate for food, I ate grass,” Noor told Human Rights Watch.

Noor’s half-sister fed and housed him for close to a year. But the lingering pain from his wounds persisted.

“At times, I would lose all feeling in my left side, like I was semi-paralyzed. It would take up to a week for the feeling to come back. Other times, my left side hurt so much it felt like my bones were cracking,” he said.

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<sup>47</sup> The account in this section is based on a Human Rights Watch interview with Ishmael Noor, Ifo Refugee Camp, Kenya, July 24, 2008. Ishmael Noor is a pseudonym.

Eventually, his half-sister told him she could no longer afford to support him and talked him into seeking medical care at one of the refugee camps across the border in Kenya. “I didn’t want to go, but she insisted,” Noor said.

### *Arrest and Detention in Kenya*

Noor joined seven other families traveling across the border, sometime around late December 2006 or early January 2007. He spent two days in the transit center in Liboi, Kenya, before boarding a bus to the nearest refugee camp, about two hours away.

But the journey was cut short when the bus was stopped by Kenyan security personnel. The officers ordered all the passengers to get off the bus and show identification.

Noor failed to produce identification, and the officers pulled him aside along with four Somali girls. The girls produced refugee ration cards and were released, but the police held onto Noor, demanding 1,000 Kenyan shillings (about US\$15) as a bribe. Noor said that he offered all the money he had—about 600 Kenyan shillings—but the officers were not satisfied. The bus drove away, leaving Noor with the security officers.

Noor said that the police then put him in the back of a Land Cruiser and drove him to a local police station, where he spent four nights. On his last night there, five Oromos and one Somali joined him; all six said they had been arrested crossing the border. The next day, a Kenyan officer took them to Garissa, the regional police headquarters, where they spent another four nights in a small room with more than 30 others, before being transported to Nairobi.

Noor said that in Nairobi, Kenyan officials interrogated him twice. They asked him about his background, including repeated questions about his connections with the Islamists in Somalia and the Ogaden National Liberation Front (ONLF), an insurgent group that operates in Ethiopia. After the second interview, a Kenyan-Somali official told Noor that there was no evidence he had done anything wrong, and promised that he would be released.

### *Rendition to Somalia and Ethiopia*

Kenyan police officers called Noor out of his cell at around 4:00 a.m. on January 20. He expected to be released. Instead, he was driven to the Nairobi airport, where he joined some 30 others and was forced to board a large white plane. Said Noor:

We were handcuffed behind our backs with white plastic cuffs that were very painful. Our shoes were removed and we were pushed into the plane. Our legs were tied and we were tied down to the seat of the plane. I saw one man being beaten—officers were kicking him, punching him, and holding him down. I don't know why.

Noor said he had no idea where they were going until they landed in Mogadishu, the capital of Somalia. They were met by the very forces that Noor had fled a little more than a year before—the Ethiopian military.

“I thought that the Ethiopian forces would shoot and kill me,” Noor said. “I was so scared.”

The Ethiopian military led him and the others to a big open space near the sea, where they spent several hours in the hot sun with no water. All 30 were then herded into a dusty room in the airport.

Three days later, Noor was called out of his room, along with Canadian-Ethiopian Bashir Makhtal, 11 Oromos, and three Eritreans. They were again handcuffed and taken to what looked like an Ethiopian military plane—again, with no knowledge of where they were going or why. Several hours later, they landed in Addis Ababa.

### *Interrogations and Torture in Ethiopia*

Noor spent four months in Maekalawi prison—the central investigation department in the center of Addis Ababa—in a cell with several others, with no fresh air and no natural light.

Every few days, members of the Ethiopian military called Noor out for interrogation. He said the questions were almost always the same:

They asked me: “Are you a terrorist? Are you part of the Islamic Courts Union? Are you part of ONLF?” When I said no, they told me they would chop me into little pieces if I did not confess. But I refused to confess to something I am not.

Then they would start to beat me. They beat me from head to toe. They used a stick made from a tree called *bahrasaf* that is known for its hardness. The stick was about two feet long, two to three inches wide. They also used the butt of their gun. They beat me on my upper arms, on my legs, on the back of my head, on the bottom of my feet. At one point they broke my foot by my pinky toe. Sometimes it is still so painful that I cannot sleep. They would tie my hands behind my back and force me to lean against the wall. If I fell over, then they would beat me on my side that was exposed.

If they thought I was too strong, they would target my testicles. Then I would usually fall unconscious. I often urinated blood. Even now, I still sometimes have drops of blood in my urine. I haven’t had an erection since that time.

Noor said that the interrogations and beatings usually lasted 30 minutes or more. They happened every few days. He said that one time he was interrogated and beaten almost continuously for two full days.

Sometime in June 2007, the Ethiopian military transported Noor to a military base in Ambo, in Oromia, central Ethiopia, where he joined several other Somalis and Oromos who were already there.

After a few months, plainclothes interrogators who reportedly came from Addis Ababa showed up to do their own interrogations. Noor said that the first time they just took pictures and fingerprints and asked questions, without any beatings.

But a month later they came back:

They started with the same questions: “Are you a terrorist? Are you al Qaeda? Are you part of the Islamic Courts Union? Are you ONLF?” When I said no to all, they put a pistol to my head and told me to confess or I’d be shot dead. They didn’t shoot, but started beating and kicking me.

Once I picked up a stick and repelled the hand of an interrogator who was about to strike me. They then started beating me all over my body—my head, my hands, my side, my back. Eventually I fainted. When I awoke, an interrogator who spoke Somali came to help. He took me to get fresh air and water. He then took me to a room, gave me a document with lots of pages and told me to fingerprint each page. I cannot read or write, and no one told me what the document said.

Noor said that he was forced to put his fingerprints on three documents during his time in captivity. He claimed that he was never told what any of them said.

### *Release and Return to Kenya*

Sometime in late January 2008, Ethiopian military officers told the Ambo prisoners that they were all being sent home. A day later, a large group of Oromos were reportedly released. Ethiopian authorities then loaded the 28 remaining Ethiopian Ogadenis and Somali nationals into a vehicle and drove them over the Somali border to Baidoa.

All 28 were then handed to military officers working for Somalia’s Transitional Federal Government. A general came and addressed them. He told them that he was sorry, that he realized the arrests were mistakes, and that they would be free. When someone asked if they could have a letter acknowledging their innocence, he said no. When someone else asked if they could have money or transport home, he again said no. They were then released into the town of Baidoa, without food or money, or any way to get back home.

Several local residents took them in, clothed them, fed them, and helped Noor and several others get enough money together to make the trip back to Doble, near Kenya's border.

Noor showed up at his half-sister's home in late February, some 14 months after he originally left. "She was shocked," Noor said. "She thought I was dead."

After a few weeks his half-sister once again told him she could no longer afford to keep him there and urged him to go to Kenya for medical care. He crossed the border once again—headed for the same refugee camp he had tried to reach over a year earlier. He has been living there since March 2008, still limping and urinating blood.

"See this stone?" Noor asked, unwrapping the plastic around a small pebble he pulled out of his shirt pocket. "I took this stone when I left the prison in Ethiopia. This is my remembrance. No human rights group, no journalist, no family member, no government ever came to visit me. I can't read or write. This is my only proof that I was arrested, held, and tortured there."

### **Salim Awadh Salim**

Salim Awadh Salim, a 36-year-old Kenyan, is to date being held without charge in an Ethiopian prison in Addis Ababa—some 20 months after he was arrested.<sup>48</sup>

According to Salim's wife, Fatima Chande, they traveled from Kenya to Somalia in 2006 looking for work. When after about five months the fighting in Somalia intensified, he and Fatima decided to return to Kenya.

They joined several others—including a young woman named Halima—as they made their way across the border and into the southern Kenyan town of Kiunga. As they later learned, Halima Badrouine is the wife of Fazul Abdullah Muhammad, a terrorist suspect long wanted by the United States for his alleged role in the 1998 bombings of the US embassies in Tanzania and Kenya.

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<sup>48</sup> Unless otherwise specified, the account in this section is based on a Human Rights Watch telephone interview with Salim Awadh Salim, August 27, 2008.

The day after their arrival in Kiunga, the local chief told them that they needed to register with the police. The group of eight, including four children, went to the police station as instructed. But instead of registering them, the officer in charge ordered their arrest.

Four days later, Kenyan authorities transported all eight men, women, and children to Nairobi. Men and women were separated into different cells. Plainclothes officers who were believed to work for the Kenyan Anti-Terrorism Police Unit interrogated them. At one point, the officers reportedly forced Salim to strip naked as he was interrogated about his alleged connection to Fazul Abdullah Muhammad.

On January 27, 2007, Kenyan authorities called both Salim and Fatima out of their cells, blindfolded and handcuffed them, took them to the airport, and forced them onto a plane with approximately 40 others. They did not know where they were going until they landed in Mogadishu. Men and women were separated and held in rooms guarded by Ethiopian soldiers.

Ten days later, they were flown by military plane to Baidoa. They spent a night sleeping on the ground near the plane, before being flown to Addis Ababa the next morning.

### *Addis Ababa*

At first, Salim and Fatima were held in the same detention center. But within a week or so, Salim was moved to solitary confinement in what has been described as a secret house run by Ethiopians. Ethiopian officers cuffed his hands behind his back and tied his legs together whenever he was in the cell.

Each morning, Ethiopian officers took him to another secret house for interrogations. There, US interrogators questioned him about his background, his travels to Somalia, and the terrorist suspect, Fazul Abdullah Muhammad.

After two months, Ethiopian officers returned Salim to the old police station where Fatima was being held.

Ethiopian authorities released Fatima in April 2007. As she was leaving, Salim asked her to pray for him and said that he hoped to join her within a week.<sup>49</sup>

Around that time, the pace of interrogations of Salim slowed. Daily interrogations became weekly interrogations, and then bi-monthly. In May 2007, his US interrogators reportedly told him that they believed him, that they realized he was telling the truth, and that he would soon be released. That was his last interrogation.

A few days later, eight other Kenyans were told that they were going to be released and moved out of his cell. Salim spent close to a year alone, thinking that the others had all been sent home to Kenya. A former detainee who last saw Salim in June 2007, described him as “frail, extremely depressed, and starting to lose all hope.”<sup>50</sup>

In May 2008, seven of the Kenyans were returned to his cell, where they are now being held together. They had never been released.

None have ever been permitted a visit by family members or a humanitarian organization such as the ICRC, granted access to a lawyer, or ever charged with a crime.

“All the other foreigners that we were held with here have been released. No one cares about us,” said Salim. “Please help us.”

## Ali Yusuf

Yusuf, a 30-year-old father of four, was working for the United Nations in Somalia when he was arrested by the Ethiopian military in January 2007. He spent 13 months in Ethiopian custody, where he alleges that he was brutally beaten and tortured before his release in February 2008.<sup>51</sup>

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<sup>49</sup> Human Rights Watch interview with Fatima Chande, Moshi, Tanzania, April 28, 2007.

<sup>50</sup> Human Rights Watch telephone interview with former detainee, September 9, 2008 (name withheld).

<sup>51</sup> The account in this section is based on a Human Rights Watch interview with Ali Yusuf, Nairobi, Kenya, July 28, 2008. Ali Yusuf is a pseudonym.

On January 2, 2007, Yusuf and his driver Ahmed were on their way to the Somali town of Kismayo when they were stopped by an Ethiopian military convoy of about 15 trucks. According to Yusuf, at first the officers said they wanted directions and an escort to a nearby town. But soon they started accusing both Yusuf and Ahmed of membership in al Qaeda.

Yusuf told Human Rights Watch that the Ethiopian soldiers demanded that he and Ahmed get out of their car. Ethiopian officers stripped Yusuf down to his underwear and a vest, and beat and kicked him until he fell unconscious. When he regained consciousness, he was tied up under a tree with Ahmed, with fighting going on all around them.

After several days, they were taken to the airport in Kismayo and then flown to Addis Ababa, where they spent almost three months in a shared prison cell.

Their conditions then sharply deteriorated. In March 2007, they were taken to a military base in Awassa, about four hours south of Addis Ababa. For five months they lived in an underground cell, with no light and no fresh air. Food generally consisted of two biscuits a day. Yusuf described a pattern of beatings and abuse:

Often at night, the military officers would come to our cell and hit our heads and bodies against the wall. Sometimes they would hit and kick me in the testicles.

One time they put a knife in my shoulder and told me I was al Qaeda. When I said no, I wasn't, they would move the knife around in my shoulder. I was so weak and malnourished that I hardly even bled. But my shoulder still hurts from that injury.

Sometime in July or August 2007, Yusuf and Ahmed were moved once again—this time to Ambo. Although a number of other Somalis were being held in Ambo at the same time, Yusuf and Ahmed were kept in a separate, underground cell.

According to Yusuf, the interrogations continued:

The interrogators kept insisting that I was transporting chemical weapons for al Qaeda. I didn't know what they were talking about. Finally, they showed me the first aid kit they had taken out of my car when I was first arrested. They took out the flares used for emergencies. They were the plastic kind, with liquid inside, that created large floodlights when broken in two. When I tried to explain, they beat me. Finally, I convinced them to let me show them that they were just lights. But even after that, they still said I was al Qaeda.

Another time they cracked the butt of a gun over my head. When I started to faint, a different officer held me up and told me I was a terrorist. I still have the scars from that beating.

On January 26, 2008, Ethiopian officers told Yusuf and Ahmed that they were going home. The officers took Yusuf and Ahmed outside where they joined the 26 other Somalis being held in Ambo. It was the first time that they had seen the others. It was also the first time they had seen daylight in months. Yusuf said:

My eyes could not adjust to light. Everything was so blurry. It hurt to look. They tried to feed us, but I couldn't even eat. I was so weak. I could barely stand.

On February 5, Ethiopian authorities turned over Yusuf, Ahmed, and the other Somalis to Somali military officers. A general from the Transitional Federal Government apologized to them, told them they were innocent, and ordered their release. None of them had any money, food, or clothes, other than what they were wearing.

A hotel owner let Yusuf and Ahmed stay at his place, agreeing to accept payment later. Yusuf borrowed a phone, and called home. It was the first time his family had heard from him since his arrest. A few days later, UN officials helped arrange his transport home.

## **Kamilya Mohamed Tuwein**

Kamilya Mohamed Tuwein, a 43-year-old mother of three from Dubai, traveled with two business partners to Nairobi on January 9, 2007, in the hopes of securing a deal to supply diesel from Kenya to Tanzania. Their meetings were delayed until January 11, so they went to Malindi in Kenya to pass their two free days.<sup>52</sup>

On January 10, Kenyan security agents showed up at their hotel and raided their rooms. They returned again that evening, ordered the three to pack their things, and took them to the police station. When Tuwein asked why they were arrested, the police would not answer.

The next day, Kenyan security officers drove Tuwein, her two business partners, and four others to Nairobi. “When we arrived at Nairobi police headquarters, the police greeted us by saying, ‘Welcome, al Qaeda,’” Tuwein said.

The police officers took Tuwein’s cell phone and passport and interrogated her for more than three hours about her alleged al Qaeda connections. They took her to another police station, where she spent 17 nights in a women’s cell that she described as smelly, dirty, and awful. She told Human Rights Watch:

We kept asking to speak to our embassies. They said, “When the right time comes.” At one point, one of the police commanders told us if we paid a 35,000 shilling (US\$500) bribe, we would be set free.

One of the other women’s daughters hired a lawyer after they had all been held in the cell for about two weeks. The lawyer filed a habeas petition, but before Tuwein could be brought to court, she was rendered to Somalia.

On January 28, 2007, Kenyan officials took Tuwein to the airport and forced her onto a government-chartered airplane headed for Mogadishu, without telling her where she was going or why. It was her first time in Somalia.

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<sup>52</sup> The account in this section is based on a Human Rights Watch interview with Kamilya Mohammed Tuwein, Dubai, UAE, April 4, 2007.

After arrival in Mogadishu, Ethiopian soldiers separated the male passengers from the women and children. They took the women and children—about 22 in total—to a crowded, windowless room in the airport, where the group was held for 10 days. Several of the other women were pregnant.

On February 5, Ethiopian soldiers took the entire group from the airport room and loaded them onto a military plane. They spent one night in Baidoa, before being taken to Addis Ababa the next morning. Tuwein was put in a cell with three other women—including Halima Badrouine, the wife of Fazul Abdullah Muhammad, and Fatima Chande, the wife of Salim Awadh Salim—and four children.

“They didn’t even let me call home, to let my children know I was alive,” Tuwein explained. “Finally I stopped eating. I went on a hunger strike for three days. All I wanted was to be able to make a phone call.”

After about two weeks, Ethiopian authorities took Tuwein and six other women to a villa outside of town—about a 45-minute drive. She told Human Rights Watch that a bearded, Caucasian, English-speaking man, who said that he was from a US government agency, took her fingerprints and photos, and asked her several questions once she arrived at the villa.

In the evening, the Ethiopian officials returned Tuwein and the others to their prison cells in Addis Ababa. Tuwein told Human Rights Watch that she was only taken to the villa one time, but that Fazul Abdullah Muhammad’s wife, Halima, was transported there daily for a week.

Tuwein was released in March 2007, three months after she was first arrested. She was never visited by an embassy representative, an independent humanitarian agency such as the ICRC, or a lawyer at any point during her custody in Kenya, Somalia, or Ethiopia. She was not allowed to make a phone call home until the day that she was released.

## Suleiman Abdi

Abdi is a 40-year-old ethnic Somali from the Ogaden area of eastern Ethiopia, now living in a Kenyan refugee camp along the Somali border.<sup>53</sup>

Abdi left the Ogaden region in 2004, and moved to Doble, a border town about 30 kilometers from Liboi, one of the main crossing points into Kenya. He regularly traveled back and forth to Kenya to buy and sell goods.

Around December 28, 2006, Abdi joined a group of seven men—including Canadian-Ethiopian national Bashir Makhtal—headed for the border. Abdi said that he was planning to stay in Kenya only briefly before returning to his home in Doble. But before they reached the Kenyan-side transit center, they were intercepted by Kenyan police. The police ordered them out of their car and into a police vehicle, and drove them to a nearby police station.

“I protested. I crossed the border all the time,” Abdi told Human Rights Watch. “But they didn’t respond to me, and I was taken.”

The next day, Kenyan police moved them to the regional headquarters in Garissa, where they were held for five nights in a congested cell and interrogated by plainclothes police. Said Abdi:

They interviewed me twice and asked the same things: where I was from, where I grew up, whether or not I had any links with the Islamic Courts Union (ICU). At the end of the second interview, a Somali-speaking officer told me that there was no evidence I had any connections with the ICU, but that I would be charged with being illegally in Kenya.

On January 15, 2007, Kenyan police bundled Abdi and several others onto police vehicles and drove them to Nairobi. Five days later, on January 20, security officers called Abdi out of his cell and drove him to the airport, where about 30 other

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<sup>53</sup> The account in this section is based on a Human Rights Watch interview with Suleiman Abdi, Ifo Refugee Camp, Kenya, July 23, 2008. Suleiman Abdi is a pseudonym.

detainees had already been assembled. Officers herded them onto an African Express Airways plane, cuffed their hands behind their back and tied their legs to the seat. The plane landed in the Mogadishu airport, surrounded by Ethiopian military.

After four nights, Ethiopian military officers drove Abdi and several others to Baidoa, where they were put into a tent with some 80 others, mostly ethnic Oromos. According to Abdi, he was then subjected to interrogations and torture:

Every day interrogators would call different people out for interrogations. After two weeks, the interrogators—an Ethiopian and a Somali interpreter—called me. They said I was a member of the Islamic Courts Union, a war criminal, a terrorist plotter. I told them they were wrong. They started torturing me.

They pulled out my toenails. They beat me with a wooden stick on my hands, on the tops of my feet, on my knees, on the left side of my face. Eventually I fainted. Other detainees told me that the interrogators dragged me back to the tent, still unconscious.

The next day, Ethiopian military officers loaded Abdi and several others onto military vehicles for a three-day journey to Awassa, Ethiopia. The left side of Abdi's face become swollen from the beatings and affected his vision. He said:

I started to feel like I had a big ball in my head. One morning, I couldn't see. I asked for a light. Everyone started laughing because it was morning and bright. For the next three months, I couldn't see at all. My fellow prisoners helped me with everything—eating, going to the toilet, everything. I wouldn't have survived without them.

Eventually, military officers took pity on Abdi and took him to a doctor who gave him some drops for his eyes. Slowly, he started to recover vision in his right eye. It took almost a year for him to be able to see light out of his left eye.

“Even now, I can’t see clearly out of my left eye,” Abdi said. “I only see vague shapes and color.”

In July 2007, Ethiopian authorities again moved Abdi, this time to Ambo, where he was held with several Oromos and Somalis—including Ishmael Noor. The interrogations continued, carried out by plainclothes officers who reportedly came from Addis Ababa. “The questions were always the same,” Abdi said. “They asked about my biography. They wanted me to say that I was a member of the ICU or ONLF. When I wouldn’t agree, they would beat me.”

Abdi was released in February 2008, one of the 28 men taken to Baidoa and handed over to military officers belonging to Somalia’s Transitional Federal Government. He has since moved his entire family to a refugee camp in Kenya, close to the Somali border:

I was in jail for 13 months and six nights. I was never allowed a phone call home. I was never taken to court. I was never seen by the ICRC or any rights group. I never received any sympathy or help from any government or any individuals. Now I have no peace. I am scared.

## **Swaleh Ali Tunza**

Swaleh Ali Tunza is a 40-year-old Kenyan who has been held without charge by the Ethiopians since January 2007.<sup>54</sup>

According to family members and an eyewitness, Kenyan officials arrested Tunza in Kiunga in early January 2007 and secretly flew him to Mogadishu on January 28, where he was handed over to Ethiopian authorities, and ultimately transported to Addis Ababa.

For two months, Ethiopian authorities held him incommunicado in solitary confinement, in a small two-by-two-meter cage-like cell made of corrugated iron. In

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<sup>54</sup> Unless otherwise specified, the account in this section is based on a Human Rights Watch telephone interview with Swaleh Ali Tunza, August 27, 2008.

the mornings, they regularly took him to a villa to be interrogated by US officials. In the evenings, they returned him to his cell and allegedly handcuffed him in a painful position.

Tunza told Human Rights Watch that the US officials showed him photographs of people for him to identify. They accused him of connections to the ICU and terrorism and questioned him about alleged associations. His hands were frequently cuffed behind his back in painful positions. At least once, Ethiopian guards reportedly forced him to stand for hours on a stone block in between interrogations.

In April 2007, the interrogations ended. The Ethiopian officials moved Tunza out of solitary confinement into a cell with others. A month later, they told him he would be released—only to move him and seven other Kenyans to a separate place of detention.

In February 2008, Ethiopian police officers broke Tunza’s leg just above his ankle during a beating following the escape of one of the other detainees. Tunza said that although he spent almost a month in the hospital, his leg never properly healed, and is now swollen and causes constant pain. Tunza worried that his leg may ultimately need to be amputated.

In the 21 months Tunza has been in Ethiopian custody, he has never been charged with a crime, never visited by a lawyer or a humanitarian agency, and never allowed to speak with his family.

His brother told Human Rights Watch, “I miss him so much. Our family needs him.”<sup>55</sup>

## **Abdullah Hamid**

Hamid, 42 years old, heard that the Islamic Courts Union had brought peace to Mogadishu, and decided to travel there in late 2006. But when the Mogadishu airport was bombed on December 25, he became scared for his safety and joined a

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<sup>55</sup> Human Rights Watch telephone interview with Abdallah Ali Tunza, brother of Swaleh Ali Tunza, September 4, 2008.

group of about 30 people, including several who were sick or injured, going to Kenya.<sup>56</sup>

On January 8, 2007, Ethiopian military forces fired upon the group near the Kenyan border. Hamid and others escaped into the forest where they hid for the night. The next day, Ethiopian soldiers captured Hamid as he went to collect water. They gagged, bound, and beat him, and then airlifted him by helicopter to Ras Kamboni, a Somali town near the Kenyan border.

Upon arrival in Ras Kamboni, Ethiopian military forces drove him about 20 minutes to an area that Hamid described as an “American outpost.” According to Hamid, three US officials—two white men and a black man—questioned him about what he was doing in Somalia and told him he had better cooperate or they would hand him over to the Ethiopians.

After about three hours, the US officials did in fact hand him to the Ethiopians, who flew him to Kismayo, where he was kept for three days before being taken to Baidoa and then Addis Ababa.

Upon arrival in Addis Ababa, the Ethiopian authorities took Hamid to a private house, where he was put in a room by himself, with his hands cuffed behind his back and legs shackled at all times he was in the cell. (He later learned that Salim Awadh Salim was held there as well.) Hamid described the detention facility:

They would often play music all day and night because they knew we didn't like to hear music. They kept the lights on and would poke their heads in at any time. The handcuffs were made of rope and tied so tight. It was so painful. In fact, I still have scars from where the rope cut into my skin. But they also brought us really good food. I think they wanted us to be well-fed so that we would be helpful during the interrogations.

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<sup>56</sup> The account in this section is based on Human Rights Watch telephone interviews with Abdullah Hamid, August 17 and August 19, 2007, and September 9, 2008. Abdullah Hamid is a pseudonym. His nationality has been withheld at his request.

Just about every morning, the Ethiopian guards took him to a villa for interrogations. Usually he was taken to a villa with US officials, where he was asked to identify people in photos and all kinds of questions about what he was doing in Somalia. “I knew they were Americans because they talked about contacting the White House,” Hamid said. Hamid reported being taken to other villas where he was interrogated by other foreign intelligence officials as well.

After about a month, Hamid went on a hunger strike, demanding to be taken to court. In March 2007, he was brought before a military court with several others. The judge told them that the court would determine whether they were prisoners of war or illegal combatants. His request for a lawyer was denied. At the next court session a month later, the military prosecutors said they did not have enough evidence and that they needed to do further investigation. He was never brought back to court.

Hamid told Human Rights Watch that sometime around April 2007, the Ethiopian military moved him from the private house to an old police station on Haile Salassie road where he remained in solitary confinement, held in a two-by-two-meter cage. Then, in May he was moved to a cell with several others, and eventually released in June.

“Nobody knew what happened to me,” Hamid said. “I thought I would never see my family again. I thought about committing suicide. Now I am just so happy to be free.”

## International Legal Standards

The systematic rendition of individuals from Kenya to Somalia, and Somalia to Ethiopia, violated several fundamental human rights guarantees under international law. These include the prohibitions on arbitrary detention; torture and cruel, inhuman, or degrading treatment; and enforced disappearance.<sup>57</sup>

The Ethiopian government violated international law in its torture and other mistreatment of persons in custody. Ethiopia ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1994. Both conventions prohibit torture and cruel, inhuman, or degrading treatment.

By rendering detainees to Somalia, Kenya violated its obligation not to “expel, return (‘refuter’) or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.”<sup>58</sup> In 2006, the UN Committee against Torture, the international expert body responsible for monitoring compliance with the Convention against Torture, explained that in order to fulfill the non-defilement obligation, states “should always ensure that suspects have the possibility to challenge decisions of defilement”—something the Kenyan government has failed to do.

The Somali Transitional Federal Government similarly violated its non-refoulement obligation to the extent that it helped facilitate the deportations from Somalia to Ethiopia.<sup>59</sup>

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<sup>57</sup> See, for example, International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, arts. 7 & 9; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987; Declaration on the Protection of All Persons from Enforced Disappearances, G.A. res. 47/133, 47, U.N. GAOR Supp. (No 49) at 207, U.N. Doc. A/47/49 (1992).

<sup>58</sup> Convention against Torture, art. 3(1).

<sup>59</sup> Somalia ratified both the ICCPR and the Convention against Torture in 1990.

Kenya also violated international law when it expelled individuals who, based on their identification documents, appeared to be Kenyan citizens and those with valid Kenyan visas or residency documents. The Kenyan government's deportation of Kenyan nationals and other persons lawfully in Kenya to Somalia without judicial or other competent review violates fundamental rights against arbitrary deportation provided under the ICCPR.<sup>60</sup>

Kenya and Ethiopia's detention of men, women, and children without access to a judicial authority and without charge, and holding them incommunicado from family members, legal counsel, and diplomatic representatives, violated international law prohibitions on arbitrary detention and enforced disappearances.<sup>61</sup>

In 2006, the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance (Convention against Enforced Disappearance). The convention defines "enforced disappearance" as:

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>62</sup>

The Convention against Enforced Disappearance prohibits enforced disappearance both in peacetime and wartime. It requires states to hold all detainees in officially recognized places of detention, authorize communications with detainees' families

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<sup>60</sup> ICCPR, art. 12 ("No one shall be arbitrarily deprived of the right to enter his own country"), and art. 13 (concerning aliens lawfully in the territory of a state party to the ICCPR).

<sup>61</sup> Article 9 of the ICCPR states that "[n]o one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Incommunicado detention arises when detainees are denied access to lawyers, family members, and physicians. In 2003, the UN Commission on Human Rights passed a resolution holding that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture." 147/1983, Selected Decisions of the Human Rights Committee under the Optional Protocol, UN Doc. CCPR/C/OP/2 1990, p. 176.

<sup>62</sup> International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly on December 20, 2006, opened for signature on February 6, 2007, art. 2. The treaty will enter into force 30 days after 20 states have ratified it in accordance with article 39.

and legal counsel, and give competent authorities access to detainees and maintain official records of all detainees.<sup>63</sup> Kenya signed the convention on February 6, 2007, but has not yet ratified it.

The UN Working Group on Enforced or Involuntary Disappearances has stated that the crime of enforced disappearance “is a continuous crime until the fate or whereabouts of the disappeared person becomes known.”<sup>64</sup> Persons “disappeared” in Kenyan, Somali, or Ethiopian custody who have since been transferred elsewhere remain the legal obligation of the relevant state so long as their fate or whereabouts remain unknown.

Finally, while the US government was not directly responsible for arresting, detaining, or rendering individuals into Ethiopian custody, it definitely knew of the renditions, and, at a minimum, took advantage of the abusive activities of the Kenyan, Somali, and Ethiopian governments to interrogate terrorist suspects of interest, raising serious concerns about US government complicity in the abuses. The US government also provided substantial funds to the Ethiopian military, supported its operations in Somalia, and trained Kenyan security forces in counterterrorism. It continues to supply millions of dollars in counterterrorism assistance to both Kenya and Ethiopia, describing these nations as key partners in the region, without ever publicly raising concerns about ongoing arbitrary detentions and rendition-related abuses.

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<sup>63</sup> Convention against Enforced Disappearance, arts. 1, 17.

<sup>64</sup> Report of the UN Working Group on Enforced or Involuntary Disappearances, Commission on Human Rights, E/CN.4/2006/56, December 27, 2005, para. 10.

## Acknowledgements

This report was written by Jennifer Daskal, senior counterterrorism counsel at Human Rights Watch. It is based on research conducted by Daskal, Leslie Lefkow, senior researcher with the Africa Division, Joanne Mariner, terrorism and counterterrorism director, Ben Rawlence, a researcher with the Africa Division, and Elijah Zarwan, a consultant with the Middle East and North Africa Division. Laura Dauban and Rebecca Musarra, interns in the Terrorism and Counterterrorism Program, provided research assistance.

The report was reviewed and edited by Lefkow and Mariner, as well as James Ross, legal and policy director, and Joseph Saunders, deputy program director. Thomas Gilchrist, associate in the Africa Division, and Katharine Wies, associate in the Terrorism and Counterterrorism Program, provided production assistance, as did Grace Choi, publications director; Jim Murphy, online editor; Anna Lopriore, photography specialist; Ella Moran, multimedia specialist; and Fitzroy Hepkins, production manager. John Emerson designed the map.

Human Rights Watch would like to express gratitude to Al-Amin Kimathi, Chair of the Muslim Human Rights Forum, Kenya, and all of the staff and volunteers that work there, for spending so much time sharing material and information with Human Rights Watch. And we are particularly grateful to the many rendition victims who spoke with Human Rights Watch, despite concern that they might face repercussions from the authorities.

## Appendix A. Letter to the Ethiopian Government, August 21, 2008

August 21, 2008

Hon. Seyoum Mesfin  
Minister of Foreign Affairs  
Addis Ababa, Ethiopia

*Via facsimile*

Hon. Assefa Kesito  
Minister of Justice  
P.O. Box 1370  
Addis Ababa, Ethiopia

*Via facsimile*



[www.hrw.org](http://www.hrw.org)

Dear Mr. Mesfin and Mr. Kesito:

We are writing to request information about several individuals who we believe were transferred to Ethiopian custody in early 2007 and whose whereabouts are now unknown.

As you know, at least 85 individuals were deported from Nairobi, Kenya, to either Baidoa or Mogadishu, Somalia, in January and February 2007. We understand that Ethiopian military forces then operating in Mogadishu and Baidoa took custody of all of these men, women, and children, and ultimately transported them to Ethiopia. In April 2007, the Ministry of Foreign Affairs acknowledged that Ethiopia was holding at least 41 individuals in its custody and we welcome the fact that all the women and children, and a number of men, were released between April and June 2007.

However, many of the individuals rendered from Kenya and Somalia continue to be held in Ethiopian prisons, without access to independent, international monitors, such as delegates from the International Committee of the Red Cross (ICRC). The whereabouts of many others remain unknown.

We request that you provide information about the following men, who either continue to be held in Ethiopian custody or whose whereabouts are unknown:

1. Bashir Makhtal – rendered 1/20/07 to Mogadishu (Canadian)
2. Tafara Basisa – rendered 1/20/07 to Mogadishu (reportedly Ethiopian)

3. Lama Takal – rendered 1/20/07 to Mogadishu (reportedly Ethiopian)
4. Badada Lami – rendered 1/20/07 to Mogadishu (reportedly Ethiopian)
5. Tesfale Kidane – rendered 1/20/07 to Mogadishu (reportedly Eritrean)
6. Osman Mohammad Badran – rendered 1/20/07 to Mogadishu (reportedly Eritrean)
7. Saleh Idris Salim – rendered 1/20/07 to Mogadishu (reportedly Eritrean)
8. Saidi Shifa – rendered 1/20/07 to Mogadishu (reportedly Kenyan)
9. Salama Ngama – rendered 1/20/07 to Mogadishu (reportedly Kenyan)
10. Hussein Ali Said – rendered 1/20/07 to Mogadishu (reportedly Kenyan)
11. Tsumu Solomon Adan Ayila – rendered 1/20/07 to Mogadishu (reportedly Kenyan)
12. Salim Awadh Salim – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
13. Abdulrashid Mohammed – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
14. Swaleh Ali Tunza – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
15. Hassan Shaban Mwazume – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
16. Bashir Hussein Chirag Mohammed Sader – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
17. Said Hamisi Mohammad – rendered 1/27/07 to Mogadishu (reportedly Kenyan)
18. Abdallah Halfan Tondwe – rendered 2/10/07 to Mogadishu (reportedly Kenyan)
19. Kasim Musa Mwarusa – rendered 2/10/07 to Baidoa (reportedly Kenyan)
20. Ali Musa Mwarusi – rendered 2/10/07 to Baidoa (reportedly Kenyan)
21. Abdi Kadir Maalin – rendered 1/27/07 to Mogadishu (reportedly Somali)
22. Mugeta Tasiifa – rendered 1/20/07 to Mogadishu (nationality unknown)
23. Nur Mohammad Zain – rendered 1/20/07 to Mogadishu (nationality unknown)
24. Mohammad Hassan – rendered 1/20/07 to Mogadishu (nationality unknown)
25. Abdullahi Mohammad – rendered 1/20/07 to Mogadishu (nationality unknown)
26. Sakata Sakare – rendered 1/20/07 to Mogadishu (nationality unknown)
27. Shariff Jamal – rendered 1/20/07 to Mogadishu (nationality unknown)
28. Jamal Abdal – rendered 1/20/07 to Mogadishu (nationality unknown)
29. Ahmed Hassan – rendered 1/20/07 to Mogadishu (nationality unknown)
30. Mohammad Abdullah – rendered 1/20/07 to Mogadishu (nationality unknown)
31. Abdijani Ahmed – rendered 1/20/07 to Mogadishu (nationality unknown)
32. Mohammad Abushir Salim – rendered 1/27/07 to Mogadishu (nationality unknown)
33. Hassan Shaban – rendered 1/27/07 to Mogadishu (nationality unknown)

34. Yusuf Ali Haitagi – rendered 1/27/07 to Mogadishu (nationality unknown)

Specifically, we would like the following information about each of the men: (i) is he being detained and, if so, where and on what grounds?; (ii) has he been charged with a crime and, if so, what are the charges, has he had a trial, what was the outcome, and has he had access to a lawyer?; (iii) has he been released and, if so, when, where, and into whose custody?

We plan to issue a short report detailing the results of our investigation into the whereabouts and well-being of these men. We hope to hear back from you by **September 30, 2008**, so that we can include your perspective in that report.

Finally, we urge you to immediately allow the relevant consular representatives, as well as independent international monitors such as ICRC delegates, to visit all persons held in connection with the conflict in Somalia.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jennifer Daskal  
Senior Counterterrorism Counsel  
Human Rights Watch

cc: H.E. Samuel Assefa, Ethiopian Ambassador to the United States

## Appendix B. Letter to the Kenyan Government, August 29, 2008

August 29, 2008

Hon. George Saitoti  
Minister of Internal Security and Provincial Administration  
Office of the President  
Harambee House  
Harambee Avenue  
Nairobi, Kenya

*Via email and facsimile*

The logo for Human Rights Watch, consisting of a blue square with the words "HUMAN RIGHTS WATCH" in white, uppercase, sans-serif font, arranged in three lines: "HUMAN", "RIGHTS", and "WATCH".

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

Hon. Moses Wetang'ula  
Minister of Foreign Affairs  
Ministry of Foreign Affairs  
Harambee Avenue  
Nairobi, Kenya

*Via facsimile*

Dear Minister Saitoti and Minister Wetang'ula:

Human Rights Watch has long been concerned about Kenya's role in the detention and rendition of at least 85 men, women, and children to Somalia in January and February 2007. Human Rights Watch's March 22, 2007 letter detailing the then-available information about the rendition operation is attached for your convenience.

We are writing now to follow up on that letter. We are particularly concerned about the whereabouts and well-being of the following men who have asserted Kenyan nationality, yet were rendered to Somalia nonetheless. Some are reportedly being detained by the Ethiopian military in Addis Adaba; the whereabouts of others are unknown.

1. Saidi Shifa – rendered January 20, 2007 to Mogadishu
2. Salama Ngama – rendered January 20, 2007 to Mogadishu
3. Hussein Ali Said – rendered January 20, 2007 to Mogadishu
4. Tsumu Solomon Adan Ayila – rendered January 20, 2007 to Mogadishu
5. Salim Awadh Salim – rendered January 27, 2007 to Mogadishu
6. Abdulrashid Mohammed – rendered January 27, 2007 to Mogadishu

7. Swaleh Ali Tunza – rendered January 27, 2007 to Mogadishu
8. Hassan Shaban Mwazume – rendered January 27, 2007 to Mogadishu
9. Bashir Hussein Chirag Mohammed Sader – rendered 1/27/07 to Mogadishu  
Said Hamisi Mohammad – rendered January 27, 2007 to Mogadishu
10. Abdallah Halfan Tondwe – rendered February 10, 2007 to Mogadishu
11. Kasim Musa Mwarusa – rendered February 10, 2007 to Baidoa
12. Ali Musa Mwarusi – rendered February 10, 2007 to Baidoa

We request that you provide us with any known information about these men's whereabouts. Specifically, we would like the following information about each of these men: (i) what steps has the Kenyan government taken to ensure his well-being and secure his return to Kenya?; (ii) has the Kenyan government requested consular access to him, and if so, was it granted, and when?; (iii) where is he being held, and on what grounds?; (iv) is his Kenyan nationality in doubt, and, if so, what has been done to review and assess the claim of Kenyan citizenship?

We plan to produce a short report detailing the results of our investigation into the whereabouts and well-being of these men. We hope to hear back from you by no later than September 30, so that we can include your responses to our questions in that report.

Thank you,



Jennifer Daskal  
Senior Counterterrorism Counsel

Enclosure

cc: Raila Odinga, Prime Minister of Kenya

## Appendix C. Letter to the Kenyan Government, March 22, 2007

March 22, 2007

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

The logo for Human Rights Watch, consisting of a blue square with the words "HUMAN RIGHTS WATCH" in white, uppercase, sans-serif font, arranged in three lines.

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

Dear Mr. Amolo:

Human Rights Watch was pleased to meet with you recently in Nairobi and we appreciate the time you took to discuss several issues with our researcher.

As discussed in the meeting on February 28, 2007, Human Rights Watch writes to provide further details regarding issues of concern related to the Somalia crisis, particularly the arbitrary detention, deportation, and apparent enforced disappearance of dozens of individuals who fled Somalia in December 2006 and January 2007.

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.

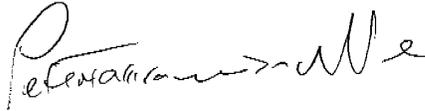
We urge the Kenyan government to ensure that any individuals detained in Kenya within the context of counter terrorism operations or detention operations linked to the Somalia conflict are permitted access to legal counsel as required under Kenyan and international law and to independent international 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,

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

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