

PUBLIC

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13 February 2007

UA 36/07 Fear of torture or ill-treatment / incommunicado detention

ETHIOPIA/
KENYA/
SOMALIA

Bashir Ahmed Makhtal (m), Canadian citizen, about 40 years old
Tesfaldet Kidane Tesfasgi (m), Eritrean national
Osman Mohamed Brahan (m), Eritrean national
Saleh Idris Salim (m), Eritrean national
Abdi Abdullahi Osman (m), Somali national
Ali Afi Jama (m), Somali national
Hussein Aw Nur Guraase (m), Somali national

The seven people named above are reported to be detained incommunicado at an unknown location in Ethiopia, and are at risk of torture or ill-treatment.

The seven – Canadian national Bashir Ahmed Makhtal, Eritrean nationals Tesfaldet Kidane Tesfasgi, Osman Mohamed Brahan and Saleh Idris Salim, and Somali nationals Abdi Abdullahi Osman, Ali Afi Jama and Hussein Aw Nur Gurase - were all arrested by Kenyan authorities in late December 2006 as they were crossing the border from Somalia to Kenya. They were apparently fleeing ongoing violence in Somalia. They were detained without charge or trial in Kenya for three weeks. Bashir Ahmed Mekthar was able to see a lawyer, but none of the seven was brought before a court. On 21 January 2007, they were deported to the Somali capital, Mogadishu, with no prior notice to relevant authorities, including the UN Office of the High Commissioner for Refugees (UNHCR) or, in the case of Bashir Ahmed Makhtal, the Canadian High Commission in the Kenyan capital, Nairobi. Both the Kenyan and Somali authorities acknowledged the detainees' transfer, but there has been no further news on the whereabouts of the seven since their arrival in Mogadishu. According to reports, on or shortly after their arrival, they were transferred into Ethiopian custody in Mogadishu and secretly flown to Ethiopia.

Under international law, states are under the absolute and unconditional obligation not to expel, return or extradite any person to a country where they risk torture or other ill-treatment, or to reject asylum seekers to territories where their life or freedom would be threatened (the principle of *non-refoulement*).

BACKGROUND INFORMATION

In December 2006, war broke out between the militias of the Council of Somali Islamic Courts (COSIC) and the Ethiopian troops supporting the Transitional Federal Government (TFG) of Somalia. After several days of fighting in Mogadishu, the COSIC militias were defeated and some fled to southwestern Somalia, pursued by the Ethiopian and TFG forces.

The conflict and continuing tension in Somalia led to a large flow of asylum seekers seeking to cross the border into Kenya. However, on 2 January 2007, the Kenyan authorities announced the closure of their border for security reasons. Since then, asylum seekers have been massing on the Somali side of the border, as they wait for it to reopen. Humanitarian agencies have had limited access to the asylum seekers. Kenya's decision to close the border and its treatment of refugees has been criticized by the international community, the UNHCR and Amnesty International. Since December 2006, the Kenyan security forces have been patrolling the border and have arrested a number of those seeking to cross it, who may have included COSIC fighters as well as civilians. The arrests and detentions have continued after the closure of the border. Kenya has deported at least 75 of those it arrested back to Somalia. There is no reliable information on the situation of those who have been returned.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

To the Ethiopian authorities:

- expressing concern at reports that three Eritrean nationals, three Somali nationals and a Canadian citizen (naming them) are in Ethiopian custody;
- calling on the Ethiopian authorities to publicly deny or acknowledge the detention of the seven men;
- calling for the Ethiopian authorities to immediately disclose their whereabouts, ensure that they have access to lawyers, families, medical care and representatives of their governments, and to either bring them promptly before a court to determine the legality of their detention or release them immediately.

To the Kenyan authorities:

- expressing concern over the earlier detention by Kenyan authorities of seven foreign citizens without charge or trial, access to legal advice and to their government or to representatives of the UNHCR;
- expressing concern that Kenya deported the seven without giving them a chance to contest the legality of this action and without taking into consideration the risk they would face once in Somalia;
- calling on the Kenyan authorities not to return or transfer people to states where they could face torture, ill-treatment or other gross human rights violations;
- urging the authorities to ensure that anyone subject to deportation or transfer to another state has the right, prior to such transfer, to challenge its legality before an independent tribunal, and to have access to an independent lawyer and a right of appeal with suspensive effect;
- requesting that an independent and impartial investigation in the deportation of these and other individuals be conducted and its findings made public.

To the Transitional Federal Government of Somalia:

- calling on the TFG not to return or transfer people to states where they could face torture, ill-treatment or other gross human rights violations;
- urging the authorities to ensure that anyone subject to deportation or transfer has the right, prior to such transfer, to challenge its legality before an independent tribunal, and to have access to an independent lawyer and a right of appeal with suspensive effect.

APPEALS TO:**Ethiopia****Prime Minister**

His Excellency Meles Zenawi, Office of the Prime Minister, PO Box 1031, Addis Ababa, Ethiopia

Fax: +251 11 1552020

Salutation: Dear Prime Minister

Minister of Justice

Mr Assefa Kesito, Ministry of Justice, PO Box 1370, Addis Ababa, Ethiopia

Fax: +251 11 5517775 / 5520874

Email: ministry-justice@telecom.net.et

Salutation: Dear Minister

Kenya**President**

H.E. President M. Kibaki, Harambee House, Harambee Avenue, P.O. Box 30510, Nairobi, Kenya

Fax: +254 20 313 600

Salutation: Your Excellency

Minister of Justice

Martha Karua, Justice Minister, State Law Office, Harambee Avenue, PO Box 40112, Nairobi, Kenya

Fax: +254 20 316 317

Salutation: Dear Minister

Somalia

Please send appeals to the Somali Charge d'Affaires in Kenya, asking for them to be forwarded to Somalia's President, Col. Abdullahi Yusuf Ahmed: TFG charge d'affaires, Mohamed Ali Nur, PO Box 623-00606, Jabavu Road, Hurlingham, Nairobi, Kenya

Email: mali@somaliembassy.co.ke

Salutation: Dear Sir

COPIES TO:

Kenyan Minister of Foreign Affairs

Raphael Tuju, Ministry of Foreign Affairs, Old Treasury Building, Harambee Avenue, PO Box 30551, Nairobi, Kenya

Fax: +254 20 318604

E-mail: press@mfa.go.ke

Ethiopian Minister of Foreign Affairs

Seyoum Mesfin, Ministry of Foreign Affairs, PO Box 393, Addis Ababa, Ethiopia

Fax: +251 11 551 43 00

Email: mfa.addis@telecom.net.et

and to diplomatic representatives of Ethiopia and Kenya accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 27 March 2007.