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June 5th, 2008,

THE PRIME MINISTER OF THE REPUBLIC OF KENYA RT. HON RAILA AMOLO ODINGA EGH, EBS MP

THE TREASURY

NAIROBI

Dear Mr. Prime Minister Sir,

RE: ARBITRARY DETENTION, RENDITION AND DISAPPEARANCE OF ALLEGED TERROR SUSPECTS

We wish to first offer you our heartfelt congratulations on your ascension to the position of Prime Minister of the Republic of Kenya. We salute your gallant struggle against oppression, your brave fight for the emancipation of the poor and the weak and for a just society that has as its cornerstone good governance and the upholding of human rights. We have always believed in your sincerity to ensure that justice prevails throughout the land, that the rights of all Kenyans are respected without prejudice and that the rule of law and constitutionalism are held supreme.

We commend you for the sacrifices that you have had to make in your political career and are especially grateful to you for all your efforts in the national dialogue and reconciliation process that has helped to restore peace and hope to this our land and nation, Kenya.

We are convinced that you are equal to the onerous task that lies ahead of steering this nation to the path of reconciliation, reform and reconstruction of its institutions, social fabric and infrastructure long destroyed by bad governance, naked greed and opportunism coupled to disregard for the rule of law and constitutionalism that have spawned unparalleled social inequalities, abject poverty, hate and negative ethnicity that greatly contributed to bringing this country to the brink early this year. We are particularly anxious to see a just and fair resettlement of the internally displaced persons (IDPs) living in squalor and hopelessness in camps and

other temporary shelter after being so violently disgorged from their homes by the bloody turmoil that was visited on the nation during the post-election crisis.

Secondly we would like to remind you, Mr Prime Minister sir, of your pre-election support for victims of state injustice perpetrated through the arbitrary detention, deportations and enforced disappearances of alleged terrorist suspects who were extra judicially removed from Kenya and taken to murky ghost prisons in Somalia, Ethiopia and Guantanamo Bay.

MHRF wishes to draw your attention to the continued suffering in detention in Ethiopia and the disappearance of many of those suspects illegally removed from Kenya in the mass renditions that took place in January and February last year. You are aware too that amongst these people detained without trial were nineteen Kenyans and that one of them is now held at the US naval base detention facility at Guantanamo Bay Cuba¹.

In your open letter to President Mwai Kibaki carried in paid up advertisements in the Standard and Nation Newspapers of October 19, 2007 and October 20, 2007 respectively, you acknowledged the report compiled by the MHRF entitled *Horn of Terror*² and lamented the government's inaction on the revelations of the gross violations of these detainees' rights.

Sir, allow us to quote you: "While I am not saying that the government should protect terror suspects, I insist that they be dealt with in accordance with our constitution and following the due process of the law, where credible evidence – and not ethnicity – is the deciding factor in determining the viability against them. The right of these deported people to equal protection under the law, as conferred by section 70(a) of our constitution, has been betrayed - by their own government, the very people they should have been able to depend upon to ensure their rights were protected³."

As we said in our report from which you quoted extensively, the fate of the deported Kenyans remains under a very dark cloud fifteen months after their rendition. We recall you writing in that open letter: "The prisoners are reported to have been tortured and subjected to degrading and inhuman treatment under interrogation (something I have experienced myself and whose terror and horror I can now therefore fully understand). They have been denied access to lawyers, consular officials, their families and international monitors. I am horrified to know that among those caught up in the brutality of this process were children and babies."

¹ The US department of Defense confirmed on 26/3/07 the detention of Abdulmalik Mohamed at Guantanamo Bay Naval Base. Kenya has not made any representations on his behalf to the US government.

² MHRF: Horn of Terror – Report of US led Mass Extra-ordinary renditions from Kenya to Somalia, Ethiopia and Guantanamo Bay January-June 2007

³ Hon.Eng.Raila A Odinga EGH MP, Presidential Candidate ODM – Paid up advertisements Standard Newspapers 19/11/07 and Nation Newspapers 20/11/07

⁴ Ibid

You reminded President Kibaki then that the report which we handed over to the chairman of the Kenya National Commission on Human Rights, Mr. Maina Kiai, on July 6, 2007, was forwarded with a covering letter by Mr. Kiai to the Minister for Justice and Constitutional Affairs Hon. Martha Karua. The letter was copied to several other cabinet ministers in charge of line dockets, the Attorney General, the Commissioner of Police and the chairmen of two parliamentary committees and nothing had been done, you rightly observed. Unfortunately, up to now nothing has been done.

We would like to remind you, Honourable Prime Minister Sir, of the memorandum of Understanding (MOU) that you signed with Muslim leaders prior to the last general elections, where you committed yourself to stand as a beacon of hope in the face of injustice, and support institutions where 'credible evidence' and not 'ethnicity' was the barometer of guilt.

In particular we would like to draw your attention to clause (E)(b)(4) of the memorandum where you committed yourself to 'specific action' to protect the rights of marginalised groups in the country:

'Specific action will include the setting up of a commission to inquire on deliberate schemes and actions of the government, its agencies or officers, to target or interfere with welfare and social well-being of Muslims in Kenya as citizens including renditioning of Kenyans to Somalia, Ethiopia and Guantanamo Bay. Such schemes and actions will be put to an end and public officers responsible for the same named and held to account⁵.'

With the foregoing Mr. Prime Minister Sir, we would like to humbly pose the following questions to you:

- When will the government of Kenya bring back the deportees to be accorded justice in Kenyan jurisdiction as the constitution and laws of the land provide?
- What steps are you taking to ensure that the gross violations that were exhaustively documented in our report, which you acknowledged so eloquently, are being dealt with?
- When do you intend to bring those responsible to justice as you promised in the MOU?
- When does the government or your party, the Orange Democratic Movement (ODM), intend to sponsor legislation for safeguards to ensure that such blatant violations of the rights of Kenyan citizens, and of those others who are otherwise in Kenya are never perpetrated again?

⁵ Memorandum of Understanding between Hon. Eng Raila A Odinga EGH MP and the National Muslim Leaders Forum (NAMLEF) 29/08/07.

We commend your efforts, Honourable Prime Minister, to foster a united Kenya through dialogue aimed at addressing the particular concerns of each community that calls Kenya its home, and in attempting to right historical wrongs. In this vein we urge you, sir, not to overlook the Muslims, who although heterogeneous in tribe and colour, are homogenous in faith. The Muslims are a community that has lived under the blinding glare of injustices, reaching the peak with the so called US war on terror, being forced to cower as foreign powers seek to convince the world of their righteousness and of the guilt of Muslims. Their moral superiority has been eroded dramatically as they blatantly flout the same rules that they have established to govern themselves, but which they feel Muslims are not worthy of. Hitherto hallowed fundamental human rights principles like adherence to the Rule of Law; Prohibition against Torture and Protection against Arbitrary Detention have been discarded on the wayside and left Muslims open to the arm of their tyranny.

We felt encouraged when during your most recent tour of Wajir District you promised to bring to justice the perpetrators of the horrific Wagalla Massacre. We commend you too for having honoured the pledge to create a specific Ministry for Northern Kenya which is aimed at bringing about affirmative action that brings to par this long neglected part of the country with the rest of Kenya. MHRF was however disappointed that you did not mention anything to do with the victims of the extra-ordinary renditions. And apparently no one does anymore.

Honourable Prime Minister, in a democratic society the elected officials are held accountable by the electorate. That is why Muslims as part of the electorate are asking the questions above and urging you to diligently pursue measures that ensure that the right of every Kenyan is seen as equally important to the right of every American citizen or any others in the west?

Suffice it to say that your promise to deal with the whole issue of human rights violations in the guise of fighting terrorism and specifically the renditions endeared you to majority Muslim voters and defenders of human rights. We pray that you shall not be party to their feeling continuously let down even by the grand coalition government.

While we are encouraged by the fact that you now have the constitutional mandate to supervise and coordinate the functions of government ministries and are in a position to demand that expedient action be taken to settle this sad affair we do hope and pray that you shall immediately take up this matter with the concerned government authorities and agencies with very visible positive results as a firm statement of how far you are willing to lead us in the struggle against injustice, tyranny and oppression while honouring your pre-election pledges.

We respectfully await your response.

Yours faithfully,

For Muslim Human Rights Forum

Al-Amin Kimathi

Chairman

CC.

Hon Martha Karua EGH MP,

Minister for Justice, National Cohesion and Constitutional Affairs

Hon. Moses Wetangula MP

Minister for Foreign Affairs

Hon. Prof. George Saitoti EGH MP

Minister of State for Internal Security and Provincial Administration

Hon Ibrahim Mohamed Elmi MP

Minister for Nothern Kenya and Arid Lands

Hon. Amos S Wako

Attorney General

Major-General Mohamed H Ali

Commissioner of Police

Mr. Maina Klai

Chairman

Kenya National Commission on Human Rights

Hon Abdikadir Hussein MP

Chairman

Parliamentary Committee on Legal Affairs and Administration of Justice