

Counterterrorism and Human Rights Abuses in Kenya and Uganda

THE WORLD CUP BOMBING AND BEYOND



Counterterrorism and Human Rights
Abuses in Kenya and Uganda:
The World Cup Bombing and Beyond

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Table of Contents

Acknowledgments	3
Author's Note	7
I. Executive Summary and Recommendations	11
II. Introduction	17
III. Background: The July 11, 2010 World Cup Bombing	19
IV. Rendition and Illegal Detention: The World Cup Bombing Aftermath	23
A. Kenya: Renditions, Detainee Abuse Allegations, and Targeting of Minority Communities	26
B. Uganda: Detainee Abuse Allegations, Involvement of Foreign Security Agents, and Persecution of Human Rights Defenders	33
V. Foreign Security Assistance and Human Rights	41
A. U.S. and U.K. Funding for Kenyan and Ugandan Counterterrorism Activities	42
B. The Link between Funding and Human Rights Abuses	45
VI. Conclusion	51
Notes	53

Author's Note

This report was originally published online by the Open Society Justice Initiative at www.opensocietyfoundations.org on November 27, 2012. Prior to the release of the report, the Open Society Justice Initiative contacted the United States Federal Bureau of Investigation (FBI) on several occasions requesting a meeting to discuss whether and how the FBI had conducted an investigation into the allegations of detainee abuse made against the FBI by individuals detained in relation to the July 2010 World Cup bombing in Kampala, Uganda. It was, as those requests made clear, the Justice Initiative's intention to offer the FBI an opportunity to comment on the allegations, and to include any such comment in the report. The FBI did not respond to those requests. The Open Society Justice Initiative also provided an advanced copy of the report's executive summary and U.S.-related recommendations to U.S. officials based in Kenya.

After the November 27, 2012, online release of the report, FBI spokespersons did, however, in responding to two media inquiries, refer to the allegations against the FBI as being "without merit." The responses are included below.

Given the seriousness of the allegations made against the FBI, the Open Society Justice Initiative considers the FBI's public media responses incomplete, as they provide no detailed information about how the FBI determined that the allegations against its agents were "without merit." The Open Society Justice Initiative nonetheless continues to seek constructive engagement with the FBI on this and other issues, including the FBI's rules or regulations relating to joint investigations with partner governments that have a history of human rights abuse.

FBI's Public Response to Media Inquiries

On November 27, 2012, the Associated Press reported:

At FBI headquarters in Washington, spokesman Paul Bresson said allegations that FBI employees mistreated or abused detainees were without merit.

"The FBI is responsible for investigating overseas terrorist attacks against U.S. persons or U.S. institutions. When investigating cases overseas, all FBI personnel operate within the guidelines established by the Attorney General as well as all other applicable laws, policies and regulations," Bresson said.

(Tom Odula, "4 Ugandan Bombing Suspects Claim FBI Abused Them," Associated Press, November 27, 2012, <http://news.yahoo.com/4-ugandan-bombing-suspects-claim-fbi-abused-them-130930295.html>.)

On December 19, 2012, Jeffrey Kaye, writing for Truth-out.org, reported:

Asked to respond to the varied abuse allegations, [Kathleen] Wright, the FBI's spokeswoman, told Truthout in an email exchange, "The FBI demands strict adherence to both the letter and the spirit of all applicable laws, regulations, and policies. Each employee has the responsibility to uphold the FBI's core values of integrity and accountability so that the Bureau maintains the public's trust."

Wright said the Bureau's Inspection Division (INSD) reviews all allegations of misconduct, and "the facts generated by INSD during the investigation are turned over to the Office of Public Responsibility (OPR) for adjudication based on those facts."

Asked if there had been an investigation by either INSD or OPR into the allegations surrounding FBI abuse during the World Cup bombing interrogations, or whether FBI agents had documented the condition of those it interviewed, as required by FBI manual procedures Special Agent Wright said, "The FBI cannot comment on investigations or on reports related to a particular investigation."

Wright said that the FBI had taken "considerable care and consideration" and made "an accurate and appropriate response," when they told [the Associated Press] abuse charges were "without merit."

She referenced a statement by FBI Director Robert Mueller to the Senate Judiciary Committee last May.

Mueller told the committee, “Every FBI employee takes an oath promising to uphold the rule of law and the United States Constitution. I emphasize that it is not enough to catch the criminal; we must do so while upholding civil rights.... In the end, we will be judged not only by our ability to keep Americans safe from crime and terrorism, but also by whether we safeguard the liberties for which we are fighting and maintain the trust of the American people.”

Wright further said FBI policy “forbids abuse, threat of abuse to the interviewee or any third party, or imposing severe physical conditions on the interviewee. Agents may not participate in a circumstance in which the agent knows or suspects that a co-interrogator or the detaining authority has used a method that is not in compliance with FBI policy, even if the method is in compliance with the co-interviewer’s or detaining authority’s guidelines.”

(Jeffrey Kaye, “Report: Serious Allegations of Abuse by FBI and Other Agencies in World Cup Bombing Investigation,” Truth-out.org, December 19, 2012, <http://truth-out.org/news/item/13417-report-serious-allegations-of-abuse-by-fbi-and-other-agencies-in-world-cup-bombing-investigation>.)

Executive Summary and Recommendations

East Africa has emerged in recent years as a focus of both transnational terrorism and Western-backed counterterrorism efforts. Governments have a responsibility to combat terrorism in a lawful manner. But as this report documents, counterterrorism tactics and operations in East Africa have led to a variety of human rights violations. Governments in the region have cited the need to fight terrorism as a pretext to crack down on political opposition, human rights defenders, and lawful expressions of dissent. East African states conducting counterterrorism operations, and the Western states that provide security assistance for those operations, must recognize that respect for human rights is central to supporting effective counterterrorism strategy, the rule of law, good governance, and political stability.

This report looks primarily at how Kenya, Uganda, the United States, and the United Kingdom responded to the 2010 World Cup bombing in Kampala, Uganda, committed by the Al Shabaab group, which is based in Somalia. The July 11, 2010 Kampala bombing killed over 70 people who had gathered in two locations to watch the final match of soccer's World Cup, and injured an equal number. But the counterterrorism actions that followed were marred by human rights abuses.

Kenya arbitrarily detained at least 12 Ugandan and Kenyan nationals suspected of involvement in the bombing; allegedly exposed them to, and/or threatened them with, physical abuse; and unconstitutionally rendered them to Uganda.

Ugandan authorities arrested additional suspects inside Uganda, with the total number of people detained in relation to the World Cup bombing reaching over 30. Many of the bombing suspects allege that Ugandan authorities engaged in physical abuse, unlawful detention, and denied them their due process rights. The bombing

suspects also allege that the United Kingdom took part in their interrogations, and that U.S. officials physically and mentally abused them. (The Ugandan government denies such abuse took place.)

Kenya and Uganda must carry out effective and thorough investigations of allegations of arbitrary detention, physical abuse and threats, and unlawful renditions. If they have not already done so, the United States and United Kingdom must also carry out effective and thorough investigations of their agents' alleged involvement in unlawful activity. Moreover, if the United Kingdom and United States are to continue to support Kenyan and Ugandan counterterrorism efforts, they must be more forceful in ensuring that those efforts do not lead to additional rights violations.

The post-World Cup bombing abuses fit into a larger pattern of allegations of human rights violations committed in the name of fighting terrorism in East Africa. Uganda, Ethiopia, and other governments in the region have used the rhetoric of counterterrorism and anti-terrorism laws to suppress freedoms of expression and assembly. Kenya, which is seeing a dramatic increase in the number of attacks against police and civilians in 2012, appears to be indiscriminately targeting certain ethnic and religious communities in its counterterrorism operations; some civil society groups claim that Kenya is also carrying out extrajudicial killings and disappearances of terrorist suspects.

As terrorism concerns in the region mount, foreign security assistance to East Africa continues to grow. But so too does the risk that more human rights abuses will be committed. Too often, in the name of counterterrorism, security forces forget that human rights violations such as detainee abuse, denial of fair trial guarantees, extrajudicial killings, and unlawful renditions, create instability by undermining the rule of law and alienating affected populations. In short, unlawful tactics—such as those allegedly employed after the World Cup bombing—do little to reduce terrorist violence. To the contrary, they may well make the situation worse.

In fighting terrorism, East African countries and their Western donors must ensure that counterterrorism efforts abide by the rule of law, that security forces are held accountable when laws are broken, that counterterrorism assistance is increasingly transparent, and that security forces constructively engage in dialogue with civil society.

Recommendations:

To Kenya:

- Ensure that counterterrorism operations in practice comply with international human rights standards, and ensure that counterterrorism operations do not target individuals or groups based solely on race, ethnicity, religion, nationality, political affiliation, or other similar distinctions.
- Ensure through repeal or amendment that the Prevention of Terrorism Act of 2012 does not contravene international human rights standards. The Act must not provide broad and arbitrary powers to detain terrorism suspects and criminalize freedom of assembly or freedom of expression, including opposition views protected under international human rights law.
- Publicly state that Kenya will not carry out unlawful renditions, and will seek the lawful return of Kenyan nationals who were unlawfully rendered to Uganda.
- Make public the command and control structures of Kenya's various counterterrorism forces. To help build community relations, counterterrorism forces should also operate more transparently and publicly explain the rationale for their tactics.
- Ensure that security sector reforms include counterterrorism security forces and provide for stronger oversight and accountability mechanisms that require independent, impartial, and transparent investigations into allegations of detainee abuse, extrajudicial killings, and other serious human rights violations associated with counterterrorism operations in Kenya or carried out by Kenyan officials outside its territory.
- As a matter of urgency, respond publicly, investigate, and release any relevant information, concerning the allegations that Kenyan officials violated the human rights of the World Cup bombing suspects.
- Make publicly available, in a regularized and easily accessible format, information about foreign military and counterterrorism support. This information should include, at a minimum, the amount, type, and source of military and counterterrorism support received from foreign donors, and the identities of the units receiving the support.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and ensure that enforced disappearance constitutes an offense under criminal law.

To Uganda:

- Ensure that counterterrorism operations in practice comply with international human rights standards; and do not suppress political dissent in the name of fighting terrorism, or target individuals or groups based solely on race, ethnicity, religion, nationality, political affiliation, or other similar distinctions.
- Ensure that the Public Order Management bill does not contravene, in letter or implementation, international human rights standards. In particular, it should not provide broad and arbitrary powers for detaining individuals, nor should it criminalize freedom of expression or freedom of assembly.
- Ensure through repeal or amendment that the 2002 Anti-Terrorism Act does not contravene international human rights standards. The Act must not provide broad and arbitrary powers to detain terror suspects and criminalize freedom of assembly or freedom of expression, including opposition views protected under international human rights law.
- Publicly state that Uganda will not carry out unlawful renditions, and approve any requests by Kenya for the return of Kenyan nationals who were unlawfully rendered to Uganda.
- Ensure that the World Cup bombing defendants are provided due process and granted access to lawyers, and cease additional delays to their cases pending before Ugandan courts. In particular, ensure that any information used against the detainees was not obtained through the use of torture or other cruel, inhuman, or degrading treatment.
- Conduct independent, impartial, and transparent investigations into allegations of detainee abuse, extrajudicial killings, or other serious human rights violations on Ugandan territory or carried out by Ugandan officials outside its territory.
- As a matter of urgency, respond publicly, investigate, and release any relevant information concerning the allegations that Ugandan officials violated the human rights of the World Cup bombing suspects.
- Make public the command and control structures of Uganda's various counterterrorism forces.
- Make publicly available, in a regularized and easily accessible format, information about foreign military and counterterrorism support. This information should include, at a minimum, the amount, type, and source of military and counterterrorism support received from foreign donors, and the identities of the units receiving the support.

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and ensure that enforced disappearance constitutes an offense under criminal law.

To the United States:

- Publicly release information regarding the U.S. government’s response to allegations that its officials abused the World Cup bombing suspects in Uganda. If an independent, impartial, and transparent investigation did not take place, conduct one as a matter of urgency.
- Publicly release information that the U.S. government has relating to the rendition of the World Cup bombing suspects to Uganda.
- Publicly release rules, regulations, and procedures for how U.S. government officials undertaking overseas interrogations or investigations should conduct themselves if the host country does not comply with international human rights standards. If such rules, regulations, and procedures do not exist, they should be put in place as a matter of urgency. The rules, regulations, and procedures should prohibit officials from cooperating with foreign government units that commit gross violations of human rights, and from facilitating any such violations by foreign government units.
- Ensure, in accordance with the “Leahy Laws,” that counterterrorism assistance to foreign security forces is cut off when there is credible information that those forces committed gross human rights violations. The same rule should apply to funding from the U.S. government’s intelligence community.
 - Post information about the Leahy Laws on U.S. embassy websites.
 - As required by recent amendment to the Leahy Laws, the United State should disclose which units it has determined are ineligible for further assistance.
 - Implement procedures for all U.S. government officials in U.S. embassies, requiring them to report any allegations of gross human rights violations they become aware of. That information should be reviewed, filed, and passed to the Department of State’s Bureau of Democracy, Human Rights, and Labor.
- Make publicly available, in a regularized and easily accessible format, information about U.S. foreign military and counterterrorism support. This information should include, at a minimum, the amount and type of military and counter-

terrorism support being provided, and the identities of the units receiving the support.

- Inform foreign states that U.S. investigatory and other assistance may be jeopardized if they implement anti-terrorism legislation in such a way that it targets individuals or groups based solely on race, ethnicity, religion, nationality, political affiliation, or other similar distinctions; if they suppress political dissent in the name of fighting terrorism; or if in any other way they contravene international human rights standards.

To the United Kingdom:

- Publicly release the methodology of the Foreign Secretary's searches into allegations of detainee abuse made by the World Cup bombing suspects.
- Publicly release information relating to the rendition of the World Cup bombing suspects to Uganda.
- Ensure that support for counterterrorism operations in East Africa is contingent on recipient governments' compliance with international legal standards and the rule of law.
- Make publicly available, in a regularized and easily accessible format, information about U.K. foreign military and counterterrorism support. This information should include, at a minimum, the amount and type of military and counterterrorism support being provided, and the identities of the units receiving the support.
- Inform foreign states that U.K. investigatory and other assistance may be jeopardized if they implement anti-terrorism legislation in such a way that it targets individuals or groups based solely on race, ethnicity, religion, nationality, political affiliation, or other similar distinctions; if they suppress political dissent in the name of fighting terrorism; or if in any other way they contravene international human rights standards.

II. Introduction

East Africa has in the past 15 years emerged as a center of both terrorist activity and Western-supported counterterrorism operations. The 1998 suicide bombings that destroyed the U.S. embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania were the first major terrorist attacks in the region to capture the attention of Western countries. Today, that attention is manifest in the United States and other donors funneling counterterrorism assistance to East African countries to fight terrorism in the region and to dislodge the *Harakat al-Shabaab al-Mujaahidiin* (*Al Shabaab*) group from Somalia. U.S., European, and East African state intelligence agencies say Al Shabaab has a local agenda, ties to other terrorist-labeled groups, and a pool of Western diaspora members with aspirations to launch assaults against European and U.S. interests.¹ Kenya in particular has seen a dramatic increase in the number of attacks against police and civilians since it sent military forces into Somalia to fight Al Shabaab in October 2011.² Although this report focuses on East Africa, terrorist-labeled groups are also causing and promoting violence elsewhere on the continent, especially in the Maghreb and Sahel.³

This report looks primarily at how Kenya, Uganda, the United Kingdom, and the United States responded to one of Al Shabaab's most notorious terrorist attacks: the bombing of two sites in Kampala, Uganda, where dozens of people had gathered to watch the final game of soccer's World Cup on July 11, 2010.⁴ The response to that crime was marked by human rights abuses. In the wake of the World Cup bombing, Kenya and Uganda unlawfully transferred terrorist suspects from one country to another without due process; are alleged to have committed detainee abuse; and detained lawyers and human rights activists, including the prominent Kenyan human rights defender Al-Amin Kimathi and Kenyan lawyer Mbugua Mureith, who sought to ensure the rights of the World Cup bombing suspects. The bombing suspects also allege that the United

Kingdom took part in their interrogations, and that U.S. officials physically and mentally abused them. Civil society groups have also accused Uganda of suppressing political opposition and public criticism under the pretext of fighting terrorism and Kenya of committing extrajudicial killings and disappearances in response to terrorism threats and violently targeting specific communities, such as Somalis in Kenya, because they are perceived as a terrorism threat.⁵

Civil society groups in Kenya and Uganda have criticized international security assistance donors, in particular the United States and the United Kingdom, for supporting these governments and their abusive security forces, and for encouraging anti-terrorism laws that have been used to suppress freedoms of expression and assembly. Officials from the United States and United Kingdom are aware of these concerns, but continue to provide support and funding, emphasizing that Kenya and Uganda, among other countries in the region, are important partners in fighting terrorism.⁶

A successful counterterrorism strategy in East Africa requires regional security cooperation that combats terrorism, is respectful of human rights and the rule of law, and fosters unity rather than promoting tensions between states and civil society. Each element is critical, but they must also exist concurrently because of their mutually reinforcing relationships. Too often, security forces forget that heavy handed actions, including detainee abuse, denial of fair trial guarantees, extrajudicial killings, and unlawful extraditions, create instability, foster alienation among affected groups, undermine the rule of law, and can be counterproductive. The importance of respecting human rights is reflected in the United Nations Global Counter-Terrorism Strategy's Plan of Action, which affirms "that the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism."⁷

The actions of Kenya and Uganda in response to the World Cup bombing show that they have not yet found the best approach. If states involved in counterterrorism efforts in East Africa do not respect human rights and uphold the rule of law, Al Shabaab and like-minded groups will continue to use allegations of human rights abuses to discredit governments in the region;⁸ rights violations committed by governments will extinguish any hope of bringing civil society and security forces together to deal with terrorism; and disrespect of human rights may exacerbate racial, ethnic, and religious rifts among the citizens these governments seek to protect. When government security forces use the threat of terrorism as an excuse to suppress minority groups and political opposition, their actions can provoke violence rather than reduce it.

III. Background: The July 11, 2010 World Cup Bombing

On July 11, 2010, bombs exploded at two sites in Kampala, Uganda—the Ethiopian Village restaurant and the Kyadondo Rugby Club—where people had gathered to watch the final match of soccer’s World Cup. The attacks killed over 70 people and injured a similar number. Within days, Al Shabaab publicly claimed responsibility, calling the attacks retaliation for Uganda’s participation in the African Union Mission in Somalia (AMISOM), a military mission that the African Union and UN Security Council authorized primarily to protect Somalia’s Transitional Federal Government.⁹

Less than 48 hours after the bombing, President Yoweri Museveni of Uganda issued a press statement saying of the attackers, “We shall look for them wherever they are and get them.”¹⁰ In the crackdown that followed, Kenyan and Ugandan security forces cast a wide net, rounding up dozens of people.

Almost immediately, the investigation of the bombing became internationalized. Uganda responded to the attacks by working with the governments of Kenya, Tanzania, and Somalia to hunt for suspects. According to Peter Walubiri, a Ugandan lawyer representing some of the suspects, at least twenty individuals were illegally rendered to Uganda, some of whom have since been released.¹¹ (Rendition, unlike the legally defined process of extradition, is a technique that states have used to transfer individuals from the custody of one state to another without any legal process and in violation of extradition agreements.)

Those rendered but later released include Khalif Abdi Mohammed, who alleged he was rendered from Kenya to Somalia and then to Uganda, and Mohammed Adan Abdow, who was one of the Kenyans rendered to Uganda on July 23. Both men were

held for over a year before the charges were dropped and they were unconditionally released.¹²

On July 13, 2010, two days after the bombing, a U.S. Department of State spokesperson said, “We have today a three-person FBI [Federal Bureau of Investigation] team on the ground in Kampala collecting evidence. Two Diplomatic Security officers will arrive later today to assist the government of Uganda in its investigation, and we have an additional FBI team standing by in the United States ready to assist if needed. But we will continue to do everything in our power to assist Uganda in bringing the perpetrators of this—these attacks to justice.”¹³

On the evening of July 23, 2010, Kenya’s Anti-Terrorism Police Unit (ATPU) detained three Kenyan men—Idris Magundu, Mohammed Adan Abdow, and Hussein Hassan Agade—as suspects in the World Cup bombing and rendered them to Uganda. The three men were eventually taken to Luzira Upper Prison in Kampala. More renditions of men from Kenya, Tanzania, and Somalia occurred over the following year—at least until June 2011. Each suspect underwent days of interrogations in Uganda. According to government officials and court documents, the investigation into the bombings was done with the support of U.S., U.K., Kenyan, and/or Tanzanian officials.¹⁴

According to the U.S. Department of Justice, assistance in the response to the bombings came not only from FBI agents, but also from New York Police Department (NYPD) detectives attached to the New York Joint Terrorism Task Force (JTTF).¹⁵ The Department of Justice also reported that since August 2010, U.S. government trial attorneys and JTTF personnel, “at the request of Ugandan law enforcement, have travelled to Uganda and provided assistance to the Ugandan investigators and prosecutors.”¹⁶ Inspector General of Police for Uganda, Major General Kale Kayihura, praised the cooperation and thanked the “FBI, the British High Commission, New Scotland Yard, and Interpol among the many other nations and agencies that are assisting us at this time.”¹⁷ He added, “Our teams are working exceptionally well together in all facets of the investigation.”¹⁸

Although the media reported that over 30 people from seven countries were initially detained, the number of detainees eventually dwindled, something that a former U.S. official attributed to the cooperation and assistance that the FBI provided to the Ugandans.¹⁹ Today 12 men—seven Kenyans, four Ugandans, and one Tanzanian—are now awaiting trial before a Ugandan court on a combination of murder, attempted murder, and/or terrorism charges in relation to the World Cup bombing. Two other defendants pleaded guilty and received five year and twenty-five year sentences.²⁰

The post-bombing actions of Ugandan, Kenyan, U.S., and U.K. authorities were fraught with allegations of serious human rights abuses, including allegations of renditions, illegal detentions, and detainee abuse.²¹ In November 2011, eight of the 12 men now awaiting trial—seven Kenyans and one Tanzanian—petitioned Uganda’s Consti-

tutional Court to dismiss their criminal case, citing such abuses. The men said that, in violation of Uganda's Constitution, they were brought to Uganda without due process; held in undisclosed places of detention without access to family, lawyers, and medical assistance; interrogated by foreign officials; and physically and mentally abused during interrogations.²² The eight men also claimed any criminal trial would be unconstitutional because two of them were coerced through "trickery, force and torture" to give confessions.²³ Also in the second half of 2011, three of the Ugandan defendants awaiting trial filed a constitutional petition, claiming that they would not be able to have a fair trial for many of the same reasons.²⁴ Senior Ugandan police officials have sworn that the applicants "were not held incommunicado or denied access to their lawyers as alleged, nor were they ever tortured as alleged."²⁵

In addition to the specific abuses alleged by the accused attackers, there are concerns that the governments of Uganda and Kenya used the general threat of terrorism to crack down on or harass minority groups, political opposition, and human rights lawyers. In Uganda, civil society representatives claim President Museveni increasingly relies on the rhetoric of local and transnational terrorism to excuse Uganda's domestic practice of suppressing political opposition through draconian legislation and heavy-handed security operations. This approach, which deploys the threat of terrorism to assert far-reaching state powers, has led, for example, to prosecutors charging violent rioters in September 2009 with crimes under the Anti-Terrorism Act of 2002.²⁶ In Kenya, where the government passed anti-terrorism legislation for the first time in 2012, many human rights and civil society groups have said that government fears of terrorism have led to ethnic profiling and indiscriminate attacks against Muslim and Somali communities by government security forces.

Today, the 12 accused sit in prison in Kampala, waiting for their cases to be heard. But serious questions remain about the human rights abuses they were allegedly subjected to, and the roles of Kenyan, Ugandan, U.S., and U.K. security forces in those alleged abuses.

IV. Rendition and Illegal Detention: The World Cup Bombing Aftermath

Rendition is the process of transferring a suspect or fugitive from one state or jurisdiction to another. However, unlike extradition, rendition takes place without any legal process—the rendered individual has no chance to challenge his transfer or his treatment. In rendering a suspect, the sending state removes an individual’s right to challenge the allegations against him, and transfers him against his will to another country. The technique leaves the governments involved unaccountable and the victims susceptible to a variety of human rights abuses, such as unfair trials, disappearances, incommunicado detention, and torture.

Rendition, because it lacks a legal process, also removes an individual’s right to raise concerns, prior to transfer, that he or she might face a real risk of torture by the receiving state. When this risk exists, international law prohibits such transfers from taking place under the legal principle known as *non-refoulement*. Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment instructs states not to “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.”

Procedures for a lawful transfer to another country are spelled out in Kenya’s 1968 Extradition Act, including the requirements to issue an arrest warrant and bring the detainee to a court prior to extradition.²⁷ In the aftermath of the World Cup bombing, Kenyan authorities ignored these rules.

Rendition is usually done quickly and quietly, and has become a hallmark of counterterrorism operations in many countries. The United States expanded its use of renditions after September 11, 2001. East African government officials have admitted to using the technique against suspected terrorists as a way to circumvent arduous due process guarantees that can slow down and damage an investigation.²⁸

It is not known exactly how many people were rendered to Uganda following the World Cup bombing. Of the 12 men now in prison in Uganda awaiting legal proceedings, 10 were victims of rendition and the other two were detained in Uganda:

1. **Batematyo Abubukari:** Ugandan national; rendered from Kenya to Uganda on August 8, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
2. **Hussein Hassan Agade:** Kenyan national; rendered by Kenya's ATPU to Uganda on July 27, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; currently in prison in Uganda, constitutional petition pending.
3. **Isa Ahmed Luyima:** Ugandan national; rendered from Kenya to Uganda on August 8, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
4. **Hassan Haruna Luyima:** Ugandan national; detained in Uganda with his brother Muzafar Luyima by Ugandan authorities on August 2, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
5. **Muzafar Luyima:** Ugandan national; detained in Uganda with his brother Hassan Haruna Luyima by Ugandan authorities on August 2, 2010; currently in prison in Uganda.
6. **Idris Magondu:** Kenyan national; rendered by Kenya's ATPU to Uganda on July 27, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
7. **Yahya Suleiman Mbuthia:** Kenyan national; rendered by Kenya's ATPU to Uganda on August 26, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
8. **Mohammed Ali Mohammed:** Kenyan national; rendered by Tanzania to Uganda on June 30, 2011; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.

9. **Habib Suleiman Njoroge:** Kenyan national; claims he was rendered by Kenya's ATPU on August 5, 2010 but ATPU denies rendering him; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
10. **Selemi Hajar Nyamandondo:** Tanzanian national; rendered by Tanzania to Uganda on February 21, 2011; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
11. **Omar Awadh Omar:** Kenyan national; claims he was rendered by Kenya's ATPU on September 17, 2010 but ATPU denies rendering him; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.
12. **Mohammed Hamid Suleiman:** Kenyan national; rendered by Kenya's ATPU to Uganda on August 14, 2010; currently in prison in Uganda charged with terrorism, murder and/or conspiracy to murder; constitutional petition pending.

The following men were also detained in relation to the World Cup bombing investigation, but have been released or convicted:

13. **Mohammed Adan Abdow:** Kenyan national; rendered from Kenya to Uganda on July 27, 2010; imprisoned in Uganda for over a year; all charges dismissed and released without trial September 12, 2011.
14. **Nsubuga Edris:** Ugandan national; plead guilty to committing acts of terrorism; sentenced to 25 years imprisonment by a Ugandan court on September 16, 2011.
15. **Al-Amin Kimathi:** Kenyan national; human rights activist detained in Uganda on September 15, 2010 while seeking to provide legal assistance to the World Cup bombing suspects; all charges dismissed and released without trial September 12, 2011.
16. **Khalif Abdi Mohammed:** Somali national; detained in Kenya in July 2010 and rendered from Kenya to Somalia, then to Uganda; all charges dismissed and released without trial September 12, 2011.
17. **Mugisha Muhamoud:** Ugandan national; plead guilty to conspiracy to commit acts of terrorism; sentenced to 5 years imprisonment by a Ugandan court on September 16, 2011.

The first rendition of Kenyan nationals to Uganda after the World Cup bombing took place in late July 2010. An officer from Kenya's Anti-Terrorism Police Unit (ATPU), Charles Ogeto, confirmed in response to a habeas petition that the ATPU rendered

Hussein Hassan Agade and two others to the Ugandan police on July 27 “to assist the Uganda authorities with their investigations.”²⁹ The two other men were Idris Magondu and Mohammed Adan Abdow.³⁰ (Abdow was released in September 2011.) Ogeto also confirmed the August 14, 2010 rendition of Mohammed Hamid Suleiman, and the August 26, 2010 rendition of Yahya Sulieman Mbutia for the same purpose.³¹ The ATPU denied, however, claims by Habib Suleiman Njoroge and Omar Awadh Omar that they were rendered to Uganda in August and September 2010 respectively.³² Other renditions from Kenya included at least two Ugandan nationals: Isa Ahmed Luyima and Batematyo Abubakari.³³

Mohammed Ali Mohammed, a Kenyan national, and Selemani Hijar Nyaman-dondo, a Tanzanian national, were rendered from Tanzania to Uganda after a Tanzanian court approved their extradition but before the two men were allowed to exhaust their right to appeal.³⁴ Tanzanian authorities also detained Mohammed’s mother-in-law (Asha Mohamed Ayub), Mohammed’s wife (Amina Saif), their one year old daughter, and other family members but never transferred them to Uganda.³⁵

The World Cup bombing defendants currently in detention in Uganda awaiting trial claim that they were subjected to human rights violations before, during, and after their renditions. They allege that they were arbitrarily detained at undisclosed facilities, where they were held incommunicado, and many say they were subjected to treatment that may have amounted to torture or cruel, inhuman, and degrading treatment—all of which international and domestic law prohibits. These abuses are similarly prohibited by the African Charter on Human and Peoples’ Rights which, for example, states that “no one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”³⁶

A. Kenya: Renditions, Detainee Abuse Allegations, and Targeting of Minority Communities

1. Post-World Cup Bombing Abuses

Idris Magondu was, according to his affidavit, working as a driver in Nairobi when, on July 23, 2010, unidentified men broke into his house in Nairobi’s Kawangware neighborhood and took him to Uganda, where he remains today facing criminal charges in relation to the July 11, 2010 World Cup bombing.³⁷ Magondu provided an account of his arrest and rendition in a court affidavit that was similar to those of other defendants. He said that at around midnight, when he was with his wife and four month old baby, police burst into the house without showing an arrest warrant and forced him and his wife to lie on the floor as the men searched the house.³⁸

The men took Magondu to the Inland Container Depot Police Station in Nairobi, and then to the headquarters of the ATPU, also in Nairobi.³⁹ There, he was, according to his affidavit, denied water, access to his family, and access to a lawyer despite asking for one.⁴⁰ He said he was then taken from one police station to another, frequently returning to the ATPU headquarters, but without ever being allowed to contact his family or a lawyer.⁴¹ Other rendition victims similarly claimed that they were held incommunicado in Kenya, sometimes in undisclosed locations, without being allowed contact with their family or a lawyer—an allegation that Kenyan authorities have disputed.⁴²

Several rendition victims claim that, during their interrogations Kenyan officials threatened them with death and physically abused them, both of which are clear violations of international law. Some of the suspects also alleged that Kenyan officials said the Ugandan army would torture, shoot, and kill them once rendered. The Kenyan government would have violated its non-refoulement obligations under international law if authorities handed suspects over to Uganda while knowing they would likely be tortured or murdered.

Habib Suleiman Njoroge, for example, provided in his affidavit the name of a high level ATPU official who allegedly took a gun, placed it against Njoroge's neck as if he was going to shoot him, and accused Njoroge of being an Islamic fundamentalist.⁴³ Njoroge also alleged that the same official slapped him hard on the face.⁴⁴ Mohammed Hamid Suleiman claimed in an affidavit that at the ATPU headquarters he was "severely beaten in full view of senior police officers," and told he would be handed over to Uganda to be tortured, shot, and killed.⁴⁵ The two Ugandan nationals detained by the ATPU, Isa Ahmed Luyima and Batematyo Abubakari, made similar claims.⁴⁶ Magondu stated under oath that, "The ATPU officers threatened to hand me over to the Ugandan Army who would subsequently torture, shoot and kill me and they also told me that I would never see my family again and that they would kill members of my family."

Allegations of physical abuse and threats of abuse were not, however, isolated to Kenya. Mohammed Ali Mohammed and his mother-in-law Asha Mohammed Ayub—both detained in Tanzania—reported being subjected to beatings, threats of violence, and forced nakedness by Tanzanian security agents during their detentions.⁴⁸ Additional allegations of abuses in Uganda are described in the next section of this report.

Magondu said that, following his incommunicado detention in Kenya, ATPU officers drove him to the town of Malaba, on the Kenya-Uganda border.⁴⁹ There, the officers handed him over to Ugandan authorities without his ever having access to a lawyer or ever appearing before a court.⁵⁰

Renditions like the one described by Magondu are not new to Kenya. Rendition has been used previously by the Kenyan government, both in ordinary criminal matters and with terrorist suspects. Speaking on the issue of renditions in October 2010, and in doing so revealing the police department's willingness to conduct renditions and ignore

the rule of law, Kenya's police spokesman commented to a regional newspaper: "Nobody complains when it is about a car thief, but when it comes to Al Qaeda, some people would like us to believe that they are more equal than other criminals and therefore we must follow the extradition procedure."⁵¹

Prior to the World Cup bombing renditions, in 2007, at least 90 people in Kenya were rendered to Somalia and then to Ethiopia.⁵² Also in February 2007, Kenyan police arrested Mohammed Abdulmalik, a Kenyan national, in Mombasa.⁵³ The ATPU detained him for two weeks, during which time officials allegedly beat and interrogated him about a plan to attack a well-known running race.⁵⁴ Kenyan authorities then drove him to the Nairobi airport and handed him to U.S. personnel who rendered him to Djibouti.⁵⁵ There, he was detained in a shipping container on a U.S. military base, then rendered to Afghanistan where he was held in various facilities, before being moved to Guantánamo Bay, where he remains imprisoned.⁵⁶

Omar Hassan, a former commissioner of the Kenya National Commission on Human Rights (KNCHR), reflected on the Kenyan government's approach to dealing with terrorist threats at a conference of counterterrorism experts, stating "The [Kenyan] government is looking for what's convenient rather than upholding the rule of law. The public is so fearful of the terrorism threat and is prejudicial towards certain communities it became acceptable for the government to do what public opinion allows. But the law isn't as fashionable."⁵⁷

Despite this history of renditions, in September 2010 two Kenyan justices separately ruled that renditions were unconstitutional, reaffirming that the rule of law should not bend to national security and terrorist threats. One of the petitioners was Mohammed Hamid Suleiman, a World Cup bombing suspect who, through his wife, asked a court on August 16, 2010, to order the commissioner of police and the commandant of the ATPU to explain why Suleiman was arrested and why he should not be released. After hearing the facts of the case on August 18, 2010—four days after Kenyan authorities rendered Suleiman to Uganda without ever bringing him to court in accordance with Kenya's extradition procedures—High Court Justice Aggrey Muchelule condemned the rendition, stating: "Whether one is a terror suspect or an ordinary suspect, he is not exempted from the ordinary protection of the law...Police must have the capacity to battle terrorism and enforce human rights at the same time as the two are not, and should not, be incompatible."⁵⁸

The second petitioner was World Cup bombing suspect Mohammed Aktar Kana, who was able to bring his case to High Court Justice Mohammed Warsame prior to his rendition to Uganda. Justice Warsame was similarly critical in his September 28, 2010 ruling and blocked the attempted rendition until a hearing could take place. In his ruling, which he handed down soon after Kenya's new constitution ushered in a new bill of rights, he stated:

The significant issue which we must not lose sight of is that the new constitution has enshrined the bill of rights of all citizens and to say one group can not enjoy the right [sic] enshrined under [sic] bill of rights is to perpetuate a fundamental breach of the constitution and to legalize impunity at [sic] very young age of our constitution. That kind of behavior, act or omission is likely to have far and serious ramification on the citizens of this country and the rulers. It also raises basic issue of whether a President who has just sworn and agreed to be guided by the provisions of the constitution can allow his agents to breach [sic] with remarkable arrogance or ignorance.⁵⁹

Both rulings demonstrated the critical role that an independent judiciary can play in ensuring that security forces do not violate human rights and undermine the rule of law. But these court decisions did not solve all the problems associated with Kenya's renditions. While Justice Warsame's ruling blocked Kana's illegal rendition, Justice Muchelule's judgment had, unfortunately, little practical benefit for Suleiman, who was in Ugandan custody by the time the ruling was issued. (The last line of Muchelule's ruling stated, "Since the subject is out jurisdiction [sic], however, I make no further orders.")⁶⁰

In 2012 a senior Kenyan national security official told the Open Society Justice Initiative that the court rulings had discouraged such renditions from occurring again.⁶¹ But the rulings did not bring a complete end to Kenya's renditions. Ismail Abubakr was reportedly rendered twice from Kenya to Uganda, the first time as a suspect in the World Cup bombing.⁶² He was released by Ugandan authorities on November 30, 2010 with several other suspects.⁶³ But in February 2011—after the judges had condemned the renditions—he was again rendered from Kenya to Uganda by the ATPU.⁶⁴ He was reportedly released again from Ugandan custody in mid-July 2011.⁶⁵

In addition to the Kenyan legal proceedings, the East Africa Law Society (EALS) filed a complaint before the East African Court of Justice (EACJ) over Kenya's arrest and rendition of Kenyan citizens to Uganda in relation to the World Cup bombings. The EALS said that the actions taken against the suspects were conducted without recourse to established extradition procedures and due process of the law as required by Kenya's Constitution and Kenya's Extradition (Common Wealth Counties) Act as read together with the Treaty for the Establishment of the East African Community and the African Charter on Human and Peoples' Rights.⁶⁶ Several other complaints have been filed before the EACJ in relation to the way Uganda and Kenya responded to the World Cup bombing as well.⁶⁷

2. Killings, Disappearances, and Oppression of Minority Communities

Many in Kenya's Muslim, Somali, and human rights communities view the renditions as reflecting a dangerous readiness by the country's security services to pursue a

counterterrorism strategy that subverts the rule of law and indiscriminately targets specific minority communities. This, they argue, damages the government's reputation and the legitimacy and effectiveness of those counterterrorism operations. Hassan Omar Hassan, a former member of the Kenya National Commission on Human Rights, has argued that the renditions of Kenyan nationals to Uganda made people "give up on government institutions."⁶⁸ An editorial in the weekly newspaper *Friday Bulletin*, which criticized Kenyan security forces for human rights abuses against ethnic Somalis, made a similar point: "Violence against locals will only alienate the community further thereby making them hostile to security machinery. The war on insecurity and the threat posed by the Al-Shabaab cannot be won without winning the hearts and minds of the local people. Violating their rights is absolutely not the way to go."⁶⁹ Indeed, it seems Kenya's security forces, by disregarding the rule of law and disrespecting human rights, has been unable to capitalize on the ties it could be making with communities and civil society groups that have criticized the grenade attacks, improvised explosive devices, and Al Shabaab recruitment.

Critics of Kenya's counterterrorism strategy—including members of the country's Muslim community—often focus on the ATPU, the same unit that carried out the post-World Cup bombing renditions. The ATPU, established in February 2003, has the mission to "combat terrorism activities by applying appropriate proactive and reactive measures."⁷⁰ Its "vision" is to "ensure a secure environment for all in Kenya by eliminating the fear and threat of terrorism."⁷¹ Its Standing Orders are labeled "secret" and its officers often hide their identities. The ATPU's website states that the unit was formed to prevent, detect, disrupt, and interdict imminent terrorist activities within the country; exhaustively investigate all terrorism and terrorism related cases; create profiles for suspected terrorists and establish a databank; and share intelligence with other security related agencies.⁷² Soon after an explosion ripped through a shopping center in downtown Nairobi in June 2012, the media reported that senior Kenyan security officials and Treasury officials approved plans to double the operational capacity of the ATPU.⁷³

The ATPU has been used to suppress minority groups and may be called into action on Kenya's east coast in response to the activities of the Mombasa Republican Council (MRC), a secessionist movement that was declared illegal and banned by Kenyan authorities in 2010.⁷⁴ On July 30, 2012, a court lifted the ban. But on October 19, 2012 a judge overturned that decision, declaring the organization to be illegal and issuing arrest warrants for several of the MRC's alleged leaders.⁷⁵ A Kenyan security official told the Open Society Justice Initiative, "The MRC fits within our mandate. You can't differentiate them between Al Qaeda or Al Shabaab. They bring their youth to train in Somalia."⁷⁶ An October 2012 edition of the weekly newspaper *Friday Bulletin* reported, "The internal security minister Katoo Ole Metito had earlier in week indicated that 'all

MRC supporters will be arrested and prosecuted'. There has been intense crackdown on MRC, a move which saw several leaders of the group arrested."⁷⁷

Several Muslim civil society groups in Mombasa told the Open Society Justice Initiative that they view the ATPU with distrust and that the secretive unit intimidates specific communities simply to impress foreign donors rather than provide real security.⁷⁸ There is a widely held perception that very few people arrested by the ATPU have been successfully prosecuted. Whether these allegations are true or not, the ATPU's unwillingness to explain their rationale for their counterterrorism methods makes their actions appear necessarily arbitrary, ineffective, and to be a form of harassment. As a result, the ATPU has a serious credibility problem amongst Kenya's Muslim communities. One resident of Mombasa—whose views were reiterated by others—explained that rather than fostering a relationship with the local communities it is assigned to protect, "The ATPU doesn't engage with civil society."⁷⁹ He elaborated, describing raids and disappearances allegedly committed by the ATPU: "People broke into houses—commando style—took someone, and nobody knew who they were. They didn't introduce themselves or have uniforms and didn't tell people where they were taken. The community knows about traffic police, but not the ATPU. They don't come close to the people."⁸⁰

Due to the house raids, the unit's secrecy, practices such as the 2010 renditions, and past allegations of detainee abuse, the distrust of the ATPU remains. Many in Kenya's Muslim community suspect that the ATPU played a role in a series of murders and disappearances beginning in April 2012 that targeted people suspected of engaging in terrorist related activities.⁸¹ Police deny involvement, but some witnesses to the disappearances have told local human rights groups that the perpetrators identified themselves as police.⁸² This included the case of Muslim activist and preacher Samir Hashim Khan and his blind colleague Mohamed Bekhit Kassim, who were abducted by unidentified men in Mombasa on April 10, 2012. Khan's dead body, which showed signs of torture, was found on the side of a road a few days later. Kassim's whereabouts remain unknown.⁸³ The ATPU had arrested Khan in 2010 on weapons charges and again in 2011 for being a member of Al Shabaab.⁸⁴ The cases against him were pending when he went missing. Kassim had also been abducted previously, in March 2011 outside Nairobi's Jamia Mosque. He was questioned and later dropped in the suburbs of Nairobi. His abductors warned that they would come back for him.⁸⁵

Similarly, a terrorist suspect named Sylvester Opiyo was taken from his car in May 2012,⁸⁶ along with another man, Jacob Musyoka.⁸⁷ Neither has been heard from since. According to a news report, Opiyo was previously arrested in March 2012 after a Nairobi bus stop was attacked with grenades, killing nine people.⁸⁸ The fact that he had been previously arrested, the method of his disappearance, and that fact that Opiyo's wife told reporters that Opiyo had recognized an ATPU official while at a restaurant earlier on the same day of his disappearance, raised suspicions that the ATPU were following

Opiyo and abducted him.⁸⁹ Police spokesman Eric Kiraithe told reporters that police had no involvement in the incident.⁹⁰ Opiyo's lawyer, who was skeptical of these claims, told reporters, "When the police begin to say we are not holding that person, that is a very dangerous sign. People are never seen again when police say they don't know where the suspects are."⁹¹ In June 2012, two of Opiyo's co-accused, Jeremiah Onyango Okumu and Stephen Mwanzia Osaka, along with two other men, Omar Shwaib and Salim Abubakar, were also abducted in the Kisauni neighborhood of Mombasa and "disappeared without trace."⁹²

Then, in late July 2012, soon after being put on the U.S. and UN terrorist sanctions list, Sheikh Aboud Rogo and Abubakar Shariff Ahmed escaped an abduction attempt, only for Rogo to be killed by plain clothed gunmen in late August.⁹³ Both men were accused by the UN Security Council of assisting in the recruitment of Al Shabaab. Ahmed had also been arrested by Kenyan authorities in 2010 on suspicion of involvement in the bombing of a Nairobi bus terminal. Rogo, at the time of his murder, was facing criminal charges for other terrorism-related activities. He had previously been charged and acquitted for a 2002 hotel bombing in Kenya.⁹⁴ His murder occurred in broad daylight when Rogo's vehicle—which he was driving and was filled with family members—was riddled with bullets.

Rogo's murder in August 2012 signified a tipping point in the rising tensions between Kenyan security forces and Muslim communities. Riots erupted in Mombasa, with rioters killing a man near a mosque; two hand grenades were thrown at police, killing at least five officers and injuring several others. Rioters set fire to at least three churches and there was widespread looting. As tensions mounted further, rioters threw stones at riot police who returned fire with tear gas. Al-Amin Kimathi, a human rights activist who strongly condemned the rioting, put the riots in context, saying, "Rogo's death was the immediate event that sparked the riots. But there were also demonstrations—though not bloody—when Samir Khan's body was found. So there has been a build-up leading to the riots. The rioters were saying 'enough is enough.' The disappearances and killings, taken together, led to the riots."⁹⁵

The group Kenyans for Peace with Truth and Justice (KPTJ), a coalition of Kenyan citizens and organizations working on human rights, governance, and rule of law pointed out that if the killings and disappearances were being conducted by Kenyan authorities it represented the police's "grave contempt for their own investigative process, the prosecution process and the courts."⁹⁶ Speaking to the positive role that rule of law plays in addressing acts of terrorism and maintaining stability, the group noted; "youth did not cause havoc and mayhem when Rogo (or any of the [terrorist suspects]) were charged before the courts. They did not protest the judicial process."⁹⁷

In addition to allegations of kidnappings, killings, and secrecy, members of the Muslim community in Mombasa have raised broader concerns that Kenya's counterter-

rorism initiatives, whether carried out by the ATPU or security forces more generally, are discriminatory towards Muslims. One community member told the Open Society Justice Initiative that in Kenya, “there is a presumption that a Muslim is a terrorist, but when others do things they are criminals. Non-Muslims can say whatever they want, but what Muslims say is met with suspicion.”⁹⁸ Another person noted, “Any injustice to Muslims is done in the name of national security... Terrorism is an excuse to excuse renditions, detentions, and extrajudicial killings.”⁹⁹

A 2012 Human Rights Watch report raised similar concerns about Kenyan security operations in Kenya’s North Eastern Province, stating that round-ups and beatings were “part of a pattern of violent and indiscriminate responses by the Kenyan military and police to suspected militant attacks between November 2011 and March 2012—responses that have involved arbitrarily rounding up large numbers of ethnic Somali Kenyans and Somali refugees and subjecting them in some cases to severe mistreatment.”¹⁰⁰ The specter of discriminatory counterterrorism measures surfaced again when Kenyan politicians and security officials renewed their calls for a counterterrorism bill in May 2012, after a shopping mall was bombed in Nairobi. Many in the Muslim community spoke out against the law, which some feared would be applied in a manner with disproportionate and negative impacts on Muslim communities. One weekly Muslim news publication reported that the imam of Jamia Mosque, Sheikh Muhammad Swalihu, argued that the law would “roll back the gains which the country made in the attainment of freedom and human rights.” For Muslims, he said, “it will have additional adverse effects as they will be prone to profiling by agents on the slightest suspicion that they are involved in so-called terrorist activities.”¹⁰¹ Despite civil society concerns, the Prevention of Terrorism bill became law in October 2012.

B. Uganda: Detainee Abuse Allegations, Involvement of Foreign Security Agents, and Persecution of Human Rights Defenders

1. Allegations of Detainee Abuse

When the World Cup bombing suspects were rendered to Uganda, they became part of Uganda’s expanding practice of sidestepping human rights protections in the name of fighting terrorism and national security threats. That pattern has included security forces using lethal force on rioters in 2009 (killing 40) and Walk-to-Work demonstrators in 2011 (killing 11) without adequately investigating if the use of force was excessive; prosecuting the 2009 rioters for crimes under the Anti-Terrorism Act of 2002; banning

the group responsible for organizing the Walk-to-Work movement, known as Activists for Change;¹⁰² detaining a journalist for reporting that the Ugandan government may have been responsible for the World Cup bombing;¹⁰³ and drafting the Public Order Management bill, which would give the police broad discretionary powers to decide who can hold public meetings. The Uganda Human Rights Commission, the Uganda Law Society, local human rights organizations, and the United Nations Office of the High Commissioner for Human Rights have all raised concerns that the bill would be used to suppress political opposition.¹⁰⁴

This pattern of rights violations continued in Uganda's treatment of the World Cup bombing suspects. After the ATPU brought Idris Magondu to a border town on July 27, 2010, Ugandan security forces took him to Entebbe Police Station, a detention facility where he allegedly was locked in a solitary confinement cell that had no mattress or bedding, was completely dark, extremely dirty, and filled with lice and fleas.¹⁰⁵ There, he claims that Kenyan police, Ugandan police, and individuals who introduced themselves as U.S. Federal Bureau of Investigation (FBI) officials interrogated him for three hours.¹⁰⁶ The following night he was taken to a different police station where he slept handcuffed and shackled. FBI and Ugandan officials, he said, also fingerprinted him and took his photograph.¹⁰⁷ Four or five days after Magondu arrived in Uganda, he was brought to a court, but without legal representation.¹⁰⁸ Other World Cup bombing suspects also said they were denied access to lawyers during their interrogations and at numerous other times during their detention in Uganda.¹⁰⁹

Following his initial court appearance, Magondu was remanded to Luzira Upper Prison, where he was held until being taken back to court—again without legal representation—and remanded to the Rapid Response Unit (RRU) headquarters at Kireka. He claims that while in detention at RRU headquarters he was further interrogated by FBI, Ugandan, and Kenyan officials without legal representation.¹¹⁰ Magondu and other suspects describe being held in a stinking lice-filled cell with 15 to 30 other prisoners.¹¹¹ The cells had no bedding and few blankets. Some of the suspects described twenty-four hour lighting, an open toilet in the cell, insufficient food, and only dirty toilet water to drink on occasion.¹¹²

After three weeks, Magondu was transferred back to Luzira. Magondu and other World Cup bombing suspects claim they were held there for months without bedding and with limited time outside.¹¹³ Several of the suspects said they were held in solitary confinement.¹¹⁴ Magondu, Isa Ahmed Luyima, Hassan Haruna Luyima, and Batem-ato Abubakari all claimed they were held in solitary confinement for more than three months in Luzira Upper Prison.¹¹⁵ According to the descriptions in affidavits, the conditions of confinement at Luzira Upper Prison may, like the RRU detention facility, have breached Uganda's obligation to treat detainees humanely and with dignity.¹¹⁶

Many of the rendered individuals allege that Ugandan officials either physically abused them or threatened to do so. The three Ugandan defendants who filed a constitutional petition (Isa Ahmed Luyima, Hassan Haruna Luyima, and Batematyo Abubakari) stated in affidavits before a Ugandan court that officers from the Ugandan Joint Anti-Terrorism Task Force (JATT) subjected them to beatings and the denial of food and water.¹¹⁷ All three men also describe in their affidavits being handcuffed, hooded, shackled, and driven to an undisclosed detention facility, which they describe as a “safe house,” where they were beaten.¹¹⁸ The JATT, an amalgamation of various Ugandan security organizations, was the focus of a 2009 Human Rights Watch report that documented illegal detention and torture.¹¹⁹

Some of the bombing suspects also complained of their treatment in RRU and police custody, including being punched, slapped, and subjected to forced nudity.¹²⁰ The worst allegations against the RRU came from Magondu and Omar.¹²¹ Magondu stated in an affidavit that Ugandans in his cell, who were not World Cup bombing suspects, “would be taken out at 9:00pm or 10:00pm at night and would not come back until 2:00am or 3:00am in the morning when they would be bleeding and have deep cuts on their limbs from the torture they had endured.”¹²² The allegations are consistent with a March 2011, Human Rights Watch report, “Torture and Illegal Detention by Uganda’s Rapid Response Unit.”¹²³ The RRU was subsequently disbanded in December 2011. The summary of the report reads, in part:

Of the 77 interviewees arrested by RRU, 60 said that RRU personnel had beaten or tortured them at some point in their custody. The most common form of torture was repetitive beatings on the joints, such as knees, elbows, ankles, and wrists during several sessions over many days while handcuffed in stress positions. RRU personnel beat detainees with batons, sticks, bats, metal pipes, padlocks, table legs, and other objects. Detainees reported that torture had left them with swollen or fractured limbs, unable to walk or lift objects, and with ongoing chronic pain. In some instances, RRU personnel inserted pins under suspects’ finger nails or in rare instances administered electric shocks. Suspects often said they were forced to sign confessions under duress following torture...¹²⁴

According to Ugandan court documents, however, the government of Uganda has denied the allegations of ill-treatment and torture in relation to the World Cup bombing investigation.¹²⁵

2. Allegations of Abuse by Foreign Security Officials

Some of the World Cup bombing defendants also made allegations of mistreatment by FBI agents. In court affidavits, defendants gave the names and detailed physical descriptions of the alleged abusers who, they claim, sometimes introduced themselves as FBI

officers. The FBI assisted Ugandan authorities in the investigations, as did members of the New York Police Department (NYPD), who were also part of the FBI team. The Open Society Justice Initiative contacted the FBI on several occasions requesting a meeting about the detainees' allegations, but received no response. (See Author's Note.)

Mohammed Hamid Suleiman provided the name of a person who, Suleiman says, identified himself as an FBI agent. According to Suleiman, this person would "psychologically torture me by saying things like, 'We are the ones who have told the Ugandans not to touch you but if you don't cooperate we will order them to beat you up until you talk.'"¹²⁶ Suleiman also said that the same man often threatened him with a pistol saying, "There are no human rights here. We are in charge of the police and the courts, and you will spend your life in prison and will not see your family again."¹²⁷

Yahya Suleiman Mbuthia alleged that during his first interrogation a blue-eyed man who identified himself as an FBI officer, "cocked his gun as if he were going to shoot me, saying that there was a bullet inside with my name on it and showing me a photo of dead people from the Kampala bombing, accusing me of being the person who did it."¹²⁸ Mbuthia also alleged that an FBI officer standing behind him hit him on the back of the head with his fist.¹²⁹ Mbuthia said he was "repeatedly beaten, punched in the stomach, had my mouth squeezed, and was almost suffocated with a dirty hood."¹³⁰ He said there were Ugandans present during the interrogations but it was clear to him throughout the interrogations that the FBI was firmly in charge.¹³¹

Nyamandondo, the man Tanzania extradited to Uganda before his appeal procedures were completed, alleged that a man who described himself as an FBI officer hit him in the eye, causing his glasses to break, his eye to bleed, and making him collapse on the ground.¹³² Nyamandondo also alleged that when he attempted to stand up a Ugandan official in the room punched him in the chest, causing him to fall back down.¹³³ Hussein Hassan Agade provided the name of a man, who introduced himself as an FBI official, who Agade said kicked him in the abdomen, grabbed him hard by the neck, and threatened to send him to Guantánamo Bay.¹³⁴ Omar Awadh Omar said he was "punched" and "slapped" by men who said they were FBI agents.¹³⁵

Omar also provided the name of an alleged U.S. "security officer" who struck him in the knee with a hard object.¹³⁶ Mohammed Hamid Suleiman's affidavit mentions a man by the same name but refers to him as an FBI agent. Their affidavits, taken together, describe him as an older man who had long hair in a ponytail, wore a blazer, shirt, and khaki trousers.¹³⁷ Omar alleged that two other Americans involved in the interrogations saluted this man when he entered the room.¹³⁸ This is not a common practice of FBI or NYPD officials and raises questions as to whether other government agencies were involved in the investigation and interrogations.

Omar, Mbuthia, and Njoroge also allege that a British intelligence official was in the room during some of their interrogations and during some of the alleged abuse.¹³⁹

As a result, the three men brought a case before U.K. courts to force the Foreign Secretary to disclose any information that the United Kingdom may have which could be useful to their constitutional petition in Uganda.¹⁴⁰ In those U.K. proceedings, the Foreign Secretary stated that he had no information about allegations of torture or ill-treatment after he undertook what the court considered to be a “reasonable and proportionate” search.¹⁴¹ The details of the search were disclosed in a closed door session and not available to the public.¹⁴² The Foreign Secretary refused to confirm or deny whether he had any information about the alleged renditions of Omar and Njoroge. The judgment in the U.K. courts is presently the subject of an appeal.

In the second half of 2010, Ugandan prosecutors, as they did with the 2009 rioters and 2011 Walk-to-Work demonstrators, charged the World Cup bombing suspects under Uganda’s 2002 Anti-Terrorism Act for crimes of terrorism, as well as for the crimes of murder and attempted murder. Prosecutors, who have registered and investigated at least 50 cases under the act as of mid-May 2012, have said they find the law useful because it provides new categories of crimes and longer sentences.¹⁴³ But in 2012, a judge from the Uganda High Court struck down a portion of the law, expressing concerns both with the law on its face and with the manner in which it was implemented. In that case—which involved charges against people involved in the 2009 riots—defense counsel argued that the prosecution’s case was based on weak evidence, a vague law, and procedural mistakes.¹⁴⁴ The judge agreed on all counts and, like the Kenyan judges who found the ATPU renditions to be unconstitutional, showed little patience for the state’s willingness to ignore Ugandan law when prosecuting acts of terrorism.¹⁴⁵

This was a positive development for the rule of law in Uganda, but several members of civil society told the Open Society Justice Initiative that they fear the High Court’s judgment may not sufficiently deter security forces from making unlawful detentions. In the absence of more robust and effective remedies for unlawful state action, they worry that Ugandan security forces may continue to break the law and violate the rights of suspects.

3. Persecution of Human Rights Defenders

Uganda’s response to the World Cup bombing included not only prosecuting suspects and, according to allegations in court documents, relying on unlawful detention tactics, but also harassing those who sought to provide legal assistance to the suspects. In several different instances that undercut the most basic principles of the rule of law, Ugandan authorities made it clear that they would treat individuals who provided legal assistance to terrorist suspects as terrorists themselves.

On September 15, 2010, Ugandan security agents arrested a prominent Kenyan human rights defender, Al-Amin Kimathi, and held him for almost a year before

all charges against him were dropped and he was unconditionally released. He was arrested with a Kenyan lawyer, Mbugua Mureithi. The two were visiting Uganda to arrange legal representation for the seven Kenyan World Cup bombing suspects who had recently been rendered there. Both men were held at the RRU headquarters and reportedly threatened with rendition and torture. Their requests to meet with a lawyer or communicate with family members were denied, and Ugandan authorities attempted to coerce from them false confessions and statements incriminating each other. Mureithi was released and deported to Kenya after three days, but he was given no explanation for his deportation other than that he was a national security threat.¹⁴⁶ (Mureithi brought a complaint before the EACJ.¹⁴⁷) Kimathi was brought to court, charged under the Anti-Terrorism Act, and detained for almost a year before having the charges dropped and being released. Kimathi's case in particular makes it clear that the Ugandan government was willing to hold people without evidence for extended periods of time—as they did to other World Cup bombing suspects, such as Khalif Abdi Mohammed and Mohammed Adan Abdow, both of whom were held for around a year before the charges were dropped and they were unconditionally released.¹⁴⁸

In December 2010, Clara Gutteridge, a British human rights monitor seeking to observe one of Kimathi's bail hearings, was denied entry to Uganda and detained overnight at Entebbe Airport. As they did to Kimathi and Mureithi, it appears Ugandan officials were seeking to harass Gutteridge in order to prevent her from providing legal support to an individual Uganda had labeled as a terrorist suspect. (On May 11, 2011, the Kenyan government detained Gutteridge overnight and summarily deported her from Kenya while she was visiting the region as an Open Society Justice Initiative fellow for meetings at the invitation of the Kenya National Commission on Human Rights. On May 31, 2011, a Kenyan government assistant minister informed the Kenyan parliament that Gutteridge “had involved herself in subversive activities which were a threat to national security and contrary to national interest. Her involvement with known terror operatives and the Al Shabaab was considered not to be in any way related to human rights activities.”¹⁴⁹)

Additionally, on April 13, 2011, four prominent human rights defenders, including a commissioner from the Kenya National Commission on Human Rights, were denied entry to Uganda, detained for six hours at the airport and subsequently deported to Kenya. In an apparent violation of Uganda's obligations under the Treaty for the Establishment of the East African Community Common Market and its Protocol, they were given no reason for these actions, nor offered any administrative or legal process by which they could challenge their treatment, before being declared “prohibited immigrants,” denied entry to Uganda, detained and deported.¹⁵⁰ The four were part of a larger delegation led by the International Commission of Jurists-Kenya, which was travelling to Uganda to meet Chief Justice of Uganda Benjamin Odoki to discuss Kimathi's case.

Taken together, these incidents show Kenya and Uganda as willing to flout domestic and international law, engage in rendition, illegally detain and abuse suspects, and misuse counterterrorism laws and security forces to crack down on minority groups and human rights defenders. If the allegations are true, they also suggest the active involvement of foreign officials in abusing detainees.

V. Foreign Security Assistance and Human Rights

The Kenyan and Ugandan governments and their security forces are the main parties responsible for any human rights abuses they commit. But other states—whether donors, collaborators, or providers of technical assistance—are responsible for ensuring that their security assistance does not aid or abet those abuses. The United States and United Kingdom have increased their support for counterterrorism activities in Kenya and Uganda in recent years; with that increased support comes increased responsibility to ensure the recipients act in accordance with the law and refrain from human rights abuses that can backfire and inadvertently erode the rule of law and fuel public resentment. As a matter of good policy and in some cases as a matter of law, the United States and United Kingdom must ensure that their security assistance does not contribute to or legitimize human rights abuses by recipient governments.

It would benefit the United States and United Kingdom to be more transparent about their counterterrorism assistance and funding to Kenya and Uganda, and to ensure that this support is used appropriately by the recipient governments. Increased transparency would increase accountability for donors and recipients alike, and it would also help dispel unfounded allegations of abuse. It is in the interest of all parties that funding is transparent and that counterterrorism activities are carried out in accordance with the law and with respect for human rights.

A. U.S. and U.K. Funding for Kenyan and Ugandan Counterterrorism Activities

The United States and United Kingdom rely on East African governments to conduct counterterrorism operations in the region. United States support, which is often opaque and includes complex funding streams costing hundreds of millions of dollars (see below), is aimed at developing the capacities and capabilities of local and regional security forces, including AMISOM. United Kingdom counterterrorism assistance is even more opaque than U.S. assistance, making it difficult to determine even rough estimates of how much, and what kind of, assistance it gives to Kenya or Uganda.

One of the main motivations for providing support is that it allows the United States and United Kingdom to avoid sending their own soldiers, which would galvanize anti-Western sentiment and be so ill-received by the local populations in Somalia that it could undermine stability. According to U.S. Army General Carter Ham, commander of U.S. Africa Command (AFRICOM), “In Africa, I would say a light footprint is consistent with what we need and consistent with the defense guidance.”¹⁵¹ This “light footprint” includes building the capacity of AFRICOM. In 2012, the U.S. Department of Defense initiated plans to undertake two construction projects at its Camp Lemonnier base in Djibouti at a total cost of \$187.2 million.¹⁵² One of the projects was for a Combat Aircraft Loading Area (CALA).¹⁵³ The other was for an “Expeditionary Lodging Facility” to support joint intelligence, surveillance, and reconnaissance missions, and to facilitate armed aircraft and munitions operations in support of AFRICOM and Central Command (CENTCOM). The facility would support 645 Air Force personnel and 111 joint current or projected personnel in support of various operations.¹⁵⁴ While this “light footprint” approach responds to political sensitivities in the region, the United States is nonetheless expanding its military reach, and therefore its responsibilities to ensure counterterrorism activities in the region do not lead to human rights abuses.¹⁵⁵

Separate from the build-up of AFRICOM, in 2012, the U.S. Congress approved a fund of \$75 million per year (the “East African Counter Terrorism Fund”) that was primarily, but not necessarily exclusively, focused on fighting “al-Qaeda, al-Qaeda affiliates, and *al Shabaab*” within Somalia.¹⁵⁶ Approximately \$40 million of this was allocated in July 2012 to Burundi, Kenya, and Uganda for their AMISOM efforts in Somalia.¹⁵⁷

Kenya did not receive AMISOM related funding prior to 2012 because its forces in Somalia were not formally part of AMISOM. That changed with the inclusion of several thousand Kenya troops in the peacekeeping operation in June 2012.¹⁵⁸ In July 2012, the Pentagon announced plans to send Kenya a package of eight Raven “drones” with reconnaissance, surveillance, and targeting acquisition kits for use in AMISOM at a cost of \$7 million from the new East African Counter Terrorism Fund.¹⁵⁹ According

to the same announcement, the Pentagon would send Uganda five heavily armored sports utility vehicles (SUVs), other trucks, and fuel; seventy-three AK-47s, 145 Beretta pistols, and 10 binoculars; a package of medical supplies; inflatable boats; and radio and global positioning system (GPS) devices at a total cost of \$19.5 million.¹⁶⁰ In addition, the Department of Defense has a global fund (commonly referred to as “Section 1206”) that focuses on internal and external counterterrorism and stability operations that are not aimed at fighting any specific group or groups.¹⁶¹ Between fiscal year 2006 and 2011, Kenya was the largest African recipient of Section 1206 funding, receiving \$46.6 million in total.¹⁶²

U.S. counterterrorism security assistance to Kenya and Uganda also took the form of training by U.S. Special Operations Forces, which provided six Joint Combined Exchange Trainings (JCETs) to Kenyan security forces in 2011.¹⁶³ From April 16 to July 14, fourteen Special Operations Forces personnel trained 40 personnel from Kenya’s 40th Ranger Striker Battalion in counterterrorism skills including combat casualty care; reconnaissance and surveillance; and tactics, techniques, and procedures for countering improvised explosive devices and snipers. Also in 2011, Special Operations Forces provided four trainings to the Kenyan Navy Special Boat Unit, and one training to Kenya’s Combat Support Wing, Joint Helicopter Command.¹⁶⁴

Uganda received two JCETs in 2011.¹⁶⁵ From April 16 to June 15, U.S. Special Operations Forces trained Alpha Company Special Forces from the Uganda People’s Defense Forces in counterterrorism skills, marksmanship, medical care, camouflage, heavy weapons, light infantry tactics, navigation, leadership, and memory skills assessment.¹⁶⁶ A second training was provided from May 23 to July 29 to Uganda People’s Defense Forces Alpha Company in detainee handling, human rights, marksmanship, navigation, special reconnaissance, military operations in urban warfare, and casualty care.¹⁶⁷

In addition, the Department of State has provided a steady stream of funding for East African states to conduct counterterrorism operations through the East Africa Counterterrorism Initiative (EACTI), a \$100 million program begun under President George W. Bush in 2003 to strengthen the counterterrorism capabilities of Djibouti, Ethiopia, Eritrea, Kenya, Tanzania, and Uganda.¹⁶⁸ Kenya has received coastal and border security assistance through the EACTI in the amount of \$12.5 million.¹⁶⁹ In fiscal year 2009, the EACTI was renamed the East African Regional Strategic Initiative (EARSi) which had a broader mandate and was expanded to cover more countries.¹⁷⁰ From this funding stream, Kenya received \$2.7 million in training and equipment for a counterterrorism unit—presumably the ATPU.¹⁷¹ EARSi was renamed again to the Partnership for Regional East Africa Counterterrorism (PREACT).¹⁷² According to the State Department, which requested \$10 million for PREACT for fiscal year 2013, this program is designed “to build the counterterrorism capacity and capability of member countries

to thwart short-term terrorist threats and address longer-term vulnerabilities.”¹⁷³ PRE-ACT, as its predecessors were, is paid for through the Peacekeeping Operations (PKO) fund (\$249.1 million requested for fiscal year 2013).¹⁷⁴ PKO funding is comparatively less transparent than military funding streams.

Kenya has also been one of the largest global recipients of Department of State Anti-Terrorism Assistance (ATA), with the State Department requesting \$5 million for fiscal year 2013 and having allocated approximately \$49.5 million during fiscal years 2003–2011.¹⁷⁵ The ATA program, according to a Department of State website, “trains civilian security and law enforcement personnel from friendly governments in police procedures that deal with terrorism. [Diplomatic Security] officers work with the host country’s government and a team from that country’s U.S. mission to develop the most effective means of training for bomb detection, crime scene investigation, airport and building security, maritime protections, and VIP protection.”¹⁷⁶

United Kingdom counterterrorism assistance is more opaque than U.S. assistance. In general terms, the United Kingdom’s Foreign and Commonwealth Office (FCO) overseas counterterrorism budget has been on the rise in recent years. Foreign Office Minister Chris Bryant said in January 2010, “by 2010–11, we will be spending £3.5 billion (\$US 5.7 billion) on counter-terrorism, security and intelligence; more than three times pre 9/11 levels. The FCO’s overseas counter-terrorism budget has also increased significantly in recent years. In 2008/9 it was £35m (\$US 58.7 million); in 2009-10 we will be spending £36.9m (\$US 60.2 million); and we are projected to spend around £38m (\$US 62 million) in 2010/11.”¹⁷⁷

Historically, the United Kingdom has been one of Uganda’s largest bilateral donors, wielding greater influence on its security sector than other donors.¹⁷⁸ The United Kingdom does not publicly disclose much additional information about counterterrorism assistance to Uganda. In Kenya, in 2010–2011, DFID spent £70 million in total and will spend an average of £128 million per year until 2015, with approximately eight percent being spent on “governance and security,” though it is unclear how much goes towards counterterrorism efforts.¹⁷⁹ A U.S. cable disclosed by WikiLeaks revealed that at a 2009 counterterrorism conference the United Kingdom told governments that its counterterrorism efforts in Kenya were focused on two key areas: Establishing a radio communications network for the Administrative Police in the North East and Coast provinces for border security, and developing a Special Forces interdiction/containment capability within the Kenyan armed forces for interdicting terrorist infiltration along the border and transit routes.¹⁸⁰

In keeping with some of these priorities, the Foreign Secretary said in February 2012 that the United Kingdom is “supporting Kenya to strengthen its border and maritime security capacity, and the Department for International Development is supporting security preparations in the run up to elections in the country. We are also

working across East Africa, with Kenya, Somalia and other countries in the region to build their capability to investigate, detain and prosecute terrorists in accordance with international human rights standards.”¹⁸¹ That same month, British Defence Attaché Brigadier David Potts provided a high-tech maritime security surveillance system to Kenya Defence Forces at the Kenyan Air Force Forward Operating Base in Mombasa.¹⁸² Then, in April, the U.K. High Commissioner to Kenya at the time, Peter Tibber, donated six vehicles to the ATPU on behalf of the British government.¹⁸³ The *Daily Nation* newspaper reported that New Scotland Yard sent officials to Kenya to help in the investigation of a British national allegedly detained in late 2011 with explosive materials in Mombasa.¹⁸⁴ The media also reported in June 2012 that New Scotland Yard sent detectives from its Counter Terrorism Command to assist in investigating a bombing at a Mombasa bar that killed three. The suspect in that bombing was a British national.¹⁸⁵

In an email response to Open Society Justice Initiative requests for additional information on U.K. counterterrorism assistance to Uganda and Kenya, the FCO stated, “Unfortunately we do not provide comprehensive detail on our counter-terrorism projects overseas due to the sensitive nature of CT [counterterrorism] work and the potential risk this level of detail could pose to those involved in the projects.” The response noted that U.K. High Commissioner to Kenya Peter Tibber posts blog entries that “provide some overview information on projects in Kenya—but we do not provide a comprehensive picture due to the security risks involved.”

B. The Link between Funding and Human Rights Abuses

Civil society groups in Kenya and Uganda have at times criticized the United States and the United Kingdom for blindly supporting domestic security forces that violate human rights and the rule of law, including their close partnership with the now disbanded Ugandan Rapid Response Unit during the World Cup bombing investigation. And according to Human Rights Watch, this unit perpetrated abuses prior to, and during, that investigation.¹⁸⁶ Members of Kenya’s civil society also criticized the United Kingdom for providing Kenya’s ATPU with six vehicles meant to help the unit “respond quickly to incidents and to help prevent the destruction to lives and economies which terrorists seek.”¹⁸⁷ In announcing the donation of the vehicles, then U.K. High Commissioner to Kenya Peter Tibber stated, “They are in addition to other assistance we are providing to the ATPU and others to prevent and investigate crime.”¹⁸⁸ Tibber’s announcement came at the time when community members in Mombasa suspected the ATPU of abducting preacher Samir Hashim Khan and his blind colleague Mohamed. A

few years before, the United Kingdom came under criticism from human rights groups for having provided counterterrorism military training to a Kenyan military unit that went on to perpetrate human rights abuses during counter-insurgency operations in Mount Elgon in 2008.¹⁸⁹

Following the September 11, 2001 terrorist attacks in the United States, the United States and United Kingdom encouraged allies around the world, including in East Africa, to adopt strict anti-terrorism laws, despite concerns that governments would use them to crack down on political opposition and minority groups. For example, as discussed earlier, Uganda's Anti-Terrorism Act, passed in 2002, has been used to punish political dissent and harass human rights defenders. Even in Kenya, where civil society groups successfully opposed draft anti-terrorism laws put forth in 2003 and 2006, the United States and United Kingdom continued to push the government towards adopting anti-terrorism legislation, which it did in 2012.¹⁹⁰

In response to criticism that counterterrorism funding leads to human rights abuses, the United States and United Kingdom generally argue that their assistance leads to greater respect for human rights and the rule of law. U.S. and U.K. officials point to mechanisms, policies, and practices aimed at ensuring that their security assistance does not contribute to, or enable, human rights abuses. But in some cases—including, apparently, the World Cup bombing investigation—those safeguards have fallen short.

With respect to the World Cup bombing investigation, a former U.S. government official with knowledge of the investigation told the Open Society Justice Initiative that the FBI's involvement successfully reduced human rights violations. He said that the FBI persuaded Ugandan authorities to conduct a more focused investigation rather than mass round-ups. As he described it, "The FBI got them away from picking people up indiscriminately. By the second week we got them looking at evidence and stop doing business as usual...We got them away from arresting the whole neighborhood towards being more surgical."¹⁹¹ If true, this is a positive outcome, but the FBI's refusal to meet with the Open Society Justice Initiative makes it impossible to verify the account of one former official. (See Author's Note.)

It is also unclear what FBI policies are in place if a partner entity, such as the RRU, commits abuses during a joint investigation. The FBI's manual, "Cross Cultural, Rapport-Based Interrogation," which includes a section on conducting interviews when a detainee is in foreign custody, provides no such guidance.¹⁹² (See Author's Note.) In contrast, the United Kingdom has issued specific guidance that aimed to distance interrogators from foreign governments that abuse detainees.¹⁹³ The guidance reads, in part:

When we work with countries whose practice raises questions about their compliance with international legal obligations, we ensure that our co-operation accords with our own inter-

national and domestic obligations. We take great care to assess whether there is a risk that a detainee will be subjected to mistreatment and consider whether it is possible to mitigate any such risk. In circumstances where, despite efforts to mitigate the risk, a serious risk of torture at the hands of a third party remains, our presumption would be that we will not proceed. In the case of cruel, inhuman or degrading treatment or punishment, this will cover a wide spectrum of conduct and different considerations and legal principles may apply depending on the circumstances and facts of each case.¹⁹⁴

The effectiveness of this guidance, however, rests heavily on how well U.K. personnel gather information about detainee abuse, and how seriously they take that information. In addition, the guidance is not absolute. Even when officials “know or believe” that torture will take place, the relevant ministers must be informed and the ministers “will consider all relevant facts in deciding whether an operation should proceed.”¹⁹⁵ When there is a “lower than serious risk of [cruel, inhuman, or degrading treatment] taking place,” the operation may proceed but the operation should be kept “under review.”¹⁹⁶ In all other circumstances, the operation can continue if “senior personnel and legal advisers conclude that there is no serious risk of torture or CIDT” or U.K. personnel are able to “effectively mitigate the risk of mistreatment.”¹⁹⁷ If neither is possible, Ministers “must be consulted.”¹⁹⁸ The guidance also gives significant credence to assurances from partnering governments that they do not abuse detainees, despite such assurances having proved false in the past.¹⁹⁹

The U.S. Department of State claims it vets members of the security forces it supports in East Africa and has ceased providing support when individuals or units have been credibly accused of perpetrating gross violations of human rights.²⁰⁰ Such action is required by U.S. domestic legislation known as the “Leahy Laws,” named after U.S. Senator Patrick Leahy, who authored them.²⁰¹ These laws prohibit the use of funds authorized by the Foreign Assistance Act and Arms Export Control Act to assist foreign security units credibly accused of having committed gross violations of human rights. Funding is not allowed to resume until and unless the responsible individuals are held accountable. A similar restriction applies to training funded out of the Department of Defense’s annual budget.

When the Leahy Laws are implemented properly, they project the United States’ commitment to human rights and may deter human rights abuses. A 2010 study by the Congressional Research Service reported that, for example, Section 1206 funding from fiscal year 2009 to Ethiopia was suspended due to Leahy Laws concerns.²⁰²

However, the Leahy Laws have had significant shortcomings. The rules do not apply to assistance funded out of U.S. government intelligence budgets. Also, in some cases the Department of State or Department of Defense had not informed governments that assistance was being restricted due to credible accusations of human rights abuses. The Open Society Justice Initiative believes that not doing so effectively hollows

out the deterrent component of the law, although there may be legitimate reasons for this in some cases, such as where disclosure would jeopardize the safety of individuals who provide derogatory information.²⁰³ A 2012 report from the State Department Office of the Inspector General (OIG) showed how the Leahy Laws fell short in regard to U.S. counterterrorism support for Kenya.²⁰⁴ The OIG criticized the U.S. embassy in Nairobi for insufficient vetting, finding that, “There is no process for collecting and updating information on human rights abuses.”²⁰⁵ The OIG also reported that “there is no reporting mechanism to verify that individuals who are vetted and cleared are the same persons who receive training.”²⁰⁶

Some of the Leahy Laws’ shortcomings were recently addressed, but mostly with respect to rules affecting the Foreign Assistance Act. It remains to be seen how, and how well, these changes will be implemented. For example, whereas in the past Leahy vetting results were not publicly available, new legislation requires the government to “make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished.”²⁰⁷ Also, the new legislation addresses the failure of the Department of State to vet units rather than individuals. (In the past, vetting was primarily focused on individuals receiving training.)²⁰⁸ Additionally, the U.S. government must proactively seek out information about human rights abuses from internal and external sources, which will help to better ensure that the United States discovers such information prior to approving and distributing assistance.²⁰⁹ An increase in resources dedicated to Leahy vetting in recent years is reportedly helping make the program more effective.

In addition to the Leahy Law safeguards, the United States often includes human rights trainings in its counterterrorism funding packages.²¹⁰ Department of Defense Section 1206 funding requires a human rights training component, for example. But is it unclear how effective such trainings are. The large-scale factors that enable security forces to commit human rights abuses—corruption, lack of accountability, and lack of respect for the rule of law—are difficult to address through a few trainings. Officials from the Department of State also told the Open Society Justice Initiative that unintended consequences, such as the possibility of human rights violations, are actively considered in advance of providing a government with significant security-sector assistance.²¹¹

The United Kingdom, which provides human rights trainings to foreign security forces in East Africa, does not have a legal equivalent to the Leahy Laws. But, following criticism in 2008 from human rights groups—for providing counterterrorism training to a Kenyan military unit that committed human rights abuses in Mount Elgon—the U.K. Ministry of Defence said that its aid is conditional: “Were the allegations proved to be true the UK would not resume training until we were satisfied that these had been properly addressed.”²¹² In late 2011, the United Kingdom published human rights

guidance to the FCO on its Overseas Security and Justice Assistance (OSJA).²¹³ Since its publication, the guidance was extended to all U.K. government departments. The guidance instructs U.K. officials to undertake a variety of mitigating measures if the assistance may directly or significantly contribute to human rights or international humanitarian law violations.²¹⁴ However, ministers are informed of problems only when the risk of abuse is serious and cannot be mitigated, and when “the Head of Department considers that Ministers would want to be informed.”²¹⁵ In all other situations, decisions about assistance relating to a risk of abuse can be taken at a lower level.²¹⁶ The U.K. guidance also relies heavily on assurances from the state receiving the aid that it will not commit abuses. Like the consolidated guidance and Leahy Laws, the OSJA is only effective if the United Kingdom is aggressive in gathering information about the conduct by recipients of their aid.

The counterterrorism assistance provided by the United States, and to a lesser extent by the United Kingdom, to Kenya and Uganda is massive, but the safeguards that come with that aid require strengthening. While the Leahy Laws and similar restrictions are well intentioned, they have not prevented human rights abuses being committed by security forces receiving U.S. and U.K. assistance. In particular, it seems clear that they do not appear to have prevented abuses being visited on the World Cup bombing suspects. If the United States and United Kingdom want their counterterrorism assistance to be effective rather than counterproductive, stronger safeguards are needed.

VI. Conclusion

East Africa is already a focus of Western-backed counterterrorism efforts, and those efforts are likely to grow. In late June 2012, the head of AFRICOM, General Carter Ham, said he was seeing signs of cooperation among Al Shabaab, Boko Haram in Nigeria, and Al Qaeda in the Islamic Maghreb. “What really concerns me,” he said, “is the indications that the three organizations are seeking to co-ordinate and synchronize their efforts—in other words, to establish a co-operative effort amongst the three most violent organizations ... And I think that’s a real problem for us and for African security in general.”²¹⁷ Whether the links are substantial, tenuous, or non-existent, the assertion that terrorist-labeled groups are expanding their reach in Africa will undoubtedly bring an increased proliferation of partnered operations, intelligence sharing, counterterrorism training, military equipment, and surveillance technology to deal with the threat of terrorism. In turn, this will increase the operational reach of security forces in East Africa, both domestically and regionally.

It is critical that East African security forces and foreign security assistance donors who support those forces take seriously the fact that human rights abuses and the suppression of civil society carry negative consequences that make counterterrorism efforts counterproductive. Unfortunately, the abuses that followed the World Cup bombing serve as a microcosm of this dynamic. Experience has shown that, absent adequate safeguards and careful planning and supervision, increased attention to combatting terrorism has, in many instances, translated into governments indiscriminately targeting specific minority communities and using the rhetoric of counterterrorism to justify the suppression of civil and political rights. Although governments such as the United States and United Kingdom want to retain a “light footprint,” they must ensure that their assistance does not legitimize the actions of abusive governments or enable

local security forces to commit human rights abuses. To put counterterrorism efforts on the right course in East Africa, all governments involved must ensure that their counterterrorism efforts abide by the rule of law, that security forces are held accountable when laws are broken, that counterterrorism assistance is increasingly transparent, and that security forces make efforts to constructively engage in dialogue with civil society.

Notes

1. These groups include *al Qaeda*, *al Qaeda in the Arabian Peninsula* (AQAP) in Yemen, *al Qaeda in the Lands of the Islamic Maghreb* (AQIM) in the Sahel and Maghreb, and *Boko Haram* in Nigeria. See, John O. Brennan, “The Ethics and Efficacy of the President’s Counterterrorism Strategy,” *Council on Foreign Relations*, April 30, 2012, at www.cfr.org/counterterrorism/brennans-speech-counterterrorism-april-2012/p28100, accessed August 21, 2012; and David Smith, “Africa’s Islamist militants ‘co-ordinate efforts in threat to continent’s security,’” *Guardian*, June 26, 2012, at www.guardian.co.uk/world/2012/jun/26/africa-islamist-militants-coordinating-threat, accessed August 21, 2012.

2. It is not always clear who the perpetrators are, but in the past 18 months Kenya has experienced a spike in grenade attacks, kidnappings, and improvised explosive devices (IEDs) in Nairobi, Mombasa, and Kenya’s northeastern region. The U.S. embassy in Kenya reported on July 5, 2012: “In the past year, there have been at least 17 attacks involving grenades or explosive devices in Kenya. At least 48 people died in these attacks, and around 200 people were injured... Nine of these attacks occurred in North Eastern Province, including locations in Dadaab, Wajir, and Garissa. Four attacks occurred in Nairobi, and four in Mombasa. Targets included police stations and police vehicles, nightclubs and bars, churches, a religious gathering, a downtown building of small shops, and a bus station. The most recent attack involved two simultaneous assaults on churches in Garissa on July 1, 2012. In this attack, 17 people were killed and about 50 people were injured.” U.S. Department of State, Bureau of Consular Affairs, *Travel Warning* (Kenya), July 5, 2012, at travel.state.gov/travel/cis_pa_tw/tw/tw_5745.html, accessed August 20, 2012.

3. U.S. Department of State, Office of the Coordinator for Counterterrorism, *Country Reports on Terrorism 2011: Africa Overview*, July 31, 2012, at www.state.gov/j/ct/rls/crt/2011/195541.htm, accessed August 20, 2012.

4. Scott Baldauf, Mike Pflanz, and Max Delany, “Somalia’s Al Shabab claims responsibility for Uganda bombings” *Christian Science Monitor*, July 12, 2010, at www.csmonitor.com/World/Africa/2010/0712/Somalia-s-Al-Shabab-claims-responsibility-for-Uganda-bombings, accessed August 20, 2012.

5. Open Society Foundations has conducted grantmaking and regional and national advocacy activities around the issues in this report, including the ongoing litigation in Uganda arising from the Kampala bombing. OSF has provided this support as a means of promoting due process and the rule of law. OSF does not take a position on questions of guilt or innocence that arise from the ongoing litigation.

6. See, for example, Ng'Anga, "Kenya: U.S. Can't Dictate to Kenya, Envoy," *All Africa*, November 8, 2012, at <http://allafrica.com/stories/201211090244.html>, accessed November 14, 2012; U.S. State Department, *Country Reports on Terrorism 2011*, July 31, 2012, at <http://www.state.gov/j/ct/rls/crt/2011/195541.htm>, accessed November 14, 2012; Cyrus Ombati, "War on terrorism gets boost as UK donates equipment," *Standard Digital*, May 22, 2012, at http://www.standardmedia.co.ke/?articleID=2000058588&pageNo=1&story_title=War%20on%20terrorism%20gets%20boost%20as%20UK%20donates%20equipment, accessed November 14, 2012; Human Rights Watch, *Open Secret: Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda*, April 2009; Human Rights Watch, *World Report 2012: Uganda*, January 2012. Although the United Kingdom withdrew some support from Uganda following crackdowns on public demonstrations in April 2011, its monetary support for Uganda remains strong. *Ibid.* See, also, Presentation of U.S. Congressperson Adam Smith (ranking member of the House Armed Service Committee) at the American Security Program, July 12, 2012, at americansecurityproject.org/blog/2012/rep-adam-smith-comes-to-asp/, accessed September 12, 2012; and Jeffrey Gettleman, "Ethiopian Leader's Death Highlights Gap Between U.S. Interests and Ideals," *New York Times*, August 21, 2012, at www.nytimes.com/2012/08/22/world/africa/zenawi-exemplified-conflict-between-american-interests-and-ideals.html?_r=1&hp, accessed August 22, 2012.

7. U.N. General Assembly, *The United Nations Global Counter-Terrorism Strategy*, Res. 60/288, September 20, 2006, at daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement, accessed August 20, 2012, p. 9.

8. See, for example, allegations of human rights abuses at the Twitter account @HSMPress, which describes itself as "Harakat Al-Shabaab Al Mujahideen is an Islamic movement that governs South & Cen. Somalia & part of the global struggle towards the revival of Islamic Khilaafa," at <https://twitter.com/hsmppress>, accessed August 24, 2012.

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Open Society Justice Initiative

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.

East Africa Law Society

The East Africa Law Society (EALS) is the premier regional Bar Association of East Africa founded in 1995. It is a dual membership organization bringing together over ten thousand individual lawyer members as well as six National Bar Associations: Burundi Bar Association, Kigali Bar Association, Law Society of Kenya, Tanganyika Law Society, Uganda Law Society, and Zanzibar Law Society. EALS is the largest Professional organization in East Africa, with a specific focus on the professional development of its members as well as promotion of constitutionalism, democracy and good governance, the rule of law and the advancement, promotion and protection of human rights of all people in East Africa and beyond.

International Commission of Jurists—Kenya

Established in 1959, the Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-partisan, not for profit making, membership organisation registered in Kenya. With a membership drawn from the Bar as well as the Bench, it is a National Section of the International Commission of Jurists whose headquarter is in Geneva. It is however autonomous from the ICJ Geneva.

Pan African Lawyers Union

The Pan African Lawyers Union (PALU) is the umbrella association of African lawyers and law societies. It brings together the continent's five regional and fifty-four national lawyers' associations, as well as individual lawyer-members. Our mission is to work towards the development of the law and legal profession, the rule of law, human rights and socio-economic development of the African continent, including through supporting African regional integration.

On July 11, 2010, terrorist bombings at two sites in Kampala, Uganda, killed over 70 people. In the wake of the attacks, Kenya and Uganda unlawfully transferred terrorist suspects from one country to another without due process, allegedly abused detainees, and detained lawyers and human rights activists who sought to ensure the rights of the bombing suspects. The bombing suspects also allege that the United Kingdom took part in their interrogations, and that U.S. officials physically and mentally abused them. Civil society groups have also accused Uganda of suppressing political opposition and public criticism under the pretext of fighting terrorism, and accused Kenya of committing extrajudicial killings and disappearances in response to terrorism threats, and violently targeting specific communities, such as Somalis in Kenya, because they are perceived as a terrorism threat

In examining these abuses and the parties responsible for them, this report argues that Kenya, Uganda, and the Western countries that support them must thoroughly investigate the alleged abuses and must pursue counterterrorism activities that do not entail human rights violations.

