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21st September 2010

H.E. Michael Ranneberger
The US Ambassador to Kenya
US Embassy
Nairobi.

**RE: UNLAWFUL FBI SUPERVISED ARREST AND DETENTION
OF AL-AMIN KIMATHI AND I WHILE IN THE COURSE OF OUR
PROFESSIONAL DUTIES IN UGANDA AND SUBSEQUENT
TRUMPED-UP CHARGES AGAINST AL-AMIN KIMATHI.**

Your Excellency, as you might be aware, on Saturday 18th September 2010, I was “deported” from Uganda back to Kenya. It is therefore impossible for me to communicate to your counterpart in Uganda the complaints regarding the unlawful arrest, *incommunicado* detention and mistreatment that I suffered in Uganda under the supervision of the FBI and which Mr. Al-Amin Kimathi continued to undergo until yesterday when he was charged with terrorism and murder charges arising from the 7/11 bombing in Kampala. And it is for this reason that I am constrained to write this letter to you in the hope that our complaints, although originating from Uganda will be acted upon by the US administration.

Your Excellency, Al-Amin Kimathi is the Executive Coordinator of the Muslim Human Rights Forum (MHRF), a civil society human rights organization registered in Kenya. As such, Al-Amin Kimathi is a human rights defender (HRD) in terms of the 1998 UN Declaration on Human Rights Defenders. For my part, I am an advocate of the High Court of Kenya and a member of the Law Society of Kenya and the East Africa Law Society.

I have been retained by MHRF and the families of six Kenyans¹ who, since the end of July 2010, were first arrested and detained *incommunicado* in Kenya before

¹ These are the families of Hussein Hassan Agade, Idris Magonda, Mohamed Adan Abdow, Mohamad Hamid Suleiman, Yahya Suleiman Mbuthia and Habib Suleiman Njoroge.

being rendered/kidnapped from Kenya (without extradition proceedings and without any modicum of due process) and handed over to Ugandan authorities to stand trial for the 7/11 terrorist bombings. All their *habeas corpus* applications before the High Court in Nairobi have been met with the standard response that, "the subjects are already outside jurisdiction." Consequently, MHRF instructed me to pursue the issue of the fair trial rights of the six Kenyans in the Ugandan courts. MHRF also tasked Al-Amin Kimathi with the duty of attending, observing and monitoring the human rights compliance of the trial in Uganda.

It is in the above context that I made my first trip to Kampala between 10th and 13th August 2010. During this trip, I engaged Ugandan defence counsel Mr. Ladislaus Rwakafuuzi as lead-counsel and we visited the first three Kenyans held at Luzira Main Prison without any incident.

Between 30th August to 2nd September 2010, Al-Amin Kimathi and I jointly visited Kampala when we attended mention of the case before the Nakawa Chief Magistrate's Court in Kampala on 2nd September 2010. Again, this trip was incident free.

Your Excellency, on our third trip to Kampala on the night of Wednesday 15th September 2010, intending to attend mention of the case the following morning on 16th, the trip turned into the most traumatizing night of my life. From Entebbe Airport we were lured into a trap by members of Uganda's Rapid Response Unit (RRU). An officer from the RRU kept calling Al-Amin Kimathi posing as a good Samaritan waiting for us at Niagara Hotel with a letter from one of our clients on trial for us to pick and deliver to his wife in Kenya. On arrival at the hotel, we were violently arrested, accused of being terrorists, hooded, and traumatized with endless high speed driving into the outskirts of Kampala throughout the night. It was not until about 12 noon on 16th September that we were delivered into the office custody of the RRU at Kireka in Kampala, hungry, exhausted, confused, disoriented and completely traumatized.

Without being accorded an opportunity to rest, to contact my family or counsel I was immediately subjected to intimidating interrogation and threatened with being charged with the same terrorism and murder offences that my clients are facing unless I gave false incriminating evidence against Al-Amin Kimathi to the effect that MHRF was a recipient of funds from Al Queda and Al Shabab.

My interrogators made no secret that the whole operation of arresting and detaining us was organized, masterminded and supervised by FBI officers. It was also made clear to me that the ultimate decision on whether I would be charged or released rested with the FBI officers. Indeed, an FBI officer was present in the office as I was being interrogated but he did not facilitate any of my

basic rights as an arrested person including the right not to be held in *incommunicado* detention and the right to counsel.

My polite protests that I was only involved in the case as counsel in the course of my professional duty fell on deaf ears. In blatant breach of the UN Basic Principles on the Role of Lawyers², I was subjected to the humiliation and awkwardness of being compelled to record a statement of my professional involvement in the case. Thereafter, I was subjected to further humiliation of being locked up in the same cells with my clients – Mohamed Hamid Suleiman, Yahya Suleiman Mbutia and Habib Suleiman Njoroge, who confirmed to me that the FBI officers had interrogated each of them more than five times and they had expressly told them that they were the ones in effective charge of the 7/11 investigations.

Your Excellency, I was detained together with Al-Amin Kimathi at Kireka RRU cells from 16th to 17th September when I was transferred to Entebbe Airport Police Station. I continued being held *incommunicado* at Entebbe Airport Police Station until the morning of 18th September when I was escorted into the aircraft destined for Kenya and my mobile phone handed back to me. That is when I was able to speak to my family and the outside world for the first time since I was arrested on the night of Wednesday 15th September.

Yesterday I learned with utter shock that after detaining Al-Amin Kimathi in *incommunicado* detention for six (6) days, he was arraigned in court charged with the same terrorism and murder offences as our clients.

Your Excellency, I am convinced that the charges are trumped-up and a pernicious negation of Al-Amin Kimathi's status as a human rights defender contrary to the essence of the UN Declaration on Human Rights Defenders.

Your Excellency, as former UN Secretary General, Koffi Annan said on 14th September 1998, ***“the Declaration rests on the basic premise: that when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe.”***

Your Excellency, I also have no doubt that the charges have been occasioned by the blinding prejudice with which the FBI and all other agencies involved in the

² To be specific, the interrogators, under the direction of the FBI breached guarantees for the functioning of lawyers contained in Articles 16, 17, 18 and 21 which provide that; ***“16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately protected by the authorities. 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. 22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”***

7/11 investigations were determined to fabricate a case against MHRF and Al-Amin Kimathi. Indeed, my interrogators made it clear that the decision to charge Al-Amin Kimathi had already been made even before we were taken into the offices of the RRU. The interrogators informed me upfront that I was the only one who had a remote chance of convincing them why I should not be charged otherwise, "there was no question about not charging Al-Amin Kimathi."

Your Excellency, I was shocked to see the investigators, in the absence of Al-Amin Kimathi, start to work on his laptop copying and moving data back and forth from his laptop to theirs. I am convinced that this sort of investigation of a suspect's computer, is completely unfair and prejudicial to his rights and completely unacceptable. It surely would not happen anywhere in the United States of America, Canada, Australia or Western Europe.

Your Excellency, as Al-Amin Kimathi now painfully languishes in remand custody awaiting trial for his life, I wish to let you know the sources of MHRF funding and assistance as I know them. They include; grants from the Open Society Initiative (OSIEA), program partnerships with the ICJ-Kenya, program partnerships with UK based Reprieve and Redress and donations coordinated by the Jamia Mosque Committee – Nairobi. I also know that the funds of MHRF are managed by the reputable firm of Kenyan auditors – Githongo & Company.

Let the FBI, Kenyan and Ugandan authorities tell the world if they have investigated OSIEA, ICJ-Kenya, Reprieve, Redress, Jamia Mosque Committee and Githongo & Associates before they lynch an innocent man, since as the saying goes; "the character of a person is determined by the company s/he keeps".

Your Excellency, for my tribulations, I am seeking legal advice on appropriate legal action to take against the FBI, the Ugandan and Kenyan authorities who definitely collaborated in my arrest and *incommunicado* detention in Uganda. Meanwhile, I will appreciate any remedial action that your office might offer on behalf of the US administration.

Your Excellency, allow me to point out the glaring irony that Al-Amin Kimathi now finds himself in vis-avis the charges. On 14th July 2010, on behalf of MHRF he issued an unreserved condemnation of the 7/11 terrorist bombings, viz;

"The Muslim Human Rights Forum (MHRF) condemns in the strongest terms possible the twin bomb attacks on Sunday night in Kampala – Uganda. There could be no possible justification for taking away the lives of innocent civilians who were only socializing peacefully. Those killed were not party to any conflict and as innocent civilians should not have been targeted in any warfare whatsoever. This heinous, barbaric and senseless murder of innocent people cannot be condoned anywhere in a sane society. MHRF sends condolences to all

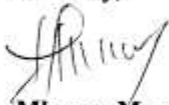
those who lost family and loved ones, friends and colleagues in the brutal attacks and wish the injured speedy recovery. MHRF supports efforts by the security agents in Uganda and the region to get to the bottom of this most unfortunate carnage, to investigate, apprehend and prosecute those found responsible but appeal to the authorities to exercise their obligations under international and national law. We maintain that any measures taken to combat terrorism must comply with the obligations of the state under international law, in particular human rights law, refugee law and international humanitarian law."³

Your Excellency, the assertion being peddled that Al-Amin Kimathi and I were arrested in the company of "a well known Al Shabab operative" is a blatant lie. Al-Amin Kimathi and I were arrested just the two of us at the parking lot of the Niagara Hotel and removed from the taxi that had come for us at Entebbe Airport from Holiday Express Hotel where we had been booked for the period we were to be in Kampala. The alleged Al Shabab operative, Mr. Omar Awadh Omar, who was charged together with Al-Amin Kimathi yesterday was in fact arrested in Nairobi at about noon on Friday 17th September 2010 – two days after our arrest in Kampala! *Habeas corpus* application for Omar Awadh Omar was filed yesterday before the High Court at Nairobi and is being heard today.

Your Excellency, unless there is an open, transparent and independent inquiry into all the circumstances leading to the arrest, detention, charging and arraignment of Al-Amin Kimathi, the United States, Kenya and Uganda risk the tragedy and ignominy of being complicity in the gross violation of the basic rights of Al-Amin Kimathi as a human rights defender. The terrorism and murder charges against Al-Amin Kimathi might just be a cruel and pretended justification for victimization and reprisal for his commitment to the course of human rights.

Thank You.

Sincerely,



Mbugua Mureithi
Advocate.

³ See Statement of the Muslim Human Rights Forum on the twin bomb attacks in Kampala, Umma Defenders, a Website for Kenyan Muslim Youth and at <http://safariafricaradio.com/index.php/news/404>

cc.

1. The Ugandan High Commissioner to Kenya
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2. Hon. Moses Wetengula, EGH, MP
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Ministry of Foreign Affairs
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3. Hon. Mutula Kilonzo, SC, EGH, MP
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Ministry of Justice
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