

EXECUTIVE SUMMARY

IGNORANCE IS NO DEFENCE: DJIBOUTI, RENDITION AND TORTURE

Shadow Report Submitted to the African Commission on Human and Peoples' Rights
Concerning Rendition, Secret Detention and Torture by the Republic of Djibouti



Humanity | Activism | Knowledge | Integrity



This report presents compelling evidence from legal proceedings, official US and other government documents, a US Senate Committee inquiry, Supranational, NGO and media investigations, suggesting that Djibouti has repeatedly violated the African Charter in carrying out counterterrorism operations. Specifically, we allege that Djibouti (either as principle agent, or in collaboration with agents of other states):

- Secretly detained at least 6 individuals *incommunicado*, subjecting them to torture and/or inhuman or degrading treatment;
- Denied prisoners access to adequate judicial process (in particular the opportunity to challenge the legality of their detention or to access a lawyer);
- Allowed foreign agents to interrogate prisoners held in Djiboutian custody in circumstances violative of Djibouti's international legal obligations;
- Transferred prisoners and/or allowed them to be refouled from Djibouti with no judicial oversight or opportunity to challenge their transfer and to circumstances likely to involve further mistreatment including torture;
- Has been involved in at least 7 highly suspicious flights, which may have been carrying further, as yet unidentified individuals through or from Djibouti in the context of rendition and/or secret detention operations.

Considered as a whole, the evidence in this report suggests a clear case to answer of contravention of Djibouti's obligations under Articles 1, 2, 3, 4, 5, 6, 7, 12 and 18 of the Charter. The evidence also poses numerous further questions as yet unanswered by Djibouti. However, no acknowledgment of even the bare, publicly known allegations have appeared in Djibouti's report on its international legal compliance submitted to the African Commission in 2013.

Whilst the threat of global terrorism remains potent in the East and Horn of Africa, carrying out counterterrorism operations with a disregard for domestic and international legal standards over the past 14 years has demonstrably failed to succeed in promoting regional or global security. Counterterrorism operations must be carried out with respect for the rule of law or else they risk creating the very conditions of insecurity they seek to protect against. The East and Horn of Africa region is now by any standards more insecure than it was at the beginning of the global "War on Terror".

In its posture of refusing to acknowledge these credible allegations of violations, Djibouti is acting contrary to a global trend towards acknowledging, and accepting responsibility for, past mistreatment of security detainees. In the US, the UK, and

Canada, official reports and/or commissions of inquiries have begun to deal with past national security violations committed during the last decade.¹ Supranational human rights courts and bodies similar to the African Commission, including the European Court of Human Rights and UN Committees, have increasingly not only accepted jurisdiction over matters relating to bilateral and multilateral counterterrorism operations involving foreign states, but also recognised violations of human rights guarantees comparable to those in the African Charter.²

In light of the material in this report, and the important principles at stake, we suggest that as a part of its review of Djibouti, the Commission should engage the Republic of Djibouti in an urgent, constructive dialogue to (a) determine the extent of the Republic of Djibouti's violations; and (b) to recommend appropriate remedies under applicable principles of international law.

The Commission should call upon Djibouti to:

1. Reveal the names, fate, and whereabouts of all of the victims held within and transferred through the territory of Djibouti in the context of counterterrorism operations, and provide redress, including appropriate compensation, for violations of their human rights.
2. Issue an apology to victims of violations stemming from Djibouti's involvement unlawful counterterrorism operations, and implement measures to ensure that such violations will not be repeated.
3. Conduct an affirmative review of cooperation arrangements with foreign governments to ensure that Djibouti does not further collaborate in the violation of individual rights on its territory, whether passively or actively. Make public the nature of its future cooperation with the US and other western power in the area of counter-terrorism.
4. Make public the nature and extent of Djibouti's counterterrorism cooperation with the US other western powers.

¹ For example, Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* (foreword, findings and conclusions, and executive summary only, released December 2014); Canada's Commission of Inquiry Into the Actions of Canadian Officials in Relation to Maher Arar, (2009); The UK Iraq Detainee Inquiry (2013).

² See for example, *Al Nashiri v. Poland*, ECtHR No. 28761/11 (24 July 2014); *Husayn (Abu Zubaydah) v. Poland*, ECtHR No. 7511/1 (24 July 2014); *El-Masri v. Macedonia*, ECtHR No. 39360/09 (13 December 2012); (*Mohammed Alzery v. Sweden*, Communication No. 1416/2005, U.N. Doc. CCPR/C/88/D/1416/2005 (2006); (*Agiza v. Sweden*, Communication No. 233/2003, U.N. Doc. CAT/C/34/D/233/2003 (2005).