

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2007/09/05/us-dont-send-guantanamo-detainees-home-torture-and-abuse>

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Authorities in Tunisia mistreated two former Guantanamo detainees who were sent home in June despite Tunisia's pledge to the US government that it would treat them humanely, Human Rights Watch said in a report released today.

The Tunisian government is now holding both men, Abdullah al-Hajji Ben Amor and Lotfi Lagha, in prison; the men have told those who visit them that things are so bad they would rather be in Guantanamo, Human Rights Watch said.

Closing Guantanamo provides the United States one of the best opportunities to help rebuild its moral authority and international good will, said Jennifer Daskal, senior counterterrorism counsel for Human Rights Watch. Washington should not squander that chance by forcibly repatriating detainees to countries with known records of torture and abuse.

The 43-page report, [Ill-fated Homecomings: A Tunisian Case Study of Guantanamo Repatriations](#), describes the experiences of the two Tunisians returned home 11 weeks ago and urges the US government to set up a process that would give detainees advance notice of their transfer, and allow them the opportunity to contest it before a federal court if they fear torture or ill-treatment upon return to their home countries.

Ten Tunisian detainees remain at Guantanamo, and at least eight of them were convicted in Tunisia of crimes in absentia.

On June 18, US authorities flew al-Hajji, a 51-year-old father of eight, and Lagha, a 38-year-old from a remote village in southern Tunisia, from Guantanamo to Tunis and handed them over to the Tunisian security forces. The US had held both men in Guantanamo for approximately five years without ever charging either with a crime.

During the last week of July, two Human Rights Watch researchers traveled to Tunisia to investigate the fate of these two men. While authorities declined Human Rights Watch's request to meet with the detainees, the researchers talked to their lawyer and family members who have visited them.

Al-Hajji told his lawyer that he spent his first two days back in Tunisia at the Ministry of Interior, where Tunisian security officials slapped him, threatened him with the rape of his wife and daughters, shook him awake every time he started to sleep, and coerced him into signing a paper he could not read because he needs new glasses. After signing the statement, Tunisian authorities took al-Hajji to the military court that had convicted him in absentia in 1995 on charges of participating in a foreign terrorist organization abroad.

He spent the next six weeks in solitary confinement in a room he called his tomb. In early August, he was moved to a cell with common-law prisoners, where he now awaits his retrial on September 26. Al-Hajji told his lawyer that the Americans at Guantanamo never told him about his conviction in absentia, and that if he had known, he would have objected to being returned home.

Lagha, who was never represented by a lawyer at Guantanamo, did not see a lawyer in Tunisia until August 9, more than seven weeks after his return there. Like al-Hajji, Tunisian authorities initially took Lagha to the Ministry of Interior. Lagha later told his lawyer that the police threatened to torture him but did not abuse him physically.

A judge subsequently questioned Lagha in the absence of a lawyer and recommended pressing charges. Lagha was sent into pretrial detention, where he was held in solitary confinement for more than six weeks. Authorities transferred him on August 7 to a cell with common-law prisoners.

The US State Department, in its human rights reporting, is crystal-clear about the persistence of torture and unfair trials in Tunisia, said Sarah Leah Whitson, director of the Middle East and North Africa division at Human Rights Watch. Does the US government really

think that diplomatic assurances are going to stand up against these entrenched practices?

The United States says it can negotiate away the risk of torture by getting what are known as diplomatic assurances or promises of humane treatment from the receiving country. Robert F. Godec, the US ambassador to Tunisia, told Human Rights Watch that assurances from Tunisia are specific and credible, and that we follow up on those assurances. But Ambassador Godec would not or could not say what Tunisia specifically promised with respect to al-Hajji and Lagha, whether it honored the promises, or what the United States was doing to follow up.

The experience of the returned Tunisians shows, yet again, why the US cannot rely on diplomatic assurances to override a legitimate fear of torture or abuse, said Daskal.

## Background

The United States now says that 150 of the 355 Guantanamo Bay detainees are eligible for release or transfer. Human Rights Watch urges the US government to provide Guantanamo detainees advance notice of any pending transfer and an opportunity to challenge the transfer, including the reliability of any diplomatic assurances, before a federal court. Notice should include the relevant information needed to make an informed choice, including any records of prior convictions in absentia.

While Human Rights Watch expects that the vast majority of detainees will not want to challenge their transfer home, such a process will establish a necessary protection for those who might otherwise be sent home to torture and other abuse.

Of the 355 detainees the US is still holding in Guantanamo, approximately 50 come from countries such as Algeria, China, Libya, Tunisia, and Uzbekistan all countries with known records of torture and have told their attorneys that they are so fearful of torture or other abuse that they do not want to return home. Another nine who are either unrepresented or never met with their lawyer come from such at-risk countries, and may also have valid repatriation concerns, as may others because of personal circumstances. The Convention against Torture, to which the US is a party, prohibits returning anyone to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.

In some cases, the administration has recognized detainees concerns as legitimate, as with the Chinese Uighurs, and is actively seeking third-country placement for the detainees. But the process of finding a country willing to resettle these detainees, let alone an appropriate country, is concededly not easy.

As a result, the US government appears to be turning more and more to the use of diplomatic assurances from the detainees home country as a means of mitigating the risk of abuse. Human Rights Watchs research on such assurances strongly indicates that they do not provide an effective safeguard against torture and ill-treatment. Former Guantanamo detainees who were sent home to Russia in 2004 experienced torture and other abuse despite Moscows pledge to the US government that they would be treated humanely, according to a March 2007 Human Rights Watch report titled [The Stamp of Guantanamo](#).

In addition to Tunisia, the US is reportedly negotiating such assurances with Algeria, which still has 26 detainees in Guantanamo, and Libya, which has nine in Guantanamo. Both are countries with known records of torture.

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