

Human Rights Watch

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

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In mid-June, a group of U.S. soldiers entered the cells of Abdullah al-Hajji and Lofti Lagha at Guantanamo Bay, Cuba, where they had been held without charge for five years. The Americans cuffed the detainees' hands, shackled their ankles, muffed their ears and blindfolded them before loading them onto a military plane for the flight home.

For most of the 360 detainees still at the U.S. military prison, that would have been a joyous journey. But Hajji and Lagha are from Tunisia, a country that State Department reports say uses sleep deprivation, electric shocks, waterboarding, cigarette burns, beatings and prolonged suspension by the wrists to extract confessions and stifle opposition.

Eight weeks later, the two men are being held in a Tunisian prison, telling visitors that things are so bad they would rather be back at Guantanamo Bay.

For five days in July, I crisscrossed this steamy capital, trying to learn the fate of these men. I met with local activists, lawyers, government officials and families of Guantanamo detainees. Plainclothes cops followed me around, giving themselves away with their deep stares and white SUVs. While I was unable to meet with Hajji or Lagha, I talked to others who had.

The problem goes beyond these two men. Since 9/11, the United States has been using Guantanamo Bay as a dumping ground for suspected jihadists. As pressure mounts to shut it down -- even Defense Secretary Robert M. Gates has said he would like to see it closed -- efforts to winnow down its population are now in high gear. In July, the Bush administration said that 80 detainees were slated for release or transfer; that number has now jumped to 150.

For most of these detainees, this is good news. But about 50 men have told their lawyers that they fear torture and other abuse so acutely that they do not want to be returned home. These detainees -- citizens of Algeria, China, Libya, Tunisia and Uzbekistan, all countries the United States has accused of mistreating prisoners -- present yet another obstacle to closing Guantanamo Bay.

In some cases, Washington has recognized these fears as legitimate. Eight of the detainees (five Chinese Uighurs, an Algerian, an Egyptian and a Russian) were sent to Albania rather than to their countries of origin. This isn't an ideal solution -- the men are now living apart from their families in a refugee camp in an impoverished country where they don't speak the language and can't find jobs -- but it is better than continued detention at Guantanamo Bay and a forcible return to a country that tortures. The United States is still trying to find a third-party country to accept the remaining 17 Uighurs held at the prison, some of whom have been accused of waging an on-again, off-again separatist struggle against China's central government.

But in other cases, the Bush administration has claimed that it can negotiate away the risk of torture by getting promises of humane treatment from the receiving country. The Tunisian government gave such assurances before Hajji and Lagha were transferred. And State Department officials are reportedly in the final stage of negotiating such deals with Algeria. But what protection can "diplomatic assurances" provide from countries that have done little to clean up their acts after years of U.S. protests?

The cases of Hajji and Lagha provide scant comfort. Hajji, a 51-year-old father of eight, says he left Tunisia with his family in 1990 because of religious persecution, traveled to Saudi Arabia, then settled in Pakistan in 1991. Lagha, a 38-year-old from a remote village in southern Tunisia, left in 1998, traveling first to Italy and settling in Pakistan in 2001. Both were arrested by Pakistani authorities and handed over to the Americans in 2002. Neither was ever charged with a crime, and on June 18, 2007, after five years in U.S. custody, they were passed off to Tunisian authorities -- the first of 12 Tunisians at Guantanamo Bay to be sent home.

Hajji told his local lawyer that the Tunisian government's first act of welcome was to replace the blindfolds used in transporting detainees with hoods. The account I gathered about what happened to Hajji during his first days back home tracks closely with widely known practices of the Tunisian police. He endured two long days of interrogations at the Ministry of Interior, where Hajji says he was slapped, threatened with the rape of his wife and daughters, and shaken awake every time he started to sleep. In the end, the threats to Hajji's family were more than he could take: He told his lawyer that he signed the paper that officials thrust at him, even though his eyes had deteriorated so badly and his glasses were so old that he had no idea what it said.

Hajji's next stop was a Tunisian military court. This court had tried him in absentia and sentenced him to 10 years in 1995 on suspicion of belonging to a terrorist organization operating abroad. The case against him relied primarily on a statement from one of his 19 co-defendants, who claimed that Hajji had been associated with the Tunisian Islamic Front in Pakistan -- a statement that Hajji's lawyer says was probably given after torture and abuse. Hajji says that neither the Tunisians nor the Americans ever told him about this conviction before sending him home; had he known about it, he adds, he never would have wanted to return. (Hajji's U.S. lawyer, who also learned of the conviction only recently, went to Guantanamo Bay to try to warn his client about it, but Hajji was whisked away to Tunisia before the lawyer could do so.)

For the next six weeks, Hajji was held in solitary confinement in a windowless, unventilated cell that he called his "tomb." He was allowed just 15 minutes of recreation per day, in another windowless room. Hajji told visitors that he never knew what time it was -- not even when to pray. He had, I'm told, no contact with any other prisoners.

In fact, the Tunisian government had disavowed such solitary confinement in 2005 as cruel and outmoded. "It's illegal!" exclaimed Hajji's overworked defense lawyer, producing a tattered copy of the Tunisian Criminal Code and pointing excitedly to the provision that permits solitary confinement only for punitive purposes and not for more than 10 days.

Both his lawyer and the International Committee of the Red Cross have been able to visit Hajji. His family members, who are allowed one 15-minute visit per week, must report the content of their conversations to police as soon as they leave the prison.

Less is known about Lagha, who had no legal representation during his more than five years at Guantanamo Bay. He returned on the same flight as Hajji. Since June 21, I'm told, he has been facing charges of participating in a terrorist organization abroad, but he was not given access to a lawyer until Aug. 9. He told his new attorney that he had been moved out of solitary confinement only two days before the lawyer's visit.

Two of Lagha's brothers made the long trip from the family home in southern Tunisia to the capital to see him while I was there. They had thought that their brother was dead, they told me, and hadn't even known he was being held at Guantanamo Bay until they learned of his release on al-Arabiya TV.

I asked Robert F. Godec, the U.S. ambassador to Tunisia, what the Bush administration is doing to track the two men's cases. He said that he had "specific and credible" assurances from the Tunisian government that they would not be abused, adding that "we follow up on these assurances." But he would not say whether the treatment of Hajji and Lagha had lived up to Tunisia's pledges; nor would he say whether any U.S. official had met with the two since their return home. This is disturbing: All we have are promises from a notoriously abusive regime, yet U.S. officials will not even say whether they are following up on those assurances by talking to the detainees themselves.

My organization, Human Rights Watch, has long urged the Bush administration to close Guantanamo Bay. As we continue to hope for an end to this chapter, we must remember that the United States is expressly prohibited under international law -- in the form of the 1984 Convention Against Torture -- from forcibly sending anyone back to a country where there are substantial grounds for believing they would be tortured.

Haphazardly shipping detainees such as Hajji and Lagha to countries with widely known records of torture is hardly the way to go about closing Guantanamo Bay. The administration could shut down the camp responsibly by alerting the detainees and their lawyers about pending home-country returns and giving them an opportunity to challenge such transfers, including the reliability of any diplomatic assurances of humane treatment, before a federal court. Most Guantanamo detainees won't want to do anything to slow their return home, but such a process would add an invaluable protection for those who can demonstrate a credible fear of torture or abuse back home.

Guantanamo Bay needs to be emptied, but it must be done justly and humanely. Otherwise, Washington could end up condemning the detainees to a fate worse than Guantanamo. This would only further fray the tattered global reputation that the United States so desperately needs to repair.

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