

# Human Rights Watch

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

<https://www.hrw.org/news/2007/09/25/letter-italian-government-regarding-nassim-saadis-deportation-and-use-diplomatic>

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Human Rights Watch is disturbed by the Italian authorities reliance upon diplomatic assurances from Tunisia to justify Saadis deportation as being consistent with its human rights obligations. Our research strongly indicates that assurances against torture and ill-treatment do not provide an effective safeguard for persons at risk of such abuse upon return. Such assurances are inherently unreliable and practically unenforceable. Their growing use in the Council of Europe region and elsewhere threatens to undermine the ban on torture and the *nonrefoulement* obligation.

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We respectfully request that the Italian authorities refrain from seeking or relying on diplomatic assurances, a practice that undermines the prohibition against torture and ill-treatment.

#### Italy's International Obligations

Seeking assurances against torture in Saadis case is an acknowledgement that he is in fact at risk of torture and ill-treatment upon return to Tunisia. The Italian governments obligations in relation to torture and ill-treatment are clear. Under the European Convention on Human Rights and Fundamental Freedoms (ECHR), the United Nations Convention Against Torture, and the International Covenant on Civil and Political Rights, torture and ill-treatment are prohibited and no person can be transferred to another country where he or she is at risk of torture or ill-treatment (the *nonrefoulement* obligation). The ban on torture and *refoulement* is absolute. It applies to all persons without consideration of their status or alleged crimes, and irrespective of the nature of the transfer, including extradition, expulsion, deportation and rendition.

In cases where individuals may face a risk of torture, full compliance with the *nonrefoulement* obligation requires states to provide for a review by an independent, impartial body of the decision to remove. In order to constitute an effective remedy, this review must take place before the person is transferred. Saadi was ordered to be deported in August 2006 under the expedited procedure created by Law 155 of 31 July 2005 (Pisanu Decree) which explicitly denies the right to a suspensive appeal to those subject to removal on national security grounds. In May 2007, the UN Committee Against Torture (CAT) issued its concluding observations on Italy's fourth periodic report and expressed concern at the immediate enforcement of these expulsion orders, without any judicial review, and that this expulsion procedure lacks effective protection against *refoulement*:

*The Committee recalls the absolute nature of the right of each person not to be expelled to a country where he/she may face torture or ill-treatment and urges the State party to reconsider this new expulsion procedure. When determining the applicability of its non-refoulement obligations, under article 3 of the Convention, the State party should examine thoroughly the merits of each individual case and ensure that adequate judicial mechanisms for the review of the decision are in place.*

An independent assessment of risk prior to removal, as recommended by the CAT, could have led to a determination by a domestic court that Saadi could not be safely returned. Italian law provides an alternative to removal in the form of compulsory residence (*obbligo di soggiorno*) and special police supervision. These measures can only be imposed by a court after a full adversarial hearing in which the individual is represented by a lawyer. Violations of the terms of a residency order give rise to criminal sanctions.

We were dismayed that in the course of the July 11, 2007 Grand Chamber hearing in the Saadi case the Italian government

representative argued that the absolute nature of the *nonrefoulement* obligation should be reconsidered to allow a national security exception to article 3 ECHR (the *nonrefoulement* obligation). Said exception would permit the risk of ill-treatment to be balanced against the alleged threat posed by the person subject to removal. Although the ban on returns to risk of torture would remain intact under international law, in particular under the UN Convention Against Torture, the Italian governments manifest effort to weaken the absolute prohibition against torture and ill-treatment under the ECHR would have a corrosive effect, and put persons subject to removal at risk of ill-treatment.

We note that the British government intervened in the Saadi case and made oral representations to the court during the Grand Chamber hearing in favor of a national security balancing test for returns to risk of ill-treatment. Human Rights Watch has criticized the British government for a similar intervention in *Ramzy v. the Netherlands*, a case from which the Italian government in power at the time withdrew. It is disappointing that after having withdrawn from the UK intervention in *Ramzy v. the Netherlands*, the Italian government is now making similar arguments in the Saadi case.

### **Risk of Ill-Treatment in Tunisia and Breach of Diplomatic Assurances**

The Italian government argued before the Grand Chamber that any risk Saadi might face upon return would be mitigated by diplomatic assurances against torture and ill-treatment secured from the Tunisian government. Saadi had been sentenced in absentia in 2005 to twenty years imprisonment by a military court for membership in a terrorist organization and would certainly automatically be imprisoned upon return. According to the Italian government, the Tunisian authorities have promised that Saadi will be treated in conformity with article 32 of the Tunisian constitution, which incorporates and privileges treaty obligations over domestic legislation; that any abuses perpetrated against Saadi will result in a full investigation and accountability for the perpetrators per the Tunisian criminal code; and that Saadi's family and lawyers will have access to him after his return.

These diplomatic assurances, however, merely restate key obligations under the Convention Against Torture, to which Tunisia is a party. According to our and others research, however, Tunisia routinely fails to honor its legally-binding treaty commitments and the practice of torture and ill-treatment of persons in Tunisian detention facilities and prisons is well-documented. In this regard, I draw your attention to a July 23, 2007 letter from Amnesty International, which documents the forced return, incommunicado detention, torture and ill-treatment of Tunisian nationals returned to Tunisia between 2004 and mid-2007 (please see attached).

The May 2007 decision of the UN Committee Against Torture in the case of *Tebourski v. France* is also illustrative. In August 2006, the French authorities deported Tunisian national Adel Tebourski from France to Tunisia, claiming that Tebourski posed a threat to Frances national security and despite the Committees request that France delay deporting Tebourski until it reviewed his individual petition. The Committee subsequently found France in violation of article 3 of the Convention Against Torture, and reminded the French government that:

*[A]rticle 3 of the Convention [Against Torture] offers absolute protection to anyone in the territory of a State party which has made the declaration under article 22 [providing for individual petitions to the Committee]. Once this person alludes to a risk of torture under the conditions laid down in article 3, the State party can no longer cite domestic concerns as grounds for failing in its obligation under the Convention to guarantee protection to anyone in its jurisdiction who fears that he is in serious danger of being tortured if he is returned to another country.*

The Committee held that Frances deportation of Tebourski to Tunisia violated its absolute obligation not to return a person to a place where there are substantial grounds for believing that he would be in danger of being subjected to torture. This ruling is as much an indictment of Tunisia for its practice of employing torture and ill-treatment against political opponents and alleged terrorist suspects as it is of France for deporting Tebourski with the knowledge that he was in fact at risk of such abuse upon return.

Moreover, Tunisia has failed to abide by diplomatic assurances of humane treatment it has offered in the past. On September 6, 2007, Human Rights Watch released a report titled [Ill-Fated Homecomings: A Tunisian Case Study of Guantanamo Repatriations](#), which details the plight of two former Guantanamo Bay detainees who were sent home to Tunisia in June 2007. Both men were mistreated, despite Tunisias pledge to the US government that they would be treated humanely on return. Currently incarcerated in a Tunisian prison, both men have told those who visit them that their treatment has been so poor they would rather be back in Guantanamo.

Human Rights Watch was not permitted to meet with the former detainees, but our researchers spoke with lawyers and family members who have seen the men and uncovered a disturbing picture of abuse. Abdullah Al-Hajji Ben Amor, a 51-year old father of eight, says he spent his first two days back in Tunisia at the Ministry of Interior, where he was reportedly slapped, threatened with the rape of his wife and daughters, shaken awake every time he started to sleep, and coerced into signing a paper he says he could not read. Al-Hajji spent the next six weeks in solitary confinement in a poorly ventilated room he called his tomb and was let out for 15 minutes a day in an enclosed space with no natural light. Tunisian authorities explicitly disavowed the use of prolonged solitary confinement in a meeting with Human Rights Watch in 2005, during which we raised concerns that detention under such conditions amounted to cruel, inhuman and degrading treatment. In early August, al-Hajji was moved to a cell with common law prisoners, where he now awaits a September 26 retrial date.

The other former detainee, Lotfi Lagha, was never represented by a lawyer at Guantanamo and was only granted access to an attorney in Tunisia on August 9 more than seven weeks after his return there. Like Hajji, Lagha was initially taken to the Ministry of Interior. He later saw an investigative judge who recommended pressing charges against him and then went to prison, where he too was held in solitary confinement for over six weeks. Lagha now awaits a trial that has not yet been scheduled, but that his lawyer expects will take place sometime in October. Lagha says that he told ICRC representatives who visited him in Guantanamo that he feared being sent home.

Robert F. Godec, the US Ambassador to Tunisia, told Human Rights Watch that the diplomatic assurances it received from Tunisia are specific and credible, and that we follow up on those assurances. But the Ambassador could not say what specifically was promised with respect to Hajji and Lagha; whether the promises were honored; whether, when, and how they were monitoring Laghas treatment; whether the treatment comported with the promises of humane treatment that they had received, and, if not, what they were doing to hold the Tunisians accountable for possible breaches of the assurances.

As Human Rights Watch research demonstrates, the Tunisian authorities have failed to treat Hajji and Lagha in a manner that is consistent with its international legal obligations, in apparent violation of its assurances to the US government that former Guantanamo detainees be treated humanely and in accord with Tunisia's legally-binding human rights commitments.

### **Diplomatic Assurances Ineffective as a Safeguard against Torture and Ill-Treatment**

Human Rights Watch research includes other well-documented cases in which persons transferred on the basis of diplomatic assurances have in fact been tortured and ill-treated and also a number of cases where courts have upheld a state's nonrefoulement obligation by halting a transfer after determining that diplomatic assurances from the receiving state could not provide an effective safeguard against torture and ill-treatment.

The growing weight of evidence and international expert opinion indicates that diplomatic assurances cannot protect people at risk of torture from such treatment on return. Part of what makes such promises ineffective is the nature of torture itself. Torture is criminal activity of the most serious kind, practiced in secret using techniques that often defy detection (for example, mock drowning, sexual assault, internal use of electricity, threats of violence). In many countries, medical personnel in detention facilities monitor the abuse to ensure that the torture is not easily detected. And detainees subjected to torture are often afraid to complain to anyone about the abuse for fear of reprisals against them or their family members. Occasional post-return monitoring by diplomats cannot protect a person under such circumstances.

Diplomatic assurances may have been at play in a so-called extraordinary rendition from Italy itself. The torture of Hassan Mustafa Osama Nasr (known as Abu Omar) in Egypt after his abduction and rendition from Italy in February 2003 by US Central Intelligence Agency (CIA) operatives, in collaboration with the Italian security service, potentially demonstrates the problems inherent in relying on such promises. According to the US State Department, it is US policy and practice to obtain diplomatic assurances against torture in renditions cases where there is a risk of torture on return. In December 2005, on the eve of a trip to Europe, US Secretary of State Condoleezza Rice defended the US government's renditions program, claiming that if the US government fears that a suspect will be tortured on return to his home or a third country, the US seeks and secures diplomatic assurances of humane treatment from the receiving country. This policy is similar in nature to the one employed by the US with respect to repatriations from Guantanamo Bay as noted above.

In February 2003, Abu Omar was abducted in Milan and rendered to Egypt by the CIA via Aviano, a US Air Force Base. Omar was held incommunicado upon return and temporarily released from Egyptian custody in April 2004 when he called his wife and a Muslim cleric living in Italy. The Italian police intercepted those calls, during which Omar claimed he had been tortured in an Egyptian prison, including by electric shock, leading to the loss of hearing and sustained trouble walking. In February 2007, Omar's lawyer reported that Abu Omar had been released from custody again. Human Rights Watch interviewed Abu Omar in March 2007 and he told us that he had been tortured in Egyptian custody. On February 16, 2007 an Italian court indicted 26 Americans, including 25 alleged CIA agents, and seven Italians, including the former director of the SISMI intelligence service, for their role in Abu Omar's kidnapping, enforced disappearance, and rendition to Egypt.

The US government continues to defend the use of rendition as a tool to combat terrorism, but consistently fails to answer valid questions and criticism regarding the reliability of diplomatic assurances to provide protection for persons subject to such transfers. In remarks on September 11, 2006 at the Center for American Studies in Rome, State Department Legal Advisor John Bellinger chastised the Committee Against Torture, the UN special rapporteur on torture, and other human rights advocates for their opposition to diplomatic assurances:

*Such an inflexible refusal to consider the weight of diplomatic assurances may have made sense when countries had only to deal with a very small number of individuals who faced risk of abuse if transferred to their countries of nationality. But today, States have found themselves unable to return hundreds of foreign nationals who are plotting terrorist attacks against their citizens. A less unyielding approach to diplomatic assurances may be appropriate.*

It is deeply troubling to see the Italian government employ the same tactics, i.e. using unreliable assurances against torture to justify deporting a national security suspect, as the United States claims it employs in its much-criticized renditions program.

### **Italy's Position on Diplomatic Assurances**

The Italian government's actions in the Saadi case are also disturbing because they appear to be directly at odds with statements made in December 2005 and March 2006 by an Italian diplomatic representative of the former government during deliberations on the issue of diplomatic assurances against torture at two expert meetings of the Group of Specialists on Human Rights and the Fight against Terrorism (DH-S-TER) at the Council of Europe. In June 2005, the Council of Europe's Steering Committee on Human Rights (CDDH) tasked the Group of Specialists with examining the wisdom of developing guidelines for the appropriate use of diplomatic assurances. In the end, the DH-S-TER recommended that no guidelines be developed for the use of assurances, with the Italian government at that time firmly in the corner of those states opposing the use of assurances for transfers to risk of torture and ill-treatment.

At the March 2006 meeting of the DH-S-TER, a Human Rights Watch representative attending in observer capacity noted the Italian representatives' vocal and steadfast opposition to the use of diplomatic assurances against torture and ill-treatment. The Italian representative joined a group of countries who argued, in concert with a coalition of nongovernmental organizations including Human Rights Watch, that diplomatic assurances against torture and ill-treatment do not mitigate the real risk of abuse. The April 2006 final report of the meeting stated:

*Certain experts considered that diplomatic assurances concerning Article 3 ECHR treatment in the context of expulsion procedures were inherently unreliable and could not be regarded as having sufficient weight to amount to an effective mitigation of the risk. They should thus never be relied upon. Some expressed this view for all the cases; others limited their remarks to cases where there is a systematic pattern of torture in the receiving State.*

The Italian government representative steadfastly espoused the position that diplomatic assurances against torture undermined the nonrefoulement obligation and should not be used in cases where there was a real risk of torture and ill-treatment upon return. Human

Rights Watch thus seeks clarification regarding what appears to be your governments disassociation from the position taken by Italy at the DH-S-TER meeting and shift toward acceptance and reliance upon diplomatic assurances for deportations to risk of torture.

### **International Expert Opinion on Diplomatic Assurances**

The Italian experts principled position regarding the use of diplomatic assurances for transfers to risk of torture and ill-treatment in the context of the global effort to combat terrorism has been echoed by other international actors. In March 2006, UN High Commissioner for Human Rights Louise Arbour stated, I strongly share the view that diplomatic assurances do not work as they do not provide adequate protection against torture and ill-treatment. The high commissioner has also articulated why post-return monitoring of an isolated individual cannot be regarded as an added safeguard.

Commenting on the UK governments efforts to deport terrorism suspects based on diplomatic assurances, UN Special Rapporteur on Torture Manfred Nowak has noted that seeking such assurances reflects a tendency in Europe to circumvent the international obligation not to deport anybody if there is a serious risk that he or she might be subjected to torture.

Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, is unequivocal in his opposition to the practice of seeking assurances against torture:

*Diplomatic assurances, whereby receiving states promise not to torture specific individuals if returned are definitely not the answer to the dilemma of extradition or deportation to a country where torture has been practiced. Such pledges are not credible and have also turned out to be ineffective in well-documented cases In short, the principle of non-refoulement should not be undermined by convenient, non-binding promises of such kind.*

The unequivocal nature of these statements lends weight to the proposition that diplomatic assurances against torture do not work and undermine the *nonrefoulement* obligation.

### **Conclusion**

The Italian governments recent move to employ diplomatic assurances to deport Nassim Saadi is a disappointing development. It flies in the face of well-documented evidence that such guarantees of humane treatment do not provide an effective safeguard against torture and ill-treatment. We respectfully request that the Italian government reject as unreliable and insufficient Tunisiass diplomatic assurances in the Saadi case, halt its efforts to deport Saadi, and refuse to seek such assurances in any future case where there is a real risk of torture on return.

Sincerely,

Holly Cartner  
Executive Director  
Europe and Central Asia Division

cc.

Louis Arbour, UN High Commissioner for Human Rights  
Manfred Nowak, UN Special Rapporteur on Torture  
Terry Davis, Council of Europe Secretary General  
Thomas Hammarberg, Council of Europe Commissioner for Human Rights  
Massimo DAlema, Foreign Minister, Italy  
Giuliano Amato, Minister of Interior, Italy  
Lamberto Dini, President, Senate 3a. Permanent Commission (Foreign Affairs, Emigration)  
Umberto Ranieri, President, House of Deputies Foreign Affairs Commission

Possession of Extremist Material in Kyrgyzstan

Police Torture and Abductions in Turkey

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