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The Story of Seven Men Betrayed by Russias Diplomatic Assurances to the United States



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2007 John Emerson

The people now being released from the US detention facility in Guantanamo Bay have already been deprived of their freedom without due process. In sending them back to their home countries, the US government has evidently concluded that they have not, after all, committed any crimes against the United States, or that they possess no useful information about terrorism, or that there is insufficient evidence to prove their criminal intent. Or perhaps, just that keeping them at Guantanamo is more trouble than they are worth.

For seven citizens of Russia, being released from Guantanamo Bay in 2004 was far from the end of their troubles. Despite promises to the US government to treat the men humanely upon their return, the Russian authorities have variously harassed, detained, mistreated, and beaten the former Guantanamo detainees since they returned. At this writing, two of them have been tortured and are in prison after investigations and trials that did not meet international fair trial standards; one has been tortured and is in prison awaiting trial; the other four are either abroad or in hiding. Taken together, their stories amount to a powerful indictment of the inept and abusive practices of the Russian criminal justice system.

But their stories amount to something more: they also expose the harmful consequences of transferring terrorist suspects to countries where they are at risk of torture.

Previous Human Rights Watch reports, as well as the work of many other human rights and international organizations, have extensively documented the cruelty of Russian criminal justice. Torture and the denial of the right to a fair trial are endemic in Russian police investigations and trials, and in many ways the treatment of the seven former Guantanamo detainees does not differ significantly from that of many other Russian Muslims who are caught up in the wide dragnet of Russia's counterterrorism campaign—or indeed, the treatment of anyone unlucky enough to be suspected of a crime in Russia. The experience of these seven men should be viewed in light of Russia's problematic conduct of the so-called "war on terror," and its highly abusive criminal justice system. But as seven men marked by the "stamp of Guantanamo" (in the words of one of them), they have endured a particularly harrowing odyssey at the hands of Russian law enforcement.

This report uses the Russian example to reveal the hollow nature of the "diplomatic assurances" that the US government is seeking as it transfers Guantanamo detainees back to their countries of origin, many of which have well documented records of torture. Under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as domestic law, the United States is prohibited from returning people to countries where there are substantial grounds for believing they would face a danger of torture. So the US government—like a growing number of others—is asking governments for "diplomatic assurances" that they will not torture or mistreat terrorist suspects upon return.

Such an assurance was sought and obtained from the Russian government in 2004, before the seven detainees were flown home. Both the US and Russian governments declined to release any substantive information to Human Rights Watch about their 2004 agreement to return the seven detainees. Each government issued only the sketchiest of statements on March 1, 2004, the day the detainees landed at Moscow's Sheremetyevo international airport. What agreements the two governments really made remains opaque.

But one fact remains blindingly clear and is extensively documented in this report: Russian law enforcement agents hounded and abused these seven hapless men almost continuously after their return from Guantanamo, ending finally in the arrest or flight of almost all of them. Some endured mistreatment in detention that amounted to torture. Whatever promises of fair treatment were made by the Russian authorities, they clearly have been broken.

The US government has triply wronged these men: first by detaining them without due process, second by returning them to Russia in violation of international law, and third by failing to follow and protest their mistreatment by Russian authorities after their return. In this last aspect, the Russian government of course bears the greatest and most immediate responsibility. But by branding these seven men "terrorist suspects," the US government certainly rendered them more vulnerable targets for Russian abuse. In this sad post-Guantanamo tale, both the US and Russian governments have a great deal to answer for.

issuing a standing invitation to all UN special mechanisms, in particular the special rapporteur on torture, ensuring unfettered access in full conformity with that mandate's long-established terms of reference.

oacceding to the Optional Protocol to the Convention against Torture, which provides for visits by international and national groups to monitor detainee treatment; and

opermitting access by international humanitarian organizations such as the International Committee of the Red Cross; permitting access by reputable independent nongovernmental organizations, both national and international.

This report draws on Human Rights Watch interviews with three of the former detainees one in person, although he declined to give a full interview, and two by telephone. In some citations the time and place of Human Rights Watch's interview have been withheld to protect the interviewee. In addition, Human Rights Watch spoke with several of the detainees' family members, lawyers, and human rights activists, and examined official court papers, taped testimony to other human rights organizations, photographs, and media accounts, to document the human rights abuses suffered by these seven men after they got back to Russia.^[1]

One of the former detainees, Airat Vakhitov, agreed to speak with Human Rights Watch, he said, because he felt the story of the Russian detainees' experiences back home had not yet been told.^[2]

All seven Russian inmates who were returned to Russia—Rustam Akhmiarov, Ravil Gumarov, Timur Ishmuratov, Shamil Khazhiev, Rasul Kudaev, Ruslan Odizhev, and Airat Vakhitov^[3]—were originally detained by US forces in Afghanistan or Pakistan. Although it is difficult to generalize about seven men of different ages from different regions of Russia, they shared some common traits. All of them are not of Russian ethnicity, and come from ethnic minorities in Russia that have traditionally been Muslim. In general they did not come from privileged or well-to-do families, though at least two of them had received higher education and spoke several languages, such as Arabic.^[4] Although they embraced different levels of piety, at least some of them claim they went to Afghanistan as a religious undertaking, either to learn more about Islamic government under the Taliban or to study Islam.^[5] Several said they fell prisoner to General Dostum, the Uzbek warlord in the north who had long battled the Taliban, and were survivors of a prison massacre at Qala-e Jangi, a fortress controlled by Dostum, in late 2001.

All of them came into US custody, one way or another, not long after the US invasion of Afghanistan, and were transferred through detention facilities in Afghanistan before ending up at Guantanamo Bay on various dates during 2002.

In statements to the British human rights organization Reprieve, which is helping to prepare lawsuits against US officials for torture and

ill-treatment suffered by detainees at Guantanamo, six of the seven detainees described their treatment at US bases in Kunduz, Bagram, and especially Kandahar and Guantanamo Bay.^[6] The statements all reflected that mistreatment by US forces in Afghanistan, and especially at Kandahar, was especially severe: beatings; deliberately inflicting serious pain upon the wounded (by deliberately letting stretchers drop, for example); forcing detainees to kneel on small rocks for hours with their hands behind their heads; exposing detainees to the elements, especially cold; denying medical treatment, especially for the wounded; jumping and landing with the knees on the backs of detainees' heads; depriving detainees of sleep; forcing detainees to run while shackled in painful positions; threatening detainees with dogs; desecrating the Koran and interfering with daily prayers; and at least initially, failing to honor the dietary restrictions of Muslims. Some said bright lights were shone on their faces throughout the night; others described crude and degrading attempts at sexual humiliation.

All the detainees interviewed by Reprieve uniformly described the transport to Guantanamo as particularly painful: the flight lasted more than 24 hours, during which time each detainee was tightly shackled at the ankles and wrists and not allowed to move, not even to rest his body against a neighbor. The detainees wore masks through which it was difficult to breathe, as well as goggles and earmuffs that clamped painfully on the sides of the head. No bathroom breaks were allowed.

At Guantanamo Bay the detainees received different kinds of treatment. None of the six who spoke to Reprieve said they were beaten. But all complained of intense psychological pressure, including long periods in solitary confinement, sexual humiliation inflicted by female staff, sleep deprivation, and the spraying of a pepper gas that in some cases may have caused long-term damage to the eyes. Many complained of being put in a freezing cold room for several hours, sometimes after being allowed to "shower" but given no towel to dry off, apparently to worsen the experience of cold. All of them were given injections without information about what the syringes contained, and some said they felt seriously ill afterward. Several complained of extreme disorientation and despair in not knowing when or if they would ever be released.^[7]

Despite this litany of mistreatment, when he was asked to compare his treatment at the hands of the Americans and at the hands of the Russians after his return, Ravil Gumarov told Human Rights Watch, "In the final analysis, the Russians were worse."^[8] The detainees' experience in Russia is the focus of this report.

The prohibition against torture is absolute. War, national emergency, the imminent threat of terrorist attack—none may be invoked to justify torture.^[9] Many international declarations and treaties^[10] have repeated this prohibition, which finds its fullest articulation in the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment.

The same absolute prohibition applies to sending people back to countries where they will be at risk of torture or ill-treatment. The Convention against Torture forbids the "refoulement" of a person to countries "where there are substantial grounds for believing that he would be in danger of being subjected to torture."^[11] The US government reaffirmed that principle in the Foreign Affairs Reform and Restructuring Act of 1998, which states in Section 1242, "It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."^[12]

Although the Bush administration has recently attempted (unsuccessfully) to redefine torture, it has not directly challenged this principle of nonrefoulement for torture. Instead, the US government has attempted to evade this important legal obligation by obtaining "diplomatic assurances" of humane treatment from governments with a record of torture.^[13]

Particularly since the attacks of September 11, 2001 in the United States, the US and other governments have increasingly sought to return alleged terrorist suspects to countries where they face a risk of torture by obtaining from their governments "diplomatic assurances" that the suspects will be treated humanely back home.

Diplomatic assurances take a variety of forms. Some are simply oral promises. Others are written documents, in some cases signed by officials of both governments. The content of the assurances also varies, and assurances against torture are sometimes packaged with other promises, such as a commitment to a fair trial. Some assurances do no more than reiterate that the receiving government will respect its domestic law or its obligations under international human rights law.

Governments that have transferred or tried to transfer suspects with such "assurances" include Austria, Canada, Georgia, Germany, the Netherlands, Russia, Sweden, Turkey, the United Kingdom, and the United States. The receiving countries have included China, Egypt, Jordan, Morocco, Russia, Syria, Turkey, Turkmenistan, Uzbekistan, and Yemen, all of which have well documented records of torture. The US government has been particularly eager to use such "assurances" as it begins to repatriate detainees from Guantanamo Bay.

Human Rights Watch opposes the use of "diplomatic assurances" in returning suspects to countries where they are at risk of torture. Governments that engage in torture routinely deny it and refuse to investigate allegations of torture. A government that is already violating its international obligation not to torture cannot be trusted to abide by a further "assurance" that it will not torture. This report provides evidence of precisely that fact, in the case of Russia.

The bankrupt nature of "diplomatic assurances" has received little attention in part because none of the governments involved want to admit to it. The receiving countries deny that they practice torture and do not want to concede further that they broke a bilateral promise of humane treatment. The sending countries, meanwhile, have no incentive to admit that the promises of humane treatment they received accomplished nothing and that they therefore violated their obligations under international law.

In response to a query from Human Rights Watch, the US government said in an email: "[T]he U.S. government has made clear on numerous occasions that it reviews humane treatment concerns relating to transfers out of Guantanamo and will not transfer an individual to a country where that individual is more likely than not to be tortured. Where necessary in order to address humane treatment concerns, the U.S. seeks assurances from the receiving government. This framework applied with respect to the transfer of the seven Russian nationals."^[14]

Some sending governments have negotiated agreements to monitor the treatment of the suspects after they have been returned to their home countries. Human Rights Watch has documented elsewhere that such monitoring agreements have not ensured humane

treatment.^[15] Moreover, by its very nature, torture is practiced in secret, often using techniques that defy easy detection (for example, mock drowning, sexual assault, and psychological abuse). In some 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 for fear of reprisals against them or their family members.^[16]

Lack of confidentiality makes it virtually impossible to monitor an isolated detainee. If observers have access to all detainees in a facility, and are able to speak with detainees privately, a detainee can report an incident of abuse to them without fear that he or she will be identified by the authorities, and subject to reprisals. Such confidentiality cannot be provided when only one detainee or a small group is being monitored.

In the case of Russia, the US government appears to have made no attempt to either monitor or protest the inhumane treatment of the seven ex-Guantanamo detainees in Russia, despite the fact that it was aware of Russia's pattern of abusive treatment. US officials told Human Rights Watch in July 2006 that they were not making any effort to monitor the treatment of former Guantanamo detainees in Russia.^[17]

Simply monitoring a detainee's treatment after he returns home will not guarantee that he will not be tortured. But that does not mean the US government should simply ignore the fate of the detainees it has rendered to Russia. Such has been its policy until now. To protest the treatment of the detainees in Russia would certainly open the US government to charges of hypocrisy. But the US failure to investigate and protest their ill-treatment means that the Russian government has so far felt no pressure, no spotlight, no brake of any kind on its abuse of the seven ex-Guantanamo detainees. Although the US should never have returned the detainees to Russia in the first place, it ought to reverse course and seize the opportunity to protest their ill-treatment now.

At the time these Russian citizens were sent back from Guantanamo, the US government was clearly aware that evidence of the risk of torture in Russia was abundant. The US State Department's own human rights report for 2003, the most recent volume at the time of their refoulement, said about Russia, "There were credible reports that law enforcement personnel frequently engaged in torture, violence, and other brutal or humiliating treatment and often did so with impunity."^[18] In June 2002, the United Nations Committee against Torture, the body responsible for monitoring state party compliance with the Convention against Torture, had voiced its strong concern at the "[n]umerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees committed by [Russia's] law enforcement personnel, commonly with a view to obtaining confessions."^[19] The Council of Europe's Committee for the Prevention of Torture visited Russia in December 2001 and published its report about the continuing problem of torture on June 30, 2003, citing a "disturbing number of allegations of physical ill-treatment" by police.^[20]

In addition to governmental and intergovernmental sources of information about torture in Russia, international human rights groups have also written extensively about the widespread torture and mistreatment of criminal suspects in police custody in Russia.^[21] As Human Rights Watch reported in 1999, torture and ill-treatment of detainees generally occurs at the time of and immediately after arrest, often through police beatings, near-asphyxiations, and the application of electroshock in the pursuit of confessions or testimony incriminating others. Aside from a very few high-profile cases in which officers have been punished for such mistreatment, the Russian police carry out torture with almost complete impunity. Provincial and federal prosecutors close their eyes to evidence of abuse. The courts commonly accept forced confessions at face value, and use them as a basis for convictions. Despite overwhelming evidence that torture has become an integral part of police practice, the Russian government and law enforcement agencies generally—with some notable exceptions—deny that torture or ill-treatment is a problem, and are not taking any measures to end these abusive practices.^[22]

Russia extensively used torture against Muslim detainees, especially Chechens accused of "terrorism," before September 11. But the advent of the international "war on terror" appears to have hardened the Russian government's treatment of such suspects. The Russian human rights organization Memorial stated in February 2006, "We have extensive evidence to suggest that under the pretext of fighting 'Islamic extremism' and 'international terrorism,' a large-scale campaign of persecution of Muslim followers of so-called 'unconventional' Islamic sects has been launched in Russia."^[23] Memorial estimates that torture was used in more than 40 percent of the cases involving Hizb ut-Tahrir, an Islamist organization with an international presence that has been banned in Russia.^[24]

Given the massive evidence about torture in Russia, it is virtually impossible to imagine that US officials were not cognizant of the risk that the Guantanamo detainees would be tortured, or that they did not understand the extent of the risk.

Two of the Russian detainees told Human Rights Watch that US interrogators at Guantanamo Bay were clearly aware that they would face torture and mistreatment back home. Indeed, interrogators used the threat of return as a pressure tactic in interrogations: "The Americans frightened us with return to Russia, [and] said that in Russia, we will be tortured,"^[25] Airat Vakhitov told Human Rights Watch. "There was constant blackmail," Ravil Gumarov told Human Rights Watch. "They kept saying, 'We'll send you to Russia,' that 'They'll string you up there' and that kind of thing."^[26]

Rasul Kudaev told interviewers from Reprieve, the British human rights organization,

Certainly the detainees themselves knew what probably awaited them if they were sent home. Most of them had had some dealings with Russian law enforcement before they went to Afghanistan, and a few of them had been seriously mistreated. According to the mother of Ruslan Odizhev, for example, her son went to Afghanistan in part because he had been extensively tortured by Russian FSB (security service) officers in 2000 and did not think he could continue to live in Russia without danger to his physical well-being.^[28] Airat Vakhitov said he was beaten in 1999 while in detention for two months on suspicion of participating in illegal armed formations in Chechnya (he was never charged). After that experience he decided to leave the country. "I knew my life wouldn't work out in Russia," he told Human Rights Watch.^[29]

The detainees themselves say they repeatedly asked US officials and representatives of the International Committee of the Red Cross at Guantanamo Bay not to be returned to Russia. "We all asked not to be returned to Russia because we were afraid of torture," Airat Vakhitov told Human Rights Watch.^[30] Ravil Gumarov told Human Rights Watch, "We were asking to be sent to a third country, we didn't want to go to Russia. We said it to the Red Cross too, that we wanted to go to a third country, any Islamic country. And we were saying it to the Americans, that we weren't about to go back to Russia." According to the detainees, both the US officials and the Red Cross said they could not influence the decision. "They said, 'That's all being decided at higher levels, we don't know anything.' The Red

Cross said, 'We can't do anything.' Their hands were tied."[\[31\]](#) Shamil Khazhiev told Human Rights Watch, "All of us asked the Red Cross over and over again not to be sent back to Russia. I didn't bother asking the Americans because it seemed useless."[\[32\]](#)

Alexandra Zernova, a human rights activist working with Reprieve, interviewed six of the seven detainees[\[33\]](#) in early October 2005. She affirmed that all of them had told her they had not wanted to be sent back to Russia, and had told US officials so.[\[34\]](#)

According to the detainees, representatives of the Russian government who visited the detainees at Guantanamo told them they would certainly be sent back to Russia. Airat Vakhitov said a senior investigator for the Procuracy General, Yuri Tkachev, visited him at Guantanamo and said, "We're going to return you to Russia anyway. It's going to be much worse for you there. We're going to show you."[\[35\]](#) In contrast, however, Ravil Gumarov claimed that Tkachev told him he'd be better off in Russia, saying, "In America you'll be in [prison] for life, in Russia we'll give you a few years."[\[36\]](#)

Vakhitov told Human Rights Watch that he continued trying to avoid being sent back to Russia right up until the last minute:

On March 1, 2004, just after the detainees landed in Russia, the US State Department released a brief statement, which read in part,

Asked whether he had heard that the US government received a diplomatic assurance that he would not be mistreated after he returned to Russia, Ravil Gumarov told Human Rights Watch, "I didn't exactly know [about the assurance]; I understood the opposite, that they gave a guarantee to put us away in Russia."[\[39\]](#)

Also on March 1, the Procuracy General of the Russian Federation released a similarly terse statement, which read in part,

After their return to Russia the seven detainees were transferred to a jail in Pyatigorsk, in southern Russia, and charged with participation in a criminal conspiracy (article 210.2 of the criminal code) and unlawful crossing of the national frontier (article 322.2). However, they were released on June 22, 2004, because of lack of evidence. According to the Russian daily *Kommersant*, Russian prosecutors had no proof that the seven men had actually participated in the fighting in Afghanistan.[\[41\]](#) Vakhitov told Human Rights Watch that during nearly four months in the detention facility in Pyatigorsk, he was visited only once by an investigator, who appeared to be making little effort to build a case against him. Instead, the investigator told him that "we have obligations [to the Americans] to keep you."[\[42\]](#) Ravil Gumarov told Human Rights Watch that Russian officials made it clear that the detainees were in Pyatigorsk only to satisfy the Americans, and that the Ministry of Foreign Affairs was intent on releasing them to defy the United States: "They said, 'We're letting you out to spite the Americans.'"[\[43\]](#)

While (as has been noted above) the actual substance of agreements between the US and Russian governments, written or unwritten, could not be ascertained, Human Rights Watch's research has confirmed that the Russian authorities indeed mistreated the ex-Guantanamo detainees.

Russian government abuses of the ex-Guantanamo detainees fell into three main categories: torture; harassment; and denial of the right to a fair trial. Detainees, detainees' relatives, lawyers, and other individuals with whom Human Rights Watch spoke reported that law enforcement officers left a clear impression of intending to "get" ("*ustroit*") the detainees or "hang" ("*povesit*") a crime on them. Over the course of several run-ins with law enforcement, Airat Vakhitov said, "I was told many times that after my time in Guantanamo, it wasn't necessary to prove I was a terrorist. That any one of us could be thrown in jail because we were terrorists."[\[44\]](#)

The two law enforcement agencies described as most abusive by those whom Human Rights Watch interviewed were the Federal Security Service, or "FSB" in Russian; and the Organized Crime Department of the Ministry of the Interior, a police unit known by its Russian acronym "UBOP."[\[45\]](#) Some detainees also complained of abuse by investigators from the procuracy, who were responsible for building criminal cases. Often local and regional FSB and UBOP conducted interrogations together. Sometimes the men who beat or detained them did not wear any identifying insignia.

In addition to being serious violations of human rights for which the Russian government is primarily responsible, incidents of torture are also evidence that the US government violated the Convention against Torture by returning the seven detainees to Russia. The fact that all the ex-detainees were frequently harassed by law enforcement, and two of them were denied a fair trial, is part of the general pattern of abuse they suffered. But the harassment and unfair trials also clearly had the objective of returning the ex-detainees to state custody. These measures therefore put the ex-detainees at greater risk of torture as well.

The mistreatment of the former Guantanamo detainees began from the moment they touched down on Russian soil. Airat Vakhitov told Human Rights Watch,

Ravil Gumarov did not remember specific abuse, but told Human Rights Watch he thought officials were trying to act tough by treating the seven men like terrorists, putting masks on them, tying their hands, and laying them down on the floor of the airplane.[\[47\]](#)

Vakhitov told Human Rights Watch that he was only once formally interrogated in prison in Pyatigorsk: he was asked to provide a chronology of his activities in Afghanistan. Although he was never tortured, on one occasion while he was praying he was told to get up onto his knees and pray not to Allah but to Jesus Christ. When he refused, he was rolled over and his clothes were burned with the ends of cigarettes.[\[48\]](#) Other detainees told lawyer Alexandra Zernova that the facility in Pyatigorsk was "very quiet" compared to what they had endured in Guantanamo-and what some of them endured afterwards.[\[49\]](#)

Rasul Kudaev presents the strongest case of mistreatment in Russian detention because eyewitness testimony, photographic evidence, and official medical documents exist to prove it.

Kudaev returned from Guantanamo in poor health. According to his mother, he suffered from hepatitis, stomach ulcers, the after-effects of a bullet he received in the hip in Afghanistan that was never removed, serious headaches, high blood pressure, and other ailments. These medical problems rendered him unable to work and to walk without a crutch and a profound limp.[\[50\]](#)

On October 13, 2005, several groups of armed men attacked government buildings in Nalchik, the republican capital of Kabardino-

Balkaria in southern Russia. Kudaev lived in the village of Khasania on the outskirts of Nalchik with his mother and brother. Approximately 150 people died in the attacks, including at least 94 people reported to have been attackers, 35 policemen, and 12 civilians.^[51] His mother claims that Kudaev was home on the day of the attack, as he was every day, due to his health. Ten days later, on October 23, as part of a sweep of dozens of arrests in connection with the attack, a group of agents picked up Kudaev at his home.

According to his mother, Fatimat Tekaeva, who was home with him at the time of the arrest, about two dozen men dressed in camouflage and masks arrived in armored vehicles, cars, and trucks, armed with automatic weapons and sniper rifles, and swarmed onto the property. They beat Kudaev as they handcuffed him and hustled him across the yard.^[52] In a statement she wrote on December 28, 2005, in connection with an appeal to the European Court of Human Rights, Tekaeva said she screamed to her neighbors to come and witness the fact that her son was walking on his own, because she was afraid that he would be beaten in custody until he was no longer capable of walking. In response, she said, an officer of the local UBOP, R. Kiarov, said, "We're not going to beat him here, all will start at the UBOP."^[53]

Several pieces of evidence make it clear that, indeed, Kudaev was very seriously beaten in the days immediately after his arrest.

On October 24 lawyer Irina Komissarova gained access to Kudaev at the UBOP, also known as the "Sixth Department." She described the scene:

On October 25 Kudaev was taken before a Nalchik City Court judge, who authorized his continued detention on suspicion of terrorism, participation in an illegal armed formation, attempt on the life of a law enforcement official, and murder.^[55] After the hearing he was transferred to a pretrial detention facility, or SIZO, where he was evidently beaten again.^[56] Komissarova gained access to him the following day:

Komissarova described other details of Kudaev's wounds to a local journalist:

On October 27 Komissarova lodged a formal request for a forensic medical examination of Kudaev. Later, Kudaev told Komissarova that he was beaten again on the following day, October 28.^[59]

On November 9, despite her objections, Komissarova was interrogated as a witness in her client's case. The following day an investigator issued a decision removing Komissarova as Kudaev's lawyer because she had given witness testimony.^[60]

Kudaev was also denied necessary medicines, which may have contributed to his suffering. Despite daily pleadings from his mother, only eight days after his arrest did officials on duty at the detention facility accept packages of medicine that his mother said he required on a daily basis.^[61]

In November 2005 photographs of several people detained after the October 13 events, including Rasul Kudaev, began circulating on the internet. They were all headshots showing the subjects covered with bruises, sores, and swelling. All of them except the photograph of Kudaev showed the prisoner's number at the bottom of the image, making it clear that they had come from official investigations.^[62]

The photograph of Rasul Kudaev resembles the others in quality and in the background visible behind the detainees' heads. Although it is not possible to officially authenticate its provenance, the preponderance of other evidence of mistreatment of Kudaev suggests that it is genuine.

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Photographs of Rasul Kudaev, before and after he was detained, circulated widely on the internet.

Although the photographs were not widely published in local or national newspapers, which are generally controlled by the authorities, they circulated quickly in cyberspace and contributed to local uproar about the way the detainees were being treated. The uproar led the president of Kabardino-Balkaria, Arsen Kanokov, and the special envoy of the Russian president to the Northern Caucasus, Dmitri Kozak, to visit in early December the detention facility in Nalchik where Kudaev and others were being held. The two officials were reportedly angry at what they saw and heard and ordered the facility opened to journalists. Ultimately, the facility was open on December 8, 2005, but only to Russian a state-run television crew. Rasul Kudaev was able to speak to the camera. In a letter to his mother, he briefly described his meeting with Kozak and Kanokov, and said that when he told the two men about his mistreatment, "the veins on [Kanokov's] neck swelled up with fury. He left here very angry."^[63] However, it appears that neither man took action against the perpetrators of the abuse of Kudaev or any other of the detainees.

In addition to the statement by his former lawyer and the photographs, medical documents also attest to the mistreatment of Kudaev in detention. The families of detainees who are beaten and tortured often have difficulties obtaining such medical documents because the authorities are, for obvious reasons, reluctant to allow independent medical examiners into Russian detention facilities.

Some medical records that are believed to document Kudaev's condition have not yet been released to his family and lawyers. But one has: a note from the ambulance service station in Nalchik, dated November 1, 2005, and signed by the head doctor, Kh.Kh. Sheribov. It states that an ambulance was called at 23:20 on October 23, 2005, to attend to Kudaev. The note does not specify who called the ambulance or where the ambulance went, although by that hour Kudaev was already in the custody of the UBOP. The note states that Kudaev was diagnosed that night as having "psycho-motor excitement, hypertension in the arteries, and numerous bruises."^[64]

The local procuracy refused to accept a petition filed by Kudaev's lawyer to open a criminal investigation of Kudaev's mistreatment, and on July 6, 2006, Nalchik City Court upheld the procuracy's decision. But in a decision that surprised Kudaev's family and local human rights organizations, on August 25, 2006, the Supreme Court of Kabardino-Balkaria overruled the city court and ordered it to reconsider its ruling.^[65] The case is now pending again before Nalchik City Court.

Rasul Kudaev has submitted documents to the European Court of Human Rights claiming that he was tortured.

Timur Ishmuratov also experienced beatings at the hands of the FSB and the UBOP. He remembered that just before the detainees were released from Pyatigorsk, a high-ranking FSB official met with all of them and told them that "the Russian government has no complaints against you." According to Ishmuratov, "[The official said that] if you live according to the law, then you won't have any harassment. He cited the Russian leadership. I believed him."[\[66\]](#)

Ishmuratov was wrong.

In the early morning of January 8, 2005, an explosion occurred on a small pipeline delivering home heating fuel to a residential section of Bugulma, a city in southern Tatarstan, several hundred kilometers east of Moscow. Ishmuratov and his wife lived in a small town not far away. There were no casualties in the explosion. After several months of being called in for increasingly aggressive questioning and harassment (documented later in this report), Ishmuratov was taken into custody on April 1, 2005, from the Bugulma mosque where he worked as a guard. On April 13, he described the initial period of his detention in a four-page handwritten statement that was later smuggled out of the Almetevsk detention facility. His statement said that during the first few days of interrogations he refused to confess to the crime. But on April 5, he was brought for the first time to the FSB, where the interrogation turned violent. He wrote,

Ishmuratov's mother told Human Rights Watch that security service officers brought Ishmuratov in handcuffs to the maternity hospital, where his wife had just delivered a baby, to put pressure on his family not to hire a lawyer to pursue complaints of abuse.[\[68\]](#) Ishmuratov's lawyer told Human Rights Watch that his client knew that his brother had been taken into custody, and this added to the psychological pressure on Ishmuratov.[\[69\]](#) (Ishmuratov's brother, Rustam Khamidullin, told Human Rights Watch that police from the Tatarstan republic-level UBOP detained him at his aunt's house in Nefteyugansk, Khanti-Mansiisk district in western Siberia, on March 31, 2005. Police held him for several days at the Nefteyugansk police station and beat him while he was handcuffed to a radiator to coerce him to admit that he had witnessed preparations for the crime. Police then took him by train to Tatarstan. Khamidullin told Human Rights Watch that he was kept in a regular compartment of a passenger train and beaten on the head and body during the two-day train journey.[\[70\]](#))

Ishmuratov later recanted his confession in both his 2005 trial and 2006 retrial.

Ishmuratov's April 13 statement asked for a criminal case to be opened against the men who had beaten him in detention and ended with two stark sentences: "I ask you to help me escape from torture and obtain justice. I'm a former prisoner of the American camp at Guantanamo, where I endured the bullying of the American military, and now I'm treated even worse by the special forces and law enforcement authorities of Russia."[\[71\]](#) No investigation of his allegations of mistreatment was ever undertaken. He was ultimately sentenced to 11 years and one month in prison, in part on the basis of the confession that he says he was beaten and threatened into giving.

Ravil Gumarov was detained on April 1, 2005, on suspicion of participating with Ishmuratov in the Bugulma pipeline explosion. According to Gumarov he confessed to the pipeline explosion as a result of torture by FSB and UBOP officials, even though he later recanted that confession in court testimony. He was convicted and sentenced to 13 years' imprisonment.

Toward the end of January 2005 Rustam Garifullin, the deputy director of the UBOP in Naberezhnyi Chelny, Tatarstan, had summoned Gumarov to ask him whether he was involved in the pipeline incident, but did not arrest him. Then on April 1 Garifullin detained Gumarov at his mother's apartment, supposedly just to ask a few questions. The next time she saw her son was in court several months later.[\[72\]](#)

Gumarov told Human Rights Watch that he was deprived of sleep for seven or eight days after his arrest in Naberezhnyi Chelny. He was kept in a tiny cage, about one meter by half a meter, where he was allowed to sit on a tiny bench during the day while being interrogated, but at night he was fastened by one handcuff to the bars of the cage over his head. He was continually asked to confess to the pipeline explosion. After a week or 10 days he was transferred to a room in the administrative building housing the FSB in Bugulma. There he was tortured using a common technique of Russian law enforcement: a gas mask is put over the detainee's head and then the oxygen is turned off, producing the beginnings of asphyxiation and a sense of panic.[\[73\]](#) This form of torture is known in Russia as "little elephant," or "*slonik*," because the tube dangling from the front of the mask resembles the trunk of an elephant.

Gumarov told Human Rights Watch that investigators also pulled hairs from his beard, and on one occasion poured an entire bottle of vodka down his throat, a particularly offensive form of mistreatment for an observant Muslim. "I hadn't had any alcohol for seven years, they poured a bottle in me and I was out of it," he told Human Rights Watch.[\[74\]](#) Gumarov told a Moscow press conference that at one point, while he was being beaten on his back to force a confession, he said, "What are you doing? This is like 1937 [the height of Stalin's repression]," and they answered, "If this were 1937, you'd have been shot a long time ago."[\[75\]](#) He told his mother that investigators had drugged him with a special kind of tea to get him to sign a confession. Eventually, he did. In a handwritten letter that was smuggled out of the detention facility in Bugulma and brought to his mother, Gumarov wrote,

Faced with the return of seven former detainees from Guantanamo, Russian law enforcement might legitimately have been expected to keep an eye on whether the men were engaged in any suspicious activity after they got home. Such surveillance could have been conducted while also respecting the ex-detainees' human rights. It was not.

The detainees and their family members uniformly complained of being frequently called, followed, and threatened by the FSB, UBOP, and other police officials after their return. Some family members reported that their homes were searched without warrants, in violation of Russian and international law. Some reported, in fact, that their homes were so frequently searched that they were unable to provide exact dates of those searches.

Ravil Gumarov told Human Rights Watch that officials from the FSB and UBOP called him at least once a week, beginning right away after he returned home from the Pyatigorsk prison to Naberezhnyi Chelny. They frequently requested that he come down to their offices for questioning, and a car followed his every movement outside the home for about a month after he returned.[\[77\]](#) Two investigators from the FSB and the UBOP called so often that Gumarov's mother recognized their voices and knew their names and telephone numbers. "They called Ravil in all the time, whenever anything happened. There was a shooting somewhere, and they called him in; somebody committed a murder somewhere, and again they called him in."[\[78\]](#)

After being released from Pyatigorsk in June 2004, Ruslan Odizhev returned to his family's home in Nalchik. According to his mother the harassment began immediately: "They came all the time, threatening, calling him all the time to the department, the first department, the sixth department [the UBOP, which was] well-known to us, the Gestapo." She drew aside the curtain at the apartment's window to point out to Human Rights Watch researchers where a modest, unmarked car used to be always parked, so the FSB could keep an eye on their movements.[\[79\]](#)

For other former Guantanamo detainees the harassment did not begin right away. Timur Ishmuratov said he believed the words of the high-ranking FSB official who told all the detainees, as they were preparing to leave the Russian detention facility in Pyatigorsk, that if they lived within the law they would not face any harassment. "I believed him, I got out, tried to build a personal life, got married, tried to find work," he said.[\[80\]](#) He moved to the small town of Urussu, near Bugulma, where he found temporary jobs on construction sites and working for a mosque. But in mid-January 2005, about a week after the explosion on a local gas pipeline (described above), his mother called from Bugulma to say security operatives were looking for him.

Ishmuratov went into Bugulma voluntarily, thinking he could easily demonstrate his innocence, and found a large group of officials from the FSB and the UBOP waiting for him. They interrogated him for six hours. To his surprise, although they asked a few questions about where he had been on January 8 (the day of the explosion) and the day before, most of the questions were about Guantanamo, Islam, the Russian officials he had spoken with in Pyatigorsk, and who figured in his current circle of acquaintances. After that he was called in for questioning often, sometimes two to three times a week. And although the early interrogations were mostly respectful, over time they grew increasingly aggressive and vulgar. Ishmuratov was particularly offended by the interrogators' use of curse words, since he had not used such words in the five years since he had become an observant Muslim. "I thought because I was innocent, it would stop," he said of the harassment.[\[81\]](#)

After his release from Pyatigorsk, Shamil Khazhiev returned to Uchali, a small town in the Russian republic of Bashkortostan, where his family lived. Human rights activist Alexandra Zernova, who met with Khazhiev on several occasions, said that he was repeatedly questioned by local FSB and UBOP officials after his return, and was briefly detained in Ufa, the Bashkortostan capital, in December 2004, on suspicion of membership in Hizb ut-Tahrir. He was released without charge. In September 2005, while riding on a train, he was questioned by UBOP officials from Samara. According to Zernova, Khazhiev has been unable to secure employment since his return from Guantanamo.[\[82\]](#) He left Russia in March 2007.

Airat Vakhitov told Human Rights Watch that he was subjected to constant police harassment and mistreatment over the course of nearly two years after his release from post-Guantanamo detention in Pyatigorsk. "They constantly called me in for interrogation and told me they were following me, so that I mustn't think I'd be at liberty for long," Vakhitov told Human Rights Watch. He moved around constantly, sleeping in different places, because "I'm afraid to stay in one place in Russia."[\[83\]](#)

In early April 2005, acquaintances at UBOP in Tatarstan, where Vakhitov was from, warned him he should go into hiding. "I was in hiding for several months in various apartments, giving my tailers the slip. There was always a tail."[\[84\]](#) During this period the authorities called Vakhitov on his cell phone and told him that his request for a passport for foreign travel had been granted. When he went into the passport office in Kazan, "the boss of the passport desk placed a call to [law enforcement] operatives and started stalling for time. I understood that they were going to arrest me. In fact my passport wasn't ready yet; they had tricked me. I stood in the corridor and saw the group of goons, and then quietly I got out of there."[\[85\]](#)

Vakhitov moved to Moscow, where he was joined by fellow ex-Guantanamo detainee Rustam Akhmiarov. On August 27, 2005, Vakhitov and Akhmiarov were seized from the apartment of Islamic activist [\[86\]](#) Gaidar Jemal by unidentified men, whom Vakhitov believes were from the UBOP. Before being removed from the apartment, Vakhitov and Akhmiarov managed to call a journalist and soon the news of their seizure was being relayed over *Ekho Moskvy*, an independent radio station broadcasting in the Russian capital. These radio reports may have prompted a sudden phone call to their two captors as Vakhitov and Akhmiarov were being driven outside Moscow along a lonely road surrounded by forest. Vakhitov told Human Rights Watch that the caller appeared to have told the captors that they had to change plans; the car turned around and headed for Sheremetyevo airport instead, and from there Vakhitov and Akhmiarov were flown to a detention facility in Kazan.

According to Vakhitov they were not mistreated in detention, although an official of the Tatarstan procuracy described them publicly as terrorists, without providing any evidence. In violation of Russian law, neither man was present during a court hearing that sanctioned their continued detention.[\[87\]](#) On August 30 Amnesty International issued an urgent action appeal on their behalf, while Alexandra Zernova gave several interviews from London and called Russian authorities to protest the detention. The two men were not formally charged, and were released in Naberezhnyi Chelny on September 2, 2005.[\[88\]](#)

Rasul Kudaev was also the target of frequent harassment and threats by law enforcement personnel, sometimes in uniform and sometimes not, after his release from post-Guantanamo detention in Pyatigorsk. Sometimes they came to speak to him at his home in Khasania. Sometimes they took him away for questioning. For example, in June 2005 authorities visited him and threatened to arrest him for evading military service in the Russian army and falsifying documents. On August 15, 2005, two men in masks and two without masks came to his home and said they wanted to speak with him about Ruslan Odizhev, the other former Guantanamo detainee who lived nearby. These unidentified agents took him to the offices of the UBOP and interrogated him for several hours, without presenting any identification, warrants, or other documentation.

"From the moment he returned home in '04, when the Americans turned him over from the Guantanamo camp, we've been under continuous pressure from law enforcement and special forces, trying repeatedly to fabricate criminal charges against him," Kudaev's mother, Fatimat Tekaeva, told Human Rights Watch.[\[89\]](#)

In addition to threats, phone calls, visits, and repeated detentions for questioning by law enforcement, the former Guantanamo detainees suffered from a more subtle, but highly disruptive, form of harassment: the difficulty of getting Russian authorities to return their basic identity documents. Without such documents, the former detainees experienced great difficulty in finding a job, housing, and medical treatment.

The lack of official identity papers posed a particularly serious problem for Rasul Kudaev, who had received serious injuries in

Afghanistan and was still suffering the aftereffects, according to his mother. The family negotiated with a hospital to remove a bullet from Kudaev's hip that was causing him pain and impeding his movement, but they were unable to get the personal identity documents that the hospital required before it could treat him. Kudaev's mother told Human Rights Watch,

Although obtaining official documents from the Russian bureaucracy can be a trying experience for anyone, not only a former detainee of Guantanamo, such an extremely attenuated process is highly unusual.

Ruslan Odizhev was also unable to obtain his internal passport (national identity document), which was necessary to obtain formal work. His mother believes that pressure from the FSB kept the local police from giving him the document because it was only through the intervention of a friendly FSB officer that Odizhev finally did receive his passport in spring 2005. However, he went into hiding soon thereafter, never having had a formal job after his release from Guantanamo.^[91]

Ravil Gumarov found it difficult to find work, even once his identity papers had been returned to him. "It's like there's a stamp on us," he said at a Moscow press conference in October 2005. "We're like, out of Guantanamo, and they stamp you and no one will hire you, it's impossible to set yourself up anywhere."^[92] He later told Human Rights Watch, "Even friends won't give you work [after Guantanamo] because they're afraid of the FSB."^[93]

Gumarov and Ishmuratov have stood trial twice (in 2005 and 2006) and gone through an appeal hearing for the Bugulma pipeline explosion. The trials were riddled with procedural irregularities that call into serious question whether their right to a fair trial was respected. Those irregularities started with neither man being given immediate access to a lawyer, although both asked for them. Ishmuratov said that he began asking for a lawyer on April 1, the day he was detained.^[94]

In September 2005 a jury at the Tatarstan Supreme Court in Kazan unanimously acquitted Gumarov, Ishmuratov, and a third defendant, Fanis Shaikhutdinov, of the pipeline explosion. The event was hailed in the media as "the first time in Russia a not-guilty verdict is reached in a terrorism case," and the three men gave a press conference in Moscow describing their mistreatment in detention.^[95]

Prosecutors submitted a request to the Supreme Court of Russia to "annul" the acquittal, a request that was granted on January 17, 2006. Annulments of jury verdicts are not uncommon in Russia, despite the prohibition on double jeopardy under both Russian and international law. The procurator general of Tatarstan, Kafil Amirov, insisted that the second trial did not constitute double jeopardy because the first verdict had been "annulled" ["*otmenyon*"], as though it had never existed. He said, "We think the jurors took this case too lightly. They didn't fully understand they're simple people."^[96]

Gumarov and Shaikhutdinov went into hiding in Moscow, where they were rearrested in the apartment of Airat Vakhitov. Ishmuratov fled to Ukraine on January 27 and attempted to claim political asylum. His request was denied and he was deported back to Russia on February 6.^[97]

The second trial, also a jury trial in the Tatarstan Supreme Court, ended on May 5, 2006, with a unanimous vote to convict all three defendants of terrorism (article 205 of the Russian Criminal Code) and illegal possession of weapons or explosives (article 222). They were also ordered to pay the equivalent of about US\$2,000 in property damages. On May 12 the court sentenced Gumarov to 13 years of imprisonment, and Ishmuratov to 11 years and one month; Fanis Shakhutdinov was sentenced to 15 years and five months.

Lawyers and relatives of the accused expressed suspicion that two juries could reach such diametrically different verdicts, and believe that the second jury was pressured to convict. Defense lawyers appealed the case to the Russian Supreme Court in July 2006, arguing that the case should be retried due to procedural irregularities, including the prosecution's introduction of new witnesses without any opportunity for pretrial cross-examination, as required by Russian law. The three-judge panel of the Supreme Court returned its decision on November 29, 2006, after half an hour of deliberation. The panel reduced the sentences of each of the three defendants, without making any change to the verdicts (although the harshness of the sentences had not been a feature of the appeals, which were rejected in full).^[98]

In July 2006 Human Rights Watch found a signed confession to the Bugulma pipeline explosion in the case file of another criminal investigation. The five-page confession was signed by Vilsur Khairullin, who was accused of conspiring to blow up key industrial targets in Tatarstan in 2005. According to the document, the interrogation was conducted by an investigator in the serious crimes division of the Tatarstan procuracy, V.A. Maksimov, on July 7, 2005, between 10:10 a.m. and 1 p.m. In the confession, Khairullin says that he planned and executed the explosion alone.^[99]

Gumarov and Ishmuratov were in custody at the time Khairullin made his confession, awaiting trial for the same crime. Yet prosecutors never mentioned the confession to lawyers for either defendant. Investigator Maksimov told the *Washington Post* that he took Khairullin to the scene of the crime, but Khairullin was unable to identify the exact location of the explosion, so they did not feel it necessary to inform defense lawyers for Gumarov, Ishmuratov, and Shaikhutdinov about his confession.^[100]

Given the record of torture among Russian investigators, it seems entirely possible that Khairullin's confession was not genuine. But as a matter of due process, such potentially exculpatory evidence should have been made available to the defendants. And if the confession was not genuine, it raises the question of what methods Russian investigators might have used to extract it.

Rasul Kudaev, the other ex-Guantanamo detainee currently in detention, has not yet been formally indicted or prosecuted, more than one year after his arrest in Nalchik. Kudaev's extensive torture by Russian authorities was detailed above. In addition, Kudaev's right under Russian and international law to be represented by a lawyer was compromised when Irina Komissarova, his original lawyer, was removed from the case.

The motivations of the Russian government in this post-Guantanamo story remain obscure. The Procuracy General, which negotiated the detainees' return with the Americans, supposedly pledged to prosecute them for terrorism. Yet Russian officials made at best desultory attempts to build cases against the seven men. Both Gumarov and Vakhitov told Human Rights Watch that while in detention in Pyatigorsk they were interrogated only once, and even then somewhat haphazardly. Gumarov told Human Rights Watch that his interrogator seemed to be trying to figure out if he, Gumarov, had actually been sent to Afghanistan for Russian intelligence.^[101] Later,

when they were released, the detainees were given the impression that the Russian Ministry of Foreign Affairs intervened on their behalf, to spite the Americans. But at that time they did not encounter officials from any ministry who seemed truly keen to prosecute. Moreover, the decision to release such internationally significant prisoners would likely have been taken at a higher level than the Ministry of Foreign Affairs. At the moment of release, according to Gumarov, Russian officials were portraying themselves to the detainees in a positive light. "The Americans wanted to put you away, but we're letting you out, we're such good guys," Gumarov quoted Russian officials as saying.^[102]

Local Russian officials were the ones who tortured, harassed, and mistreated the ex-Guantanamo detainees. There is no evidence to suggest that they did so according to a specific directive from the national government. But this does not absolve Moscow of responsibility for the fate of these seven men. The obligation not to tolerate torture stems from the Russian government's signature and ratification of the Convention against Torture, as well as many other international treaties and agreements.

This obligation was not, in fact, derived from the flimsy, non-binding agreement that the Russian and American governments mentioned at the time of the detainees' transfer. Indeed, the evidence of torture and mistreatment presented in this report demonstrates the fundamental powerlessness of such a "diplomatic assurance." When a government is failing to honor its basic obligation not to torture suspects in its custody-when it is violating its own promises under international law-unenforceable bilateral agreements about torture do not provide any additional safeguards for detainees.

Nor do such agreements lift any legal obligations for the country sending the detainee back home. Since September 11, 2001, the US government has advanced several novel and pernicious interpretations of international law, including the law on torture. The Bush administration's attack on the Geneva Conventions, for example, has ignited a storm of criticism worldwide. Unfortunately, the US government's novel and pernicious use of "diplomatic assurances" has not been as widely condemned by the international community-in large part because other governments, particularly Western European states and Canada, are using them too. These governments have played, therefore, an indirect role in the shameless use of "diplomatic assurances" that is described in this report.

Immediate responsibility for the suffering of these seven Russian men lies of course with the Russian government. But the US government must bear its share of the blame as well. Given the commonplace nature of torture by Russian law enforcement, it seems implausible that the Americans could have sent home these seven men, branded as they were by the "stamp of Guantanamo," and expected them to suffer anything less than the misery that they have, in fact, endured.

This report was written by Carroll Bogert, associate director of Human Rights Watch, and researched together with the deputy director of Human Rights Watch's Moscow office, Alexander Petrov, and Moscow office director Allison Gill. Europe and Central Asia Division associate Eugene Sokoloff also assisted in research. Europe and Central Asia Division associate Iwona Zielinska helped to format the report and publications specialist Grace Choi prepared it for final publication.

Rachel Denber, deputy director of the Europe and Central Asia division at Human Rights Watch, edited the report. Others at Human Rights Watch who read and commented on the text were: Julia Hall, senior researcher in the Europe and Central Asia Division; Diederik Lohman, senior researcher in the HIV/AIDS program; Joanne Mariner, director of the Terrorism/Counterterrorism program; Veronika Szente Goldston, advocacy director of the Europe and Central Asia Division; Dinah PoKempner, general counsel; and Ian Gorvin, consultant in the Program Office.

London-based human rights activist Alexandra Zernova provided invaluable assistance in research, as did Elena Ryabinina of the Russian human rights group Civic Assistance. Human Rights Watch is grateful to the victims, families, lawyers, and human rights activists who generously gave their time and energy to help tell the story of Russia's ex-Guantanamo detainees.

September 27, 2006

Sandy Hodgkinson

U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Ms. Hodgkinson:

I am writing to you for information about the seven Russian citizens who were repatriated to the Russian Federation from the US detention facility at Guantanamo Bay, Cuba, on February 28, 2004.

Russian and U.S. media have provided somewhat contradictory accounts of this repatriation, so I hope to ascertain the facts by turning directly to you. Human Rights Watch is currently preparing a report on the treatment of former Guantanamo detainees after the return to Russia, and this information will be critical to providing a full account of their experience.

As you may know, Human Rights Watch is an international human rights research and advocacy organization, working in more than 70 countries around the world. For the accuracy and credibility of our reports, we seek information about human rights abuse from a wide variety of sources, including governments.

In particular, we are interested in the following information:

- 1) The U.S. State Department's statement on March 1, 2004 says that "The transfer is the result of discussions between our two governments over the past year, including assurances that the individuals will be detained, investigated and prosecuted, as appropriate, under Russian law and will be treated humanely in accordance with Russian law and obligations." What was the substance of these assurances? Were they made in written or oral form? If written form, could a copy of them be provided to Human Rights Watch?
- 2) The detainees with whom I spoke said that they talked to both US officials and the ICRC about their fears of being returned to Russia. Did anyone in the US government respond formally to the detainees' concerns? Did the ICRC convey the detainees' concerns to the US government, and if so, how did the US government respond to them?

3)Did the U.S. government put in place any monitoring mechanism to determine if the detainees were, in fact, treated humanely by the Russians after their return?

4)The March 1, 2004 statement of the General Procuracy of the Russian Federation stated that "charges had been filed" against all seven detainees. Did the U.S. government provide case files on the detainees to the Russian government to substantiate such charges?

5)Why was Russian citizen Ravil Mingazov not part of the agreement that secured the release of the other seven detainees? Is the Russian government currently attempting to secure his release from Guantanamo?

6)Did the Russian government give advance notice to the U.S. government that it intended to release the seven men on June 22, 2004? If not, how did the U.S. government learn of their release? Did the U.S. government raise any objections to their release, either before or after June 22, 2004?

Thank you in advance for your assistance. If you have any questions, please do not hesitate to contact me at 212-216-1244.

Sincerely,

Carroll Bogert

Associate Director

Human Rights Watch

Procurator General of the Russian Federation Yuri Yakovlevich Chaika General Procuracy of the Russian Federation Ul.Bolshaia Dmitrovka 15a Moscow 125993 GSP-3Russian Federation

Fax:+7 095 921 4186 / +7 095 692 88 48

Dear Yuri Yakovlevich:

I am writing to you with a request for information about the seven Russian citizens who were repatriated to the Russian Federation from the US detention facility at Guantanamo Bay, Cuba, on 1 March, 2004.

Although the mass media covered the return of these seven men, some of their accounts provide contradictory information about the process of their return. For this reason we turn to you with a request for reliable information.

As you may know, Human Rights Watch is a neutral, international, non-governmental human rights organization with headquarters in the United States and offices in London, Geneva, Brussels, Moscow and Tashkent.

We have written a great deal about human rights abuses at Guantanamo Bay, and wish to supplement this work with information about the return of former Guantanamo detainees to their home countries. We are also turning to the U.S. authorities for such information.

In particular, we are interested in the following information:

1)The 1 March statement of the General Procuracy of the Russian Federation stated that charges had been filed against all seven detainees. What were those charges? On what date were those charges dropped? Why were they dropped?

2)The 1 March statement also says that "All these people were recruited by representatives of radical Islamic organizations and later sent over to Afghanistan, where they fought on the side of the Taliban." Does the General Procuracy still believe this to be the case? What evidence did the Russian government have for that assertion at the time? Did the U.S. government provide case files on the detainees to substantiate such charges? Had all seven individuals come to the attention of Russian law enforcement before they left Russia for Afghanistan?

3)The 1 March statement by the U.S. State Department says that "The transfer is the result of discussions between our two governments over the past year, including assurances that the individuals will be detained, investigated and prosecuted, as appropriate, under Russian law and will be treated humanely in accordance with Russian law and obligations." What was the substance of these assurances? Were they made in written or oral form? If written form, could a copy of them be provided to Human Rights Watch?

4)As part of those assurances, did the Russian government provide any kind of regular updates on the detainees' status to the U.S. authorities? Did U.S. authorities ever make any formal subsequent inquiries about the detainees' condition?

5)Why was Russian citizen Ravil Mingazov not part of the agreement that secured the release of the other seven detainees? Is the Russian government currently attempting to secure his release from Guantanamo?

Thank you in advance for your assistance in this regard. If you need any further information, please do not hesitate to contact our Moscow office at 737-8955.

With best regards,

Carroll Bogert

Associate Director

Human Right Watch

- [1] An eighth Russian citizen, Ravil Mingazov, remains in custody in Guantanamo at this writing.
- [2] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.
- [3] Their names have been spelled differently in different databases and some detainees have even been listed under different names. For example, Rasul Kudaev is referred to as Abdullah Kafkas in one US Department of Defense list. This report uses standard transliteration from Cyrillic of the detainees' names as they were commonly known in Russian.
- [4] Many of them spoke another local language such as Tatar, in addition to Russian.
- [5] Rasul Kudaev told reporters that he did not support Islamic government because he had seen how such a government operates in Afghanistan, and "there's war there all the time." See "Rasul Kudaev, arrested in Kabardino-Balkaria, has not turned up in Pyatigorsk prison" ("*Rasula Kadaeva, arestovanogo v Kabardino-Balkarii, v pyatigorskoi tyurme ne okazalos*"), *Caucasian Knot News*, January 20, 2006, <http://www.kavkaz.memo.ru/newstext/news/id/922021.html> (accessed July 22, 2006). At least three of the detainees said they went to Tajikistan, a former Soviet republic bordering on Afghanistan, because of repression against Muslims in Russia. They claim they were seized there by fighters for the Islamic Movement of Uzbekistan and taken to Afghanistan, where they were imprisoned.
- [6] Ruslan Odizhev was not interviewed by Reprieve because he quickly went into hiding after his return to Russia. Interviews with Reprieve on file with Human Rights Watch.
- [7] Although the Russian detainees' allegations were taken in the context of preparing litigation, their accounts are consistent with numerous other accounts of detainee abuse at Guantanamo collected by Human Rights Watch in its research in Afghanistan, Pakistan, Jordan, Saudi Arabia, and the UK and other accounts and reports collected for the Detainee Abuse and Accountability Project, a joint project of Human Rights Watch, Human Rights First, and the New York University Center for Human Rights and Global Justice. See Human Rights Watch, Human Rights First, NYU CHRGJ, *By the Numbers: Findings of the Detainee Abuse and Accountability Project*, April 2006, <http://hrw.org/reports/2006/ct0406/index.htm>.
- [8] Human Rights Watch interview with Ravil Gumarov, date and place withheld.
- [9] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 2(2): "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."
- [10] Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."
- [11] Convention against Torture, art. 3(1).
- [12] Foreign Affairs Reform and Restructuring Act of 1998, H.R. 1757, January 27, 1998, <http://usinfo.state.gov/usa/infousa/laws/majorlaw/hr1757.pdf> (accessed February 23, 2007).
- [13] The US government has argued that, in respect of Guantanamo detainees, it is not bound by the nonrefoulement obligations of the Convention against Torture because Guantanamo Bay is not technically part of the territorial United States, an argument that has been rejected by the US Supreme Court. But the US has also said that it has a *policy* of not returning aliens held overseas to torture, even though it argues that is not legally obligated not to do so under the Convention against Torture. See Responses by the US Delegation to questions from the Committee [against Torture] (Oral presentation to the Committee), May 8, 2006, <http://www.usmission.ch/Press2006/USPresentationtotheCAT.html> (accessed February 15, 2007).
- [14] Email communication from US State Department official Ashley Deeks to Human Rights Watch, February 26, 2007. Human Rights Watch's letter to US officials requesting information for this report can be found in Appendix I. Human Rights Watch's letter to the Russian prosecutor general's office requesting information for this report can be found in Appendix II. Russian officials did not respond to this request in time for the publication of this report.
- [15] Human Rights Watch, "*Diplomatic Assurances*" Against Torture: Questions and Answers, November 2006, <http://hrw.org/backgrounder/eca/ecaqa1106/>; *Still at Risk: Diplomatic Assurances No Safeguard Against Torture*, vol. 17, no. 3(D), April 2005, <http://hrw.org/reports/2005/eca0405/>; "*Empty Promises: Diplomatic Assurances No Safeguard Against Torture*", vol. 16, no. 4(D), April 2004, <http://hrw.org/reports/2004/un0404/>.
- [16] For this reason, UN and other anti-torture monitoring bodies insist on confidential interviews with detainees. Notably, the United Nations special rapporteur on torture, Manfred Nowak, cancelled a trip to Russia in October 2006 because the Russian government refused him confidentiality when speaking with victims of torture. "Press Conference by the United Nations Representative on Torture Convention," United Nations Department of Public Information statement from news conference, October 23, 2006, http://www.un.org/News/briefings/docs/2006/061023_Nowak.doc.htm (accessed January 14, 2007).
- [17] Human Rights Watch interview with a US official, Moscow, July 2006.
- [18] US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices 2003: Russia," February 25, 2004, <http://www.state.gov/g/drl/rls/hrrpt/2003/27861.htm> (accessed August 31, 2006).
- [19] United Nations Committee against Torture, "Conclusions and recommendations of the Committee against Torture : Russian

Federation," CAT/C/CR/28/4, June 6, 2002, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.4.En?Opendocument) (accessed September 24, 2006).

[20] European Committee for the Prevention of Torture, "Report to the Russian Government on the Visit to the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment," CPT/Inf (2003) 30, June 30, 2003, <http://www.cpt.coe.int/documents/rus/2003-30-inf-eng.pdf> (accessed September 24, 2006), p. 13.

[21] Human Rights Watch, *Confessions at Any Cost: Police Torture in Russia*, November 1999, <http://www.hrw.org/reports/1999/russia/>; Amnesty International, "Torture in Russia: 'This man-made Hell,'" AI Index: EUR 46/004/1997, April 1997, <http://web.amnesty.org/library/index/ENGEUR460041997> (accessed September 24, 2006).

[22] Human Rights Watch, *Confessions at Any Cost*.

[23] Memorial (Moscow), "Concocting Criminal Proceedings for 'Islamic Extremism,'" February 2006, <http://www.memo.ru/eng/memhrc/texts/2006ponomarevriabinina.shtml> (accessed September 24, 2006).

[24] Ibid. The total number of people who had been convicted of membership in Hizb ut-Tahrir at the time Memorial published its paper was 46.

[25] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

[26] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[27] Reprieve, "Torture Interview Outline for Guantanamo Clients, Rasul Kudaev," April 27, 2005, and October 2005, on file with Human Rights Watch, cited with permission of Reprieve.

[28] Human Rights Watch interview with Nina Odizheva, Nalchik, Russia, July 24, 2006. "FSB" stands for Federalnaia Sluzhba Bezopastnosti, or Federal Security Service, the successor to the Soviet-era KGB.

[29] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

[30] Ibid.

[31] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[32] Human Rights Watch partial interview with Shamil Khazhiev, Moscow, July 27, 2006.

[33] All except Ruslan Odizhev, who had already gone into hiding.

[34] Human Rights Watch telephone interview with Alexandra Zernova, September 5, 2006.

[35] Human Rights Watch telephone interview with Airat Vakhitov, September 21, 2006. The Procuracy General is the Russian equivalent of a prosecutor general's office.

[36] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[37] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

[38] "Transfer of Russian Nationals From Guantanamo," US Department of State press statement, 2004/219, March 1, 2004, <http://www.state.gov/r/pa/prs/ps/2004/30017.htm> (accessed September 9, 2006).

[39] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[40] "Charges brought against seven Russian citizens detained at the US military base in Guantanamo and turned over to the Russian side" ("*Semerym grazhdanam Rossii, sodержavshimsya na voennoi basye SShA v Guantanamo i peredannym rossiiskoi storone, predyavleno obvinyeniye*"), Procuracy General of the Russian Federation press release, March 1, 2004, <http://www.genproc.gov.ru/ru/news/index.shtml?id=207> (accessed March 26, 2007).

[41] "The story of the Russian Talibs" ("*Istorii russkikh talibov*") *Kommersant* (Moscow), June 25, 2004, <http://www.kommersant.ru/doc.html?DocID=485408&IssueId=18324> (accessed September 9, 2006).

[42] Human Rights Watch telephone interview with Airat Vakhitov, September 21, 2004.

[43] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[44] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

[45] UBOP stands for Upravlenie Borby Organizovannoi Prestupnosti, or Directorate for Fighting Organized Crime. It is also sometimes known as the "Sixth Department"-see below.

[46] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

[47] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

[48] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.

- [49] Human Rights Watch telephone interview with Alexandra Zernova, September 24, 2006.
- [50] Human Rights Watch interviews with Fatimat Tekaeva, Nalchik, Russia, November 2, 2005, and Khasania, Russia, July 26, 2006.
- [51] "Interior Ministry: Attackers on Capital of Kabardino-Balkaria Connected with Foreign Special Services" ("*MVD: Napadavshie na stolitsu Kabardino-Balkarii svyazany s inostrannymi spetssluzhbami*"), *Caucasian Knot News*, October 17, 2006, <http://www.kavkaz.memo.ru/newstext/news/id/1082860.html> (accessed January 14, 2007).
- [52] Human Rights Watch interview with Fatimat Tekaeva, November 2, 2005.
- [53] Written testimony of Fatimat Tekaeva, appendix document 4 submitted to the European Court of Human Rights, dated December 28, 2005, unpublished document on file with Human Rights Watch.
- [54] Complaint to the lawyers' association of Kabardino-Balkaria Republic, the procuracy of Kabardino-Balkaria Republic, and others by Irina Komissarova, appendix document 11 submitted to the European Court of Human Rights, dated November 3, 2005, unpublished document on file with Human Rights Watch.
- [55] Ruling of the Nalchik City Court, October 25, 2005, on file with Human Rights Watch. At this writing, Kudaev has not been formally indicted.
- [56] SIZO is the Russian acronym for *sledstvennyi izoliator*, or "investigation-isolation unit."
- [57] Complaint to the lawyers' association of Kabardino-Balkaria Republic by Irina Komissarova.
- [58] Luisa Orazayeva, "Suspect Vanishes From Kabardino-Balkaria Jail," *International Caucasian Forum*, February 2, 2006, <http://kavkazweb.net/english/viewtopic.php?t=894&sid=5871651713d07309329d3463c141adba> (accessed July 22, 2006).
- [59] Timeline of the arrest of Rasul Kudaev, section 14.23, document submitted to the European Court of Human Rights, unpublished document on file with Human Rights Watch.
- [60] Decision on the removal of lawyer by Kotliarov E.A. of the Procuracy General of the Russian Federation for the Southern Federal Region of November 10, 2005, appendix document 22 submitted to the European Court of Human Rights, unpublished document (in Russian) on file with Human Rights Watch. The prosecutor's office invited Komissarova in to discuss her allegations that her client had been abused, and then she was promptly prohibited from representing him because she had given evidence in the case. Human Rights Watch interview with Irina Komissarova, Nalchik, Russia, July 25, 2006. Human Rights Watch has found several cases in the Russian criminal defense system of energetic defense lawyers being barred from serving their clients after they are forced to submit to interrogations and then declared "witnesses."
- [61] Human Rights Watch interview with Fatimat Tekaeva, November 2, 2005.
- [62] The full set of photographs is available at <http://www.islamcom.ru/material.php?id=227> (accessed July 22, 2006).
- [63] Lyudmila Maratova, "Removed Prisoner Lost Again," *Caucasian Knot News*, January 20, 2006, <http://eng.kavkaz.memo.ru/newstext/engnews/id/923667.html> (accessed July 22, 2007).
- [64] Certificate from ambulance service, November 1, 2005, unpublished document (in Russian) on file with Human Rights Watch.
- [65] Appeal Ruling, Judge A.Kh. Boziyev, Supreme Court of Kabardino-Balkaria Republic, August 25, 2006, document (in Russian) on file with Human Rights Watch.
- [66] Timur Ishmuratov, Ravil Gumarov, and Fanis Shakhutdinov, press conference at RIA-Novosti, Moscow, October 14, 2005, <http://www.rian.ru/pressclub/20051014/41748032.html> (accessed September 9, 2006).
- [67] Copy of Ishmuratov's statement on file with Human Rights Watch.
- [68] Human Rights Watch interview with Zoya Ishmuratova, Bugulma, Russia, November 5, 2005.
- [69] Human Rights Watch interview with F.I. Baibikov, Kazan, Russia, August 2, 2006.
- [70] Human Rights Watch interview with Rustam Khamidullin, Bugulma, Russia, June 6, 2006.
- [71] Statement of Timur Ishmuratov in Russian, April 13, 2005, document on file with Human Rights Watch.
- [72] Human Rights Watch interview with Saria Gumarova, Naberezhnyi Chelny, Russia, August 3, 2006.
- [73] Human Rights Watch interview with Ravil Gumarov, date and place withheld. See also Ishmuratov, Gumarov, and Shaikhutdinov, press conference, October 14, 2005.
- [74] Human Rights Watch interview with Ravil Gumarov, date and place withheld.
- [75] Ishmuratov, Gumarov, and Shaikhutdinov, press conference, October 14, 2005.
- [76] Letter obtained in Human Rights Watch interview with Saria Gumarova, August 3, 2006, copy on file with Human Rights Watch. In his interview with Human Rights Watch, Gumarov himself confirmed that the letter was genuine.
- [77] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

- [78] Human Rights Watch interview with Saria Gumarova, August 3, 2006.
- [79] Human Rights Watch interview with Nina Odizheva, July 24, 2006.
- [80] Ishmuratov, Gumarov, and Shaikhutdinov, press conference, October 14, 2005.
- [81] Ibid.
- [82] Letter from Alexandra Zernova, human rights activist, to United Nations High Commissioner for Human Rights Louise Arbour, March 21, 2006.
- [83] Human Rights Watch telephone interview with Airat Vakhitov, September 7, 2006.
- [84] Ibid.
- [85] Ibid.
- [86] Jemal is a prominent commentator on Muslim affairs in the Russian and international media.
- [87] Amnesty International "Russian Federation: Further information on Fear for safety/fear of torture or ill-treatment/'disappearance,'" AI Index: EUR 46/034/2005, September 2, 2005, <http://web.amnesty.org/library/index/engneur460342005> (accessed September 9, 2006).
- [88] Human Rights Watch telephone interviews with Airat Vakhitov, September 7, 2006, and with Alexandra Zernova, September 5, 2006. Vakhitov credits international pressure for their release.
- [89] Human Rights Watch interview with Fatimat Tekaeva, November 2, 2005.
- [90] Human Rights Watch interview with Fatimat Tekaeva, July 26, 2006. The "passport" she refers to is a national identity card, not an international travel document. She was an eyewitness to the harassment described here.
- [91] Human Rights Watch interview with Nina Odizheva, July 24, 2006.
- [92] Ishmuratov, Gumarov, and Shaikhutdinov, press conference, October 14, 2005.
- [93] Human Rights Watch interview with Ravil Gumarov, date and place withheld.
- [94] Ishmuratov, Gumarov, and Shaikhutdinov, press conference, October 14, 2005.
- [95] Ibid.
- [96] Human Rights Watch interview with Kafil Amirov, Kazan, Russia, July 19, 2006.
- [97] Letter from Zernova, March 21, 2006.
- [98] Ishmuratov's sentence was reduced to eight years, Gumarov's was reduced to nine, and Shaihutdinov's was reduced to 10-and-a-half. A Human Rights Watch observer was present in the courtroom.
- [99] "Protocol of the additional testimony of the accused," document (in Russian) on file with Human Rights Watch.
- [100] Peter Finn, "From Guantanamo to a Russian Prison," *The Washington Post*, September 3, 2006.
- [101] Human Rights Watch interview with Ravil Gumarov, date and place withheld. Ishmuratov also told a Moscow press conference that after the Bugulma pipeline explosion, local FSB officials seemed to think he might have been recruited by the national FSB while he was in Pyatigorsk. See Ishmuratov, Gumarov, and Shakhutdinov, press conference, October 14, 2005.
- [102] Human Rights Watch interview with Ravil Gumarov, date and place withheld.

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