

# Human Rights Watch

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

<https://www.hrw.org/news/2004/01/28/torture-and-non-refoulement>

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Briefing to the 60th Session of the UN Commission on Human Rights

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In its annual resolution on torture, the Commission on Human Rights should reaffirm the absolute obligation of states not to return (refouler) a person to a country where he or she is at risk of being subjected to torture or other cruel or inhuman treatment.

Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides that no state shall expel, return (refouler) or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. To make such determinations, the CAT requires states to examine all relevant factors, including a consistent pattern of gross or flagrant violations of human rights in the country in question.

Since the September 11, 2001 attacks, a number of states have taken actions that have weakened the principle of non-refoulement by returning persons suspected of involvement in terrorism to their home countries or sending them to third countries for detention and interrogation despite the known likelihood that they would be tortured. While such returns also occurred prior to September 11, there has been a troubling increase in the practice since that time. These transfers often occur outside of any recognized legal process: in some cases, governments have not followed domestic legal processes that were established to ensure compliance with their non-refoulement obligations under article 3 of CAT. Some suspects have been sent to countries with well-documented histories of torture and ill-treatment and where they have been detained in circumstances that raise grave concerns about their treatment.

In an attempt to meet their non-refoulement obligations, some sending states have sought and obtained diplomatic assurances from receiving countries that suspects would not be subject to the death penalty or tortured after they are transferred. The use of such assurances reflects an acknowledgement by the sending state of a risk of torture, but the sending state then deems that risk eliminated by an exchange of diplomatic demarches, including cursory guarantees of protection with no enforcement mechanism to ensure compliance. Human Rights Watch questions the legal sufficiency of diplomatic assurances, particularly in cases where the receiving government engages in widespread or systematic torture. The right to be free from torture cannot be papered over through the use of diplomatic pledges from the very governments whose record on torture casts doubt on the reliability of their assurances.

***Refoulement cases since September 11.*** The rendition of terrorist suspects is by its nature a secretive process. For that reason, it is difficult to present a complete picture of detainee transfers that raise concerns under the non-refoulement requirement of CAT. A number of cases, however, have come to light in recent years.

In December 2001, the Swedish government returned two Egyptian asylum seekers to Egypt despite concerns that they would be persecuted upon their return. The Swedish Migration Board, based upon secret evidence submitted by the Swedish security police, handed the mens cases to the government, which decided to expel them. Notwithstanding its diplomatic assurances to Sweden, Egypt has not afforded a fair trial to either of the men: one was originally tried by a military tribunal and convicted in absentia but remains in prison; the other was held for nearly two years without charge. Swedish officials waited five weeks before visiting the detainees in Egypt and lacked specific expertise in detecting torture and ill-treatment. Egyptian prison officials have been present during all of their meetings with the detainees.

In September 2002, the United States government apprehended Maher Arar, a dual Canadian-Syrian national, in transit through New York to Canada, where he has lived for many years. After holding him for ten days, U.S. immigration authorities flew him to Jordan, where he was driven across the border and handed to Syrian authorities, despite his repeated statements to U.S. officials that he would be tortured in Syria. Prior to his transfer, the U.S. government obtained assurances from the Syrian government that Arar would not be subjected to torture. Arar alleges he was in fact tortured during his ten months of confinement in a Syrian prison. The U.S. government has not explained why it sent him to Syria rather than to Canada, where he resides, nor why it believed Syrian assurances to be credible in light of the governments record of torture. In addition, the U.S. government has rendered a number of suspects from its detention center

at Bagram air base in Afghanistan to third countries. According to credible reports citing unnamed U.S. officials with direct knowledge of the handling of detainees, terrorist suspects have been handed over to countries such as Egypt, Saudi Arabia, Jordan and Morocco for interrogation all countries widely known to engage in torture. One unnamed U.S. official told the *Washington Post*: We dont kick the [expletive] out of them. We send them to other countries so *they* can kick the [expletive] out of them.

In addition, some states have reportedly used interrogation tactics that violate their obligations under article 16 of the CAT to prevent other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture. In its detention center at Bagram air base in Afghanistan, U.S. officials have reportedly subjected detainees to stress and duress techniques of interrogation, including sleep deprivation and holding them for long periods in awkward, painful positions. Methods similar to those the United States is reportedly using have been found to be illegal mistreatment under international law, including in landmark decisions by the Israeli Supreme Court and the European Court of Human Rights.

## Recommendations

The Commission on Human Rights should include in its annual resolution on torture and other cruel, inhuman or degrading treatment or punishment provisions that:

Bahrain Death Sentences Follow Torture, Sham Trials

International Alternatives to Detaining Immigrants

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