

PUBLIC

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UA 149/07 **Fear of forcible return**

USA **Abdul Ra'ouf Omar Mohammed Abu al Qassim (m), Libyan national, aged about 42**

Abdul Ra'ouf al Qassim, a Libyan national in US military custody in Guantánamo Bay, Cuba, is feared to be at imminent risk of transfer to the custody of the Libyan government. Amnesty International (AI) is concerned that he would be held in prolonged incommunicado detention without charge in Libya, putting him at serious risk of torture and other ill-treatment. The organization is also concerned that he could eventually face an unfair trial and the possibility of the death penalty.

Abdul Ra'ouf al Qassim was drafted into the Libyan army at around the age of 18 and served in the military for seven years. He fled Libya in 1990 and went to Afghanistan. In 2000, he married an Afghan woman, Rahima, and they were living in the Afghan capital, Kabul, at the time of the US-led military intervention in Afghanistan in October 2001. Abdul Ra'ouf al Qassim and Rahima, then pregnant, fled to Pakistan. There, he was taken into custody at a time when rewards of up to US\$5,000 were being paid by the USA for every alleged "terrorist" handed over to it; a practice that facilitated arbitrary detentions in Pakistan. In late 2001 or early 2002, Abdul Ra'ouf al Qassim was transferred to US custody and became one of hundreds of people sent to Guantánamo Bay. He has been held there for five years without charge or trial. Rahima gave birth to their daughter, Khiria, who is now more than five years old and living in Afghanistan with her mother.

According to unclassified records of the Combatant Status Review Tribunal and the Administrative Review Board (ARB) held on his case in Guantánamo, the US government has accused Abdul Ra'ouf al Qassim of association with the Libyan Islamic Fighting Group (LIFG), an unauthorized opposition group. In his reported response to the allegation that he had stayed at an LIFG guesthouse in Afghanistan, he stated that this had been at a time when he had "nowhere else to go". To the allegation that he was an LIFG member, his response was: "I was never a member. I was compelled to stay with them; I had no choice but to stay."

Amnesty International fears that the US government's linking of Abdul Ra'ouf al Qassim to the LIFG, however tenuous, places him at particular risk of human rights violations if returned to Libya. A new report, *US responsibility for enforced disappearances in the 'war on terror'*, issued by AI and five other organizations (AMR 51/093/2007, June 2007, <http://web.amnesty.org/library/Index/ENGAMR510932007>), lists five alleged members of LIFG believed to have previously been in secret US custody and whose whereabouts remain unconfirmed. Four of these individuals are reportedly being held in Tripoli after being transferred from US to Libyan custody. At least one of them is reported to be in very poor health in solitary confinement.

On 19 April 2007, a US District Court judge denied a motion brought on behalf of Abdul Ra'ouf al Qassim seeking an order preventing the US government from transferring him to Libya because of the risk that he would face serious human rights violations there. The judge stated that "although the court recognizes the seriousness of the petitioner's allegations, it has no choice but to deny the motion" because the court's jurisdiction to consider the petition had been stripped by the Military Commissions Act, signed into law by President Bush in October 2006. On 1 May 2007, the US Supreme Court refused to intervene in the case.

Abdul Ra'ouf al Qassim has expressed his fear of being transferred to the custody of the Libyan government. In the unclassified records of his ARB proceedings in 2005, a military officer who had interviewed the detainee related that when the question of his being transferred to Libyan custody was raised, "that is when he became very nervous and said I do not wish to go back to Libya under [any] conditions".

In 2006, the UN Human Rights Committee urged the USA to "take all necessary measures to ensure that individuals, including those it detains outside its own territory, are not returned to another country... if there

are substantial reasons for believing that they would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.” In its report to the UN Committee Against Torture in 2006, the USA stated that it “does not transfer persons to countries where the United States believes it is ‘more likely than not’ that they will be tortured”, a lesser standard than required under international law. The report continued that the USA “obtains assurances, as appropriate, from the foreign government to which a detainee is transferred that it will not torture the individual being transferred“. AI opposes reliance on “diplomatic assurances” as a basis for sending individuals to countries where they would otherwise be considered at risk of torture or other ill-treatment. Diplomatic assurances under these circumstances are unreliable and unenforceable.

The Committee Against Torture stressed to the USA that assurances should not be relied upon where the state was responsible for systematic violations of the Convention against Torture. The Human Rights Committee emphasised that “the more systematic the practice of torture or cruel, inhuman or degrading treatment or punishment, the less likely it will be that a real risk of such treatment can be avoided by such assurances, however stringent any agreed follow-up procedures may be.” In its most recent report on human rights in other countries, the US State Department’s entry on Libya states that “security personnel routinely tortured prisoners during interrogations or as punishment...Reports of torture were difficult to corroborate since many detainees were held incommunicado. The reported methods of torture and abuse included chaining prisoners to a wall for hours, clubbing, applying electric shocks, applying corkscrews to the back, pouring lemon juice in open wounds, breaking fingers and allowing the joints to heal without medical care, suffocating with plastic bags, prolonged deprivation of sleep, food, and water, hanging by the wrists, suspension from a pole inserted between the knees and elbows, cigarette burns, threats of dog attacks, and beatings on the soles of the feet”. The entry adds that detainees were also subjected to cruel, inhuman or degrading detention conditions and “denied adequate medical care, which led to several deaths in custody.”

In April 2007, a UK court, the Special Immigration Appeals Commission (SIAC), blocked the UK’s bid to return two Libyan nationals, allegedly linked to the LIFG, to Libya. SIAC found that the memorandum of understanding between the UK and Libyan governments had not removed the real risk that the men would be subjected to serious human rights violations in Libya. SIAC noted that “torture is extensively used against political opponents among whom Islamist extremists and LIFG members are the most hated by the Libyan Government, the Security Organisations and above all by [Libyan leader] Colonel Qadhafi.”

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing concern that the US government may be about to transfer Guantánamo detainee Abdul Ra’ouf al Qassim to the custody of the Libyan government;
- pointing out that the US government itself has reported that torture by Libyan security personnel is routine;
- noting that the US government’s claim that Abdul Ra’ouf al Qassim is associated with the Libyan Islamic Fighting Group puts him at particular risk of human rights violations upon return, including prolonged incommunicado detention, torture or other ill-treatment, and unfair trial;
- opposing the use of diplomatic assurances as inherently unreliable and unenforceable;
- calling on the USA to find another solution for Abdul Ra’ouf al Qassim’s release from Guantánamo that ensures his treatment is in full compliance with international law, noting that his wife and child, Afghan citizens, live in Afghanistan and await his return.

APPEALS TO:

The Honorable Condoleezza Rice
Secretary of State, Department of State, 2201 C Street, N.W., Washington DC 20520, USA

Fax: + 1 202 261 8577

E-mail: Secretary@state.gov.

Salutation: Dear Secretary of State

The Honorable Robert Gates, Secretary of Defence, 1000 Defense Pentagon, Washington DC 20301, USA

Fax: + 1 703 697 8339

Salutation: Dear Secretary of Defense

COPIES TO: diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 27 July 2007.