

PUBLIC

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UA 157/07 Forcible return/Fear of torture and other ill-treatment

TUNISIA/USA **Abdellah Ben Omar al Hajji (m), Tunisian national, aged 51**
Lutfi Ben Swei Lagha (m), Tunisian national, aged 38

On 17 June, the USA transferred two Tunisian nationals, Abdellah Ben Omar al Hajji and Lutfi Ben Swei Lagha, from Guantánamo Bay, Cuba, to the custody of the Tunisian government. Amnesty International fears that they are at risk of torture or other ill-treatment in Tunisia.

The US Department of Defense publicly announced the transfers of the two Tunisian nationals to Tunisia, and also of four Yemeni nationals to Yemen, on 19 June. Amnesty International has no further information on Lutfi Ben Swei Lagha, who had no legal representation while he was held in Guantánamo. Abdellah al Hajji's US lawyer, who was not informed of the transfer until 19 June, had only been able to meet with his client once during his detention in Guantánamo. During that meeting, Abdellah al Hajji had expressed his fear of being forcibly returned to Tunisia.

Abdellah al Hajji left Tunisia in 1989 and settled in Pakistan, after briefly returning to Tunisia to collect his family (he married in 1984 and has eight children). In 1991 or 1992, he was reportedly convicted *in absentia* for his alleged association with the non-violent Islamist organisation *Ennahdha*, in military trials which were grossly unfair, and sentenced to 23 years in prison. He was arrested at his home in Lahore, Pakistan in early 2002. He was handed over to US custody by Pakistani agents, allegedly for a payment. After the US-led military intervention in Afghanistan in October 2001, US agents paid rewards of up to US\$5,000 for every alleged "terrorist" handed over to them, a practice that encouraged arbitrary detentions in Pakistan and Afghanistan. In August 2002, Abdellah Ben Omar al Hajji became one of hundreds of people sent to Guantánamo Bay.

Tunisian agents reportedly visited Abdellah al Hajji in Guantánamo, and told him that they had nothing against him. It is not known whether al Hajji knew that he had been tried *in absentia* in Tunisia, and that he faced a prison sentence upon return.

Over the years, Amnesty International has received numerous reports of torture and ill-treatment by the Tunisian security forces, including agents of the State Security Department at the Ministry of the Interior in the capital, Tunis. In virtually all cases, allegations of torture are not investigated and the perpetrators are not brought to justice.

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 said 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." Amnesty International 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, yet the USA has used such assurances in this and other cases.

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, issued in March 2007, the US State Department’s entry on Tunisia stated that “Members of the security forces tortured and physically abused prisoners and detainees. Security forces arbitrarily arrested and detained individuals...Lengthy pretrial and incommunicado detention remained a serious problem.... The government remained intolerant of public criticism and used intimidation, criminal investigations, the court system, arbitrary arrests, residential restrictions, and travel controls (including denial of passports), to discourage criticism by human rights and opposition activists. Corruption was a problem.” The State Department noted that “Political prisoners, Islamists, and persons detained on terrorism-related charges allegedly received harsher treatment than other prisoners and detainees.”

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

To the Tunisian authorities:

- calling on the authorities to make known the whereabouts of Abdellah Ben Omar al Hajji and Lutfi Ben Sweï Lagha, transferred from US custody on 17 June, and to ensure that their treatment fully complies with international law and standards;
- asking the authorities to provide them immediately with access to legal counsel and to medical care;
- calling on the authorities to give them a fair trial before an ordinary civilian court in accordance with international fair trial standards, or release them.

To the US authorities:

- expressing grave concern that the USA forcibly transferred Abdellah Ben Omar al Hajji and Lutfi Ben Sweï Lagha to Tunisia, in breach of its international legal obligations, pointing out that the US government itself has reported that torture in Tunisia is routine;
- noting that the US government’s prolonged detention of these men and labelling them as “enemy combatants” associated with terrorism puts them at particular risk of human rights violations upon return, including prolonged incommunicado detention, torture or other ill-treatment;
- opposing the use of diplomatic assurances as inherently unreliable and unenforceable;
- calling on the USA to cease any further transfers of detainees to situations where they are at risk of torture or other serious human rights abuses, and to cease its reliance upon diplomatic assurances in such cases.

APPEALS TO:

Rafik Haj Kacem, Ministère de Intérieur
Avenue Habib Bourguiba, 1000 Tunis, Tunisia

Fax: +216 71 340 888
E-mail: mint@ministeres.tn
Salutation: Monsieur le Ministre / Your Excellency

M. Béchir Tekkari, Ministère de la Justice et des Droits de l’Homme
31 Boulevard Bab Benat , 1006 Tunis - La Kasbah, Tunisia

Fax: +216 71 568 106
E-mail: mju@ministeres.tn
Salutation : Your Excellency/Excellence

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 Tunisia and the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 1 August 2007.