



GUANTÁNAMO'S REFUGEES: TRAPPED BY INACTION

The Need for Third-Country Resettlement
for Guantánamo's Refugees

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EXECUTIVE SUMMARY

There are dozens of detainees at Guantánamo from “high-risk” countries where there is a potential danger of persecution or torture should they be forcibly returned. At least 20 of these men have been “cleared for release” by the U.S. government – for some, years ago – yet they remain in Guantánamo. These men need to be resettled in the United States and third countries. However, until now, Albania has been the only country that has been willing to accept a small number of Guantánamo’s refugees. The refugee crisis that exists in Guantánamo should be approached like any other – with the United Nations High Commissioner for Refugees (UNHCR), the United States, and other countries of resettlement creating and implementing a plan of action to end the indefinite detention of refugees in an extrajudicial prison. With changes in U.S. law ending any meaningful judicial review of the government’s treatment of detainees, the crisis grows even more urgent as the courts have refused to intervene to prevent the *refoulement* of detainees to countries where they are at great risk of persecution. The United States has already transferred detainees from Guantánamo to high-risk countries despite credible individualized fears of persecution or torture upon their repatriation. This paper briefly describes the issue and some of the men at Guantánamo who continue to be wrongfully detained simply because no country has offered them refuge.

Cover Photo: The mother and daughter of Abdul Ra’ouf Al Qusin await news of Abdul Ra’ouf’s status. The U.S. government has repeatedly expressed its intent to send Abdul Ra’ouf to Libya despite a credible – and undisputed – fear that he would be tortured if returned, and even though Libya is a country which he fled years before he was transferred to Guantánamo.

INTRODUCTION

In the aftermath of the U.S. bombing campaign in Afghanistan in 2001, the U.S. military detained countless men fleeing the violence. Some were involved in the war, but most were not. According to the U.S. military's own documents, in the chaos of wartime, most captured in Afghanistan and Pakistan were sold to the U.S. military for money or as part of tribal or local grievances; others were picked up far from any battlefield.¹ With no process to sort through the men detained, many were shuffled through military facilities in Afghanistan before being transported to the now-infamous U.S. military base in Guantánamo Bay, Cuba. Entering into their sixth year of detention, by the U.S. government's own assertions, at least 80 of these men have been cleared for release.² But many continue to languish in Guantánamo simply because they have nowhere to go – their home countries would persecute them if they were forcibly returned, and the United States and its allies have refused to intervene to provide them safe haven. These men are literally trapped by inaction.

Despite the strong statements made by myriad countries for the closure of Guantánamo,³ only two countries have thus far agreed to accept Guantánamo's refugees – non-citizens in need of safe haven because they would face torture or persecution if repatriated to their home countries.⁴ The need for

¹ According to a 2002 CIA report, "a substantial number of the detainees appear to be either low-level militants . . . or simply innocents in the wrong place at the wrong time." The CIA report also reported that "[o]fficials of the Department of Defense acknowledge that the military's initial screening of the prisoners for possible shipment to Guantánamo was flawed." Tim Golden and Don Van Natta, Jr., *U.S. Said to Overstate Value of Guantánamo Detainees*, N.Y. TIMES, Jun. 21, 2004. Jay Hood, Commanding General of the Joint Task Force, acknowledged, "sometimes, we just didn't get the right folks." Jay Hood, Commanding General, Joint Task Force, in Christopher Cooper, *Detention Plan: In Guantánamo, Prisoners Languish in Sea of Red Tape*, WALL STREET JOURNAL, Jan. 26, 2005. A study relying exclusively on the records from the U.S. government's own flawed Combatant Status Review Tribunals found that – *even if all of the Tribunal records were accepted as true* – a majority of the detainees have been determined to have not committed hostile acts against the United States or its coalition allies; and only eight percent of the detainees have been characterized as Al Qaeda fighters. Indeed, eighty-six percent of the detainees were arrested by either Pakistan or the Northern Alliance and turned over to U.S. forces – most at a time when the United States was offering sizable bounties for the handover of "suspects." Mark Denbeaux, Report on Guantánamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data, Seton Hall University School of Law (Feb. 2006). U.S. military personnel recognized early that the U.S. leadership was overstating the threat posed, and the intelligence value presented by, the men detained at Guantánamo. In 2004, Brigadier General Martin Lucenti said, "Of the 550 [detainees] that we have, I would say most of them, the majority of them, will either be released or transferred to their own countries." In Mark Huband, *US Officer Predicts Guantánamo Releases*, FINANCIAL TIMES (LONDON), Oct. 4, 2004. Lieutenant Colonel Anthony Christino similarly said that the intelligence value of Guantánamo detainees was already severely limited three years ago: "There is a continuing intelligence value . . . for [s]omewhere a[round] a few dozen, a few score at the most" of the Guantánamo detainees. In Peter Jennings Reporting: *Guantánamo*, ABC NEWS, June, 26, 2004.

² See Craig Whitlock, *82 Inmates Cleared but Still Held at Guantánamo: U.S. Cites Difficulty Deporting Detainees*, WASHINGTON POST, Apr. 29, 2007, p. A01.

³ See, e.g., *Merkel Calls for Closure of Guantánamo*, DER SPIEGEL, Jan. 7, 2006 ("An institution like Guantanamo can and should not exist in the longer term."); Associated Press, *Dutch Defense Minister Urges U.S. to Close Guantánamo Prison*, Jan. 12, 2006; U.S.: *U.K. Official's Call to Close Guantanamo Rejected*, RADIO FREE EUROPE, May 11, 2006 (citing call by Lord Peter Goldsmith, Attorney General of the United Kingdom, to shut down Guantánamo, calling it "unacceptable": "It is time, in my view, that it should close"); *EU Renews Calls to Close Guantánamo After Deaths*, THE TIMES (LONDON), June 12, 2006; *EU Parliament Calls for Action to Close Guantanamo*, AGENCE FRANCE PRESSE, June 13, 2006; Statement of Austrian Foreign Minister Ursula Plassnik, June 12, 2006 ("The government of the United States should take measures to close Guantanamo as quickly as possible."); *Criticism of Guantánamo Rises; Pentagon IDs 3 Who Killed Selves*, THE GUARDIAN, June 12, 2006 (citing leaders of Germany, Sweden and Britain calling for the closure of the detention center at Guantánamo).

⁴ Albania accepted eight refugees from Guantánamo in 2006, from Algeria, China, Egypt and Uzbekistan. Matt Schofield, *Bush's Visit to Albania Will Thank a Country That's Supported His Policies*, MCCLATCHY NEWSPAPERS, June 7, 2007. In August 2007, Britain called for five British residents to be released and resettled in the United Kingdom.

countries to intervene to provide protection for Guantánamo's refugees is critical. The possibility that men will be sent by the U.S. government to their home countries despite their legitimate fear of persecution or torture is not an abstract concern. The U.S. government has forcibly returned Guantánamo detainees to countries that are recognized to have committed egregious human rights abuses – including extrajudicial killings, torture, and “disappearances” – despite pleas not to be sent there. Further, the U.S. government has vehemently resisted any attempt by detainees and their attorneys to halt transfers, even where very specific, verifiable and objective fear of persecution and torture exists.⁵ With the passage of the Military Commissions Act, a 2006 law limiting judicial review for the men imprisoned at Guantánamo, detainees are now prohibited from legally challenging transfers to countries where they will likely be tortured or subjected to persecution.

This report highlights just a few examples of detainees whose cases present clear evidence of a severe risk of persecution in their home countries. Without intervention from the United States or safe third countries, each of these men faces an impossible choice: repatriation to torture or continued indefinite detention in Guantánamo.

PROHIBITIONS AGAINST TORTURE AND TRANSFERS TO TORTURE

The international ban on torture is unequivocal. Under international law, under no circumstances can torture be justified.⁶ These principles are recognized by international human rights and humanitarian law, as well as domestic law in all countries party to the Convention Against Torture.⁷

The prohibition against torture does not only prohibit the direct torture of individuals; in the strongest of terms, it also prohibits the transfer of individuals to countries in which they would be tortured or persecuted.⁸ In addition to being a non-derogable human rights and humanitarian obligation, this *non-refoulement* principle is the bedrock of refugee law and applies to any form of forcible transfer, including deportation, extradition or informal transfer.⁹ The 1951 Refugee

These men were residents in the United Kingdom prior to their transfer to Guantánamo, but they are citizens of Algeria, Ethiopia, Jordan, Libya and Saudi Arabia. *UK Seeks Guantánamo Men Release*, BBC NEWS, Aug. 7, 2007.

⁵ *Zalita v. Bush*, 550 U.S. ___ (S.Ct. May 1, 2007); Reply Brief for Appellants and Brief for Cross-Appellees, *Kiyemba v. Bush*, No. 05-5487 (D.C. Cir. filed Aug. 2, 2006).

⁶ United Nations Convention against Torture Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) (*hereinafter* CAT), Art. 2(2).

⁷ *Id.* Over 140 states, including the United States, are party to the Convention Against Torture which defines and prohibits torture.

⁸ CAT, Art. 1 (definition of torture), Art. 3 (“No State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture . . .”); International Covenant on Civil and Political Rights, Art. 7 (“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); 1951 Convention Relating to the Status of Refugees, Art. 33 (no state “shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”). Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), U.S. Criminal Code § 2340A (prohibiting the U.S. from expelling, extraditing or otherwise effecting the involuntary removal of any person to a country where there are substantial grounds for believing that s/he would be in danger of being subjected to torture).

⁹ United Nations High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Jan. 26, 2007), 3 [*hereinafter* UNHCR Advisory Opinion]. See also Cartagena Declaration on Refugees, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at

Convention prohibits the transfer of a refugee to where his/her “life or freedom would be threatened on account of” certain enumerated factors.¹⁰ The Convention Against Torture prohibits a state party from expelling, returning or extraditing an individual to a country in which there are substantial grounds for believing the individual would be subjected to torture.¹¹ This is a mandatory obligation of State Parties to these two treaties.

The *non-refoulement* obligation requires an individualized determination. A refugee is entitled to protection from *refoulement* not because of any prior finding of official refugee status, but rather because of the fact that s/he meets the criteria of a person whose life or freedom would be threatened or who would be subject to torture.¹²

The *non-refoulement* obligation does not end at the border of a country, but extends to wherever a state exercises jurisdiction, including where that is in the territory of another State.¹³ The United Nations High Commissioner for Refugees (UNHCR) has interpreted the *non-refoulement* obligation to apply to any acts or omissions, no matter where they are taken, by a state party which “have the effect of returning a refugee to territories where he or she is likely to face persecution or danger to life or freedom.”¹⁴

GUANTÁNAMO’S BLACK HOLE: TRANSFER-TO-TORTURE WITH NO JUDICIAL OVERSIGHT

Some Guantánamo detainees are at unique and heightened risk of being subjected to torture or ill-treatment upon their forcible transfer to human rights abusing regimes, in part, because of their status and individualized experiences; and, in part, because the U.S. government relies on woefully inadequate preventive mechanisms such as “diplomatic assurances” from human rights abusing countries.¹⁵ Furthermore, the United States consistently has asserted that the courts have no power to review the treatment of detainees at Guantánamo. Thus far, the government’s arguments have been successful – the current state of U.S. law and policy provides no meaningful or effective avenues of relief for individuals at risk and fearing repatriation.¹⁶

190-93 (1984-85) [*hereinafter* Cartagena Declaration] (“To reiterate the importance and meaning of the principle of *non-refoulement* . . . as a cornerstone of the international protection of refugees”).

¹⁰ Convention relating to the Status of Refugees, opened for signature July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150, entered into force Apr. 22, 1954 Art. 33(1) [*hereinafter* 1951 Refugee Convention].

¹¹ CAT, Art. 3.

¹² UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, Reedited 1992, para. 28. There are exceptions where an individual poses a danger to the country of refuge, or a danger to the country from which s/he fled, as evidenced by a conviction by a “final judgment of a particularly serious crime.” 1951 Refugee Convention, Art. 33(2).

¹³ See UNHCR Advisory Opinion, 12.

¹⁴ UNHCR Advisory Opinion, 14 (citing Mr. Henkin, the United States representative, during negotiations preceding the adoption of the 1951 Refugee Convention, arguing that “[w]hether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened”).

¹⁵ See, e.g., Human Rights Watch, *Empty Promises: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2004); Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2005).

¹⁶ *Zalita v. Bush*, 550 U.S. ___ (S.Ct. May 1, 2007); Reply Brief for Appellants and Brief for Cross-Appellees, *Kiyemba v. Bush*, No. 05-5487 (D.C. Cir. filed Aug. 2, 2006); *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

Because of their status, some Guantánamo detainees from human rights abusing countries are at heightened risk of torture and persecution if forcibly repatriated. Some fled their countries of origin before being detained and transferred to Guantánamo. They may have asserted refugee claims in the countries to which they originally fled such that their dissent is a matter of public record. Receiving states with records of torture and ill-treatment can be expected to retaliate against such individuals. Other countries have been given access to detainees *while in Guantánamo* – and have threatened their nationals with torture and ill-treatment upon their return. It is reputed that intelligence officers from Jordan, Libya and Uzbekistan threatened their natives held at Guantánamo. Still other Guantánamo detainees did not face persecution before their Guantánamo detention, but are now likely to face torture or ill-treatment from receiving states that believe these individuals are a security threat, either based on information passed on by the U.S. government, not reviewable or subject to challenge by the individual, or simply because of the stigma associated with their incarceration in Guantánamo.

Moreover, many Guantánamo detainees are transferred to human rights abusing states with known records of torture of detainees and where the United States relies on mechanisms that have patently failed to prevent torture and persecution in the past. Post-return monitoring is impossible or ineffective to protect detainees against the risk of torture and ill-treatment in these states. Where the day-to-day custodians of detainees regularly perpetrate torture with impunity, only the most independent and intrusive of outside monitoring would be effective. Such monitoring has not been permitted by receiving states and likely will not be permitted in the future. Moreover, the United States has consistently disclaimed any responsibility for monitoring the treatment of detainees once they have been turned over to other nations.¹⁷

The United States instead relies on “diplomatic assurances” to proclaim that it is not acting in violation of domestic and international law in the transfer of at-risk individuals from Guantánamo to rights-abusing regimes such as Libya, Russia, Tunisia and Uzbekistan. In the case of transfers where there is a risk of persecution and torture, diplomatic assurances are unenforceable commitments from one government to another not to subject the individual transferred to torture or abuse.¹⁸ The U.S. government states that whenever it transfers detainees from Guantánamo to the custody of another state, it seeks assurances “of humane treatment,” and where “circumstances warrant,” the United States seeks “more specific assurances.”¹⁹ These assurances are highly problematic as they rely on the dangerously unlimited discretion of government officials. Neither the decision-making process nor the assurances themselves are transparent in any respect. Since human rights abusing regimes routinely deny torture allegations and refuse to investigate them, assurances that Guantánamo detainees will be treated humanely are hollow promises.²⁰

¹⁷ See, e.g., Respondents’ Memorandum in Opposition to Petitioners’ Motions for Temporary Restraining Orders and Preliminary Injunctions, *Almurbati v. Bush*, No. 04-cv-1227, Dkt. 134 (D.D.C. 2005) (“When the [DoD] transfers detainees to the control of other governments, the detainees are no longer subject to the control of the United States.”).

¹⁸ See, e.g., Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2005).

¹⁹ *Abdah v. Bush*, 2005 U.S. Dist. LEXIS 4942 (D.C. Cir. 2005), Declaration of Pierre-Richard Propser, para. 6.

²⁰ The United States has consistently challenged judicial review of these assurances, asserting that such review would “encumber and add delays to what is already a lengthy process.” *Abdah v. Bush*, 2005 U.S. Dist. LEXIS 4942 (D.C. Cir. 2005), Declaration of Pierre-Richard Propser, para. 12.

A limited and decreasing number of the men detained at Guantánamo who fear that they would be returned to a country in which they risk torture or persecution have access to only the most basic relief: a brief notice period in which to attempt to challenge a transfer to torture.²¹ However, because of recent legislative and judicial developments in the United States, even these most basic means to prevent a transfer to torture are increasingly non-existent. Relying on the Military Commissions Act, a new law that strips the district courts of jurisdiction over the cases of many non-citizens held in U.S. custody, the U.S. Court of Appeals for the District of Columbia held that it did not have jurisdiction to hear a challenge to the legality of detention of individuals detained at Guantánamo.²² After initially refusing to hear the case, the United States Supreme Court reversed itself and will hear the appeal of Guantánamo detainees in 2007.²³

As a consequence of the new law and the court's interpretation of it as constitutional and an effective removal of the right of Guantánamo detainees to challenge their detention, the judicial options to contest any aspect of an individual's detention at, or transfer from, Guantánamo are virtually non-existent. This was evidenced by the Supreme Court's refusal to consider a case brought by a Libyan detainee seeking to prevent his imminent transfer to the Qadhafi regime for further detention and interrogation, despite known and severe risks of persecution, and an expressed fear by the detainee that he would face torture if repatriated, none of which the United States disputed.²⁴ In April 2007, the Supreme Court refused to consider the case and thus essentially left the Libyan's life entirely subject to the executive discretion.²⁵ More recently, in June 2007, the U.S. Court of Appeals for the District of Columbia refused to grant an injunction against the transfer of another Libyan who faces probable torture if forcibly returned and the Supreme Court in August 2007 denied the emergency appeal of an Algerian at risk of torture if transferred to Algeria.²⁶

Given the current state of U.S. law, as well as the reliance of the United States on unenforceable diplomatic assurances from notorious rights-abusing regimes, an urgent need exists for UNHCR and countries – including the United States and other countries of resettlement, particularly in Europe – to intervene to ensure that Guantánamo's refugees are protected from torture and other forms of persecution. Until UNHCR and the international community become involved and agree to resettle these men as refugees, they will remain in Guantánamo indefinitely or face persecution and torture from their home countries.

REFUGEES FROM HUMAN RIGHTS ABUSING REGIMES

The refugees at Guantánamo in need of third-country resettlement are from diverse countries with recognized records of abuse of minorities, political prisoners, accused (rightly or wrongly) security

²¹ The U.S. government has been required to provide thirty days notice to the detainee's attorney before initiating the transfer in a limited number of cases. However, the attorney has no legal recourse to halt a transfer since no judicial process was available. The attorney also is prohibited from publicly discussing the transfer of his client, even if s/he does receive advance notice of the transfer.

²² *Boumediene v. Bush*, 476 F.3d 981 (2007).

²³ *Boumediene v. Bush*, cert. denied, 127 S. Ct. 1478 (Apr. 2, 2007); rehearing granted (June 29, 2007).

²⁴ *Zalita v. Bush*, 550 U.S. ___ (S.Ct. May 1, 2007).

²⁵ *Id.*

²⁶ *Khalijb v. Gates*, No. 07-1215 (D.C. Cir. June 22, 2007) (order denying emergency motion to prevent transfer to Libya on the grounds that the court lacked jurisdiction to grant the requested relief); *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

detainees, and other “undesirables.” Many resettlement countries – including the United States – regularly welcome refugees from these countries because of their poor human rights records.²⁷ All the individuals at risk if forcibly returned have been detained for years without charge or trial and, absent the intervention of international actors, face an even bleaker future.

Detainees who fear return include some detainees from Algeria, China, Jordan, Libya, Palestine, Russia, Somalia, Sudan, Syria, Tajikistan, Tunisia and Uzbekistan. In some countries (i.e., Algeria, Russia), the dangers of repatriation are individualized such that some nationals can safely return while others cannot. In other countries (i.e., China for Uighur minorities, Uzbekistan), all Guantánamo detainees would be at great risk if returned. Some of the countries to which individuals either have been returned or could be returned are described below.

Algeria still suffers from the aftereffects of a long-running civil war. Human rights groups continue to report killings, torture and “disappearances” committed by security forces, state-armed militias, and armed groups.²⁸ Individuals suspected of membership in terrorist organizations are singled out for prolonged and isolated pre-trial detention and state-sanctioned torture, including severe beatings and electric shock.²⁹ Recently, two security detainees living in the United Kingdom were forcibly returned to Algeria and are reported to have been arrested, imprisoned and charged with terrorist activities.³⁰ *There are 26 Algerians currently detained in Guantánamo—at least four have been “cleared for release.” The U.S. has transferred one Algerian refugee to Albania, but none have been transferred to Algeria. Reportedly, an agreement is being negotiated, or already has been negotiated, between the governments of the United States and Algeria to begin the repatriation of Algerians from Guantánamo; some can safely return while others cannot. The United States has refused to prevent the repatriation of at least one Algerian who would face substantial risk if returned.*³¹

China is one of the world’s most notorious human rights abusing regimes. China’s brutal repression of the Uighurs, a Turkic Muslim minority from the far western Xinjiang Autonomous Region, is well-documented and undisputed.³² China plainly has used the global war on terrorism as a pretext for oppressing Uighur Muslims with impunity.³³ In particular, China has “opportunistically

²⁷ In 2005, traditional resettlement countries absorbed large numbers of refugees fleeing persecution in these countries. Germany, the United Kingdom, France, Canada, and Spain absorbed approximately 10,165 Algerian refugees. The United States, Canada, Germany and the Netherlands absorbed approximately 42,121 Chinese refugees. Similarly, Germany, the United States, Canada, Sweden and Australia absorbed 166 Jordanian refugees. Additionally, Switzerland, Germany, Canada, the United Kingdom and Sweden absorbed 1,196 Libyan refugees. For a more comprehensive breakdown of refugees and asylum applicants as well as the main countries of asylum, see *UNHCR Statistical Yearbook 2005: Trends in Displacement, Protection and Solutions* (May 2007), available at <http://www.unhcr.org/statistics/STATISTICS/464478a72.html>.

²⁸ Amnesty International, *Amnesty International Report 2007: Algeria*.

²⁹ *Id.*

³⁰ *Algeria to Try Deported Terror Suspects*, THE GUARDIAN, Feb. 26, 2007.

³¹ *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

³² See, e.g., U.S. Dept. of State, Country Reports on Human Rights Practices – 2004 (China Report) § 1(c) (2005) (“Former detainees reported credibly that officials used electric shocks, prolonged periods of solitary confinement, incommunicado detention, beatings, shackles, and other forms of abuse . . . [S]tate-run media reported that 460 people were killed by law enforcement officials and over 100 seriously injured through abuse or dereliction of duty in 2003.”).

³³ See, e.g., U.S. Dep’t of State, Fact Sheet: China and Human Rights (2006) (“[W]ith regard to the Uighur Muslims, [China] has sometimes used the global war on terror as a pretext for restrictions and repressions.”); U.S. Dep’t of State,

used the post-September 11 environment to make the outrageous claim that [Uighur] individuals disseminating peaceful religious and cultural messages in Xinjiang are terrorists.”³⁴ *There are 17 Uighurs currently detained in Guantánamo; it appears that all were cleared for release as long ago as 2003. None can be returned to China; these innocent men will remain imprisoned until a third country accepts them as refugees.*³⁵

Libya is a modern-day authoritarian regime governed by the fierce and unchallenged authority of its head of state, Colonel Muammar Qadhafi. Since assuming control in a 1969 military coup, the Qadhafi dictatorship has maintained power through severe repression of any political dissent, using methods that include routine torture, arbitrary arrest and detention, and excessive use of force.³⁶ Independent human rights monitoring entities are flatly prohibited by the government and the government maintains a “multilayered, pervasive surveillance system.”³⁷ Political prisoners are particularly vulnerable to torture and abuse during their imprisonment. According to a 2006 U.S. State Department report, “security personnel routinely tortured prisoners during interrogation or as punishment,” including through “chaining prisoners to a wall for hours, clubbing, applying electric shock, 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.”³⁸ *Eight Libyans remain in Guantánamo. One Libyan was repatriated to Libya in December 2006, despite that he was reportedly threatened by Libyan officials while he was detained in Guantánamo.*³⁹ *He reportedly has been detained without trial since his repatriation, though the Libyan authorities stated publicly that he would “go back to his family soon.”*⁴⁰ *Several Libyans reported being threatened by Libyan security officials while in detention at Guantanamo.*

Russia has a criminal justice system notorious for lacking due process and fairness. Security forces in Russia have been involved in extrajudicial killings; torture, violence and other brutal treatment; and arbitrary arrest and detention.⁴¹ The United Nations body responsible for monitoring state compliance with the Convention Against Torture has acknowledged “numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of

International Religious Freedom Report 2006, China (2006) (“Xinjiang authorities continued to use counter terrorism as a pretext for religious repression of Uighur Muslims . . . regularly fail[ing] to distinguish carefully among those involved in peaceful activities in support of independence, “illegal” religious activities, and violent terrorism.”).

³⁴ Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang* 8 (Apr. 2005).

³⁵ The United States has acknowledged that the small group of Uighur detainees at Guantánamo cannot and will not be repatriated to China – despite Chinese demands – because they would likely be tortured or killed based on their cultural and ethnic identity. See, e.g., *Powell Says Detained Uighurs Will Not Be Returned to China*, AGENCE FRANCE PRESSE, Aug. 13, 2004.

³⁶ U.S. Department of State, *Country Reports on Human Rights Practices: Libya – 2006* (2007); Amnesty International, *Amnesty International Report 2007: Libya* (2007).

³⁷ U.S. Department of State, *Country Reports on Human Rights Practices: Libya – 2006* (2007).

³⁸ *Id.*

³⁹ See U.S. Department of Defense, *Detainee Transfer Announced*, Dec. 17, 2006 (announcing the transfer of one detainee to Libya; Andy Worthington, *Return to Torture: Cleared Guantánamo Detainee Abdul Rauf al Qassim Fears Return to Libya*, June 16, 2007.

⁴⁰ See Andy Worthington, *Return to Torture: Cleared Guantánamo Detainee Abdul Rauf al Qassim Fears Return to Libya*, June 16, 2007.

⁴¹ U.S. Department of State, *Country Reports on Human Rights Practices: Russia – 2006* (2007).

detainees . . . , commonly with a view to obtaining confessions.”⁴² Muslim “security” detainees are particularly at-risk of abusive treatment in Russian detention facilities.⁴³ Some of the men repatriated to Russia from Guantánamo reported to human rights investigators that U.S. interrogators threatened them with repatriation and coercive interrogations in Russian prisons.⁴⁴ *One Russian detainee, Ravil Mingazov, remains in detention in Guantánamo. Seven detainees were returned to Russian authorities in 2004. All were kept in detention in Russia and suffered torture and abuse at the hands of Russian authorities despite the country’s assurances of humane treatment.*⁴⁵

Somalia remains a state in deep disarray. In 2006, significant sections of the country were alternately controlled by a warlord coalition reportedly supported by the U.S. government; the Islamic Courts; and the Transitional Federal Government (TFG), a group of clan-based factions supported by Ethiopia. In addition to the generalized violence and insecurity in Somalia, there have been unfair political trials and reports of torture.⁴⁶ Furthermore, Somalia is a site in the current offensive against suspected terrorists in the Horn of Africa. Individuals fleeing conflict in Somalia have been caught in a network of secret detention and transfer between Somalia, Kenya and Ethiopia. Some have reported torture.⁴⁷ Former Guantánamo detainees returned to Somalia would remain at risk of being alleged to be terror suspects and detained, tortured or “disappeared.” *Two Somalis remain in Guantánamo—both have previously been recognized by UNHCR as mandate refugees after fleeing that country to avoid persecution; at least one has been cleared for release.*

Syria has a record of state-sanctioned torture, unfair trials and prolonged arbitrary and incommunicado detention of detainees, including thousands of political prisoners. Prisoners have died in Syrian custody due to the torture and ill-treatment they suffered. Torture and abusive treatment by security forces occurs with impunity; instances of abuses in custody are not investigated where they occur.⁴⁸ The U.S. Department of State reports that forms of torture in Syria include “electrical shocks; pulling out fingernails; burning genitalia; forcing objects into the rectum; beating, sometimes while the victim was suspended from the ceiling; alternately dousing victims with freezing water and beating them in extremely cold rooms; hyperextending the spine; bending the detainees into the frame of a wheel and whipping exposed body parts; and using a

⁴² United Nations Committee Against 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.

⁴³ Memorial, *Concocting Criminal Proceedings for Islamic Extremism*, Feb. 2006.

⁴⁴ Human Rights Watch, *The “Stamp of Guantánamo”: The Story of Seven Men Betrayed by Russia’s Diplomatic Assurances to the United States* (Mar. 2007), 16-17 (quoting one detainee recalling that his interrogators at Guantánamo warned him: “We’ll send you to Russia . . . They’ll string you up there’ and that kind of thing”; and another detainee recalling his interrogators stating: “If you don’t tell us the truth, we’ll send you to Afghanistan, and if after Afghanistan anything is left of you, you will be sent to Russia where you will be tortured, you will have no fingers left.”).

⁴⁵ Human Rights Watch, *The “Stamp of Guantánamo”: The Story of Seven Men Betrayed by Russia’s Diplomatic Assurances to the United States* (Mar. 2007).

⁴⁶ Amnesty International, *Amnesty International Report 2007: Somalia*.

⁴⁷ Amnesty International, *Horn of Africa: Unlawful Transfers in the War on Terror*, June 2007; Human Rights Watch, *People Fleeing Somalia War Secretly Detained; Kenya, US and Ethiopia Cooperate in Secret Detentions and Renditions*, Mar. 30, 2007.

⁴⁸ Amnesty International, *Amnesty International Report 2007: Syria*; U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

backward-bending chair to asphyxiate the victim or fracture the victim's spine.”⁴⁹ More than 17,000 Islamists “disappeared” in the 1970s and 1980s remain unaccounted for. A state of emergency has remained in force in Syria for the past 45 years.⁵⁰ Individuals are still arbitrarily arrested and detained for extended periods without trial and those considered to be affiliated with Islamist groups are still singled out.⁵¹ *The U.S. government may have transferred one Syrian to Syria; nine remain in Guantánamo.*

Tunisia has an abominable human rights record. Torture and physical abuse by the security forces is endemic.⁵² According to the U.S. Department of State, security forces subject detainees to various forms of torture and abuse, including “sleep deprivation; electric shock; submersion of the head in water; beatings with hands, sticks, and police batons; suspension, sometimes manacled, from cell doors and rods resulting in loss of consciousness; and cigarette burns.” Islamist detainees have been threatened with the sexual assault of their wives, or have had their wives sexually assaulted, during their detention to secure information or for punishment. Security forces subject individuals to arbitrary arrest and detention; and abuses by the security forces are committed with impunity.⁵³ Many are detained for extended periods without trial.⁵⁴ *Ten Tunisian detainees remain in Guantánamo. Most have been threatened while in Guantánamo and have in-absentia sentences of between 10 and 40 years imprisonment. They likely face continued detention, torture and abuse if repatriated to Tunisia. Two Tunisian detainees were repatriated in June 2007. Upon their return, they were held in solitary confinement for weeks, abused, and threatened; they continue to suffer in Tunisian custody. At least one had been convicted in absentia.*

Uzbekistan has a notorious rights-abusing record and has engaged in a relentless campaign to target, isolate or expel defenders of human rights. The government has threatened, imprisoned and tortured many activists and independent journalists. The UNHCR was expelled from Uzbekistan in April 2006. Individuals who are alleged to be members of prohibited Islamic groups and who have been forcibly returned to Uzbekistan from other countries, have faced incommunicado detention. In November 2006, the U.S. State Department listed Uzbekistan as one of the “countries of particular concern” for violating religious freedom. The UN Special Rapporteur has reported systematic torture and the denial of prison access to the International Committee of the Red Cross (ICRC).⁵⁵ *The U.S. government has transferred two Uzbeks to Uzbekistan; four remain in Guantánamo, at least two of whom have been cleared for release.*

⁴⁹ U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

⁵⁰ Amnesty International, *Amnesty International Report 2007: Syria*.

⁵¹ U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

⁵² U.S. Department of State, *Country Reports on Human Rights Practices: Tunisia – 2006* (2007).

⁵³ In 2006, no Tunisian police or security official was charged with abuse despite widespread allegations of abuse and substantial documentary evidence. *Id.*

⁵⁴ *Id.*

⁵⁵ Report of the UN Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2 (2003).

THE REFUGEES: SENTENCED TO PERSECUTION AT HOME OR INDEFINITE DETENTION IN GUANTÁNAMO

Jamil el-Banna, Jordanian refugee, British asylee⁵⁶

Jamil fled Jordan in 1992 after he was arrested multiple times and repeatedly beaten for distributing anti-government leaflets. He received asylum in the United Kingdom and was officially recognized as a refugee. Jordan remains notorious for harassment and repression of political opponents of the Hashemite dynasty. Jamil fears for his life should he be returned to Jordan.



Jamil was arrested in the Gambia in November 2002 while on a business trip. His arrest followed the transfer of information—now proven to be false—from British intelligence to the CIA and Gambian authorities. Jamil was rendered by the CIA from the Gambia to Afghanistan, held in an underground secret prison outside Kabul, and then transferred to Guantánamo. Interrogators have repeatedly threatened to return him to Jordan if he does not provide information regarding terrorism—information Jamil does not have.

Jamil has been cleared for release by the United States. At the time he was arrested, he was with Bisher Al Rawi, another British resident who has since been repatriated to the U.K. Jamil's wife and children are in Britain; indeed his five children are all British citizens. However, prior to August 2007, the British government has refused to allow Jamil to return, claiming they had no responsibility towards him as he is a resident, not a citizen. They argued he should seek assistance from his country of nationality, Jordan, despite his fear of persecution – acknowledged by the United Kingdom in its grant of asylum. On August 7, 2007, the British government requested the release of Jamil and four other non-citizen Guantánamo detainees. Negotiations between the United States and the United Kingdom are reportedly ongoing.

Abdul Aziz Naji, Algerian refugee⁵⁷

Abdul Aziz Naji is an Algerian refugee who left his homeland to become a humanitarian aid worker in Pakistan. He walks with the aid of a prosthetic leg due to an injury he suffered when he stepped on an unexploded landmine⁵⁸ while he and other social service workers were providing food supplies to villages in the mountains. Prior to leaving Algeria, Abdul served in the Algerian army in the mid-1990s, fighting fundamentalist terrorists opposed to the Algerian government.

Abdul would face multiple threats if he were returned to Algeria. Because of his role in the Algerian army, the newly-resurgent Algerian terrorists would consider him a target. Abdul's neighborhood was posted with fliers—presumably distributed by insurgent terrorists—warning people not to join the military, and he knew of many instances in which insurgent terrorists specifically targeted Algerian men who had served in the army, and these men were captured and slaughtered. For

⁵⁶ Jamil el-Banna is represented by Clive Stafford Smith and Zachary Katznelson at Reprieve, in the United Kingdom.

⁵⁷ Abdul Aziz Naji is represented by Doris Tennant and Ellen Lubell of Tennant & Lubell.

⁵⁸ Pakistan is laced with unexploded ordnance left over from the many conflicts pre-dating the 2001 war.

example, Abdul described incidents that occurred near his family's home, where terrorists posing as military police would set up roadblocks, stop buses and demand that the passengers who worked for the armed forces exit the bus, check everyone's papers⁵⁹, and then kill those passengers who were or had been in the military.

In addition to how he would be perceived by the newly-resurgent Algerian terrorists, Abdul is further tainted by his detention in Guantánamo, as the Algerian government would also consider him a threat and potentially would subject him to coercive interrogation or torture, indefinite extrajudicial detention and regular harassment. Indeed, Algerian government officials met with Abdul in Guantánamo and asked him if he was a member of a militant Islamic organization in Algeria – the Groupes Islamiques Armés (GIA) – though he had no prior connection with the organization, and there was no reason to suspect any affiliation aside from his detention in Guantánamo. This line of questioning greatly increased Abdul's fear of return. Further, Abdul expressed fear that terrorists in Algeria could become aware that he had been in Guantánamo and would threaten him if he did not join them.

Abdul Ra'ouf Al Qassim, Libyan refugee⁶⁰

Abdul Ra'ouf Al Qassim deserted the Libyan Army when he was young and fled Libya for fear of religious persecution. During the next ten years, Abdul Ra'ouf lived abroad as a refugee to avoid being returned to Libya. In 2000, he married an Afghan woman and settled in the Afghan capital of



Kabul before the U.S. bombardment began in October 2001. Abdul Ra'ouf fled with his pregnant wife to seek refuge in Pakistan. They now have a daughter who is also an Afghan citizen.

Soon after the family arrived in Pakistan, however, Abdul Ra'ouf fell victim to the chaos of the war in Afghanistan. At the time, the U.S. military offered large sums of money – \$5,000 or more – to anyone who handed over alleged “terrorists.” The United States blanketed Afghanistan and Pakistan with leaflets promising “wealth and power beyond your dreams.” Abdul Ra'ouf was living with his wife and young daughter in Pakistan when Pakistani police turned him over to military authorities, likely for a sizable bounty. He was later brought to Guantánamo, where he has been detained for more than five years without charge or trial.

Abdul Ra'ouf has been cleared for release and the United States has attempted to transfer Abdul Ra'ouf to Libya, and challenged efforts to prevent his transfer.⁶¹ Because of Abdul Ra'ouf's status as

⁵⁹ Abdul explained that Algerians are required to carry their identification and military services papers with them at all times.

⁶⁰ Abdul Ra'ouf Al Qassim is represented by George Daly and Jeffrey Davis, and by Gitanjali Gutierrez of the Center for Constitutional Rights.

⁶¹ In December 2006, and again in February 2007, the U.S. government publicly declared its intention to transfer Abdul Ra'ouf to Libya, notwithstanding his fears of severe persecution if he were forcibly returned. Legal action by his lawyers at the Center for Constitutional Rights delayed his transfer initially. However, in May 2007 the U.S. Supreme Court refused to intervene in Abdul Ra'ouf's case and prevent the U.S. government from transferring him from Guantánamo

a former Guantánamo detainee – and the U.S. government's false and unsubstantiated allegations that he was associated with a group hostile to Libya's dictatorial leader – he is at grave risk of indefinite detention, torture and death if forcibly returned.

Omar Deghayes, Libyan refugee, British asylee⁶²

In 1986, Omar fled Libya to the United Kingdom after his father, a prominent Libyan lawyer and human rights activist, was tortured and killed by the regime of Colonel Muammar Qadhafi. Omar was granted refugee status in the United Kingdom, where he studied law. While in Guantánamo, Omar has been threatened by Libyan security services officials.

On his second visit to the base, one of the agents told Omar: "You will be brought to judgment in Libya. When we bring you to Libya, I will personally teach you the meaning of this... In here I cannot do anything, but if I meet you later I will kill you..."



Omar was seized in a raid on his home in Pakistan on January 31, 2002. Omar has been in solitary confinement in Guantánamo Bay for over two years. He has not been charged with any offense. Prior to August 2007, the British government refused to intervene on his behalf, as he is a resident, not a British citizen. The British government argued that Omar should turn to Libya for assistance. On August 7, 2007, the British government requested the release of Omar and four other non-citizen Guantánamo detainees. Negotiations between the United States and the United Kingdom are reportedly ongoing.

Bahityar Mahnut, Chinese minority (Uighur) refugee⁶³

Bahityar Mahnut is one of seventeen Uighur detainees from the Xinjiang Autonomous Region of western China. As with the other Uighur detainees, he fled religious and ethnic persecution as a minority in China. If returned to China, Bahityar would indisputably face torture or summary execution.⁶⁴ In September 2002, the U.S. government allowed Chinese officials to interrogate the Uighur detainees at Guantánamo. The Chinese threatened these men and their families and warned them that "When we get you back, we will take you to Urumchi or Beijing where we have ways of making you talk." The Chinese also abused the Uighurs physically in Guantánamo. U.S. interrogators later informed the Uighurs that high-level officials in Washington had permitted the Chinese to interrogate them because the United States needed to insure China's support for the invasion of Iraq; that is also why the United States agreed at that time, at China's request, to label the Uighurs as terrorists.⁶⁵

to Libya – regardless of the indisputable risk of persecution he would face in his home country. By refusing to intervene in his case, the courts have effectively left Abdul Ra'ouf's life and safety entirely in the hands of President Bush.

⁶² Omar Deghayes is represented by Clive Stafford Smith and Zachary Katznelson at Reprieve, in the United Kingdom.

⁶³ Bahityar Mahnut is represented by Elizabeth Gilson. Other Uighurs captured together near the Afghan-Pakistan border are represented by Sabin Willet, Bingham McCutchen LLP, Michael Sternhell, Kramer Levin Naftalis & Frankel LLP, and George Clarke of Baker & McKenzie LLP.

⁶⁴ See U.S. Dep't of State, Country Reports on Human Rights Practices - 2004 (Feb. 28, 2005), at <http://www.state.gov/g/drl/rls/hrrpt/%2004/41640.htm>.

⁶⁵ *Parbat v. Gates*, Petition for Immediate Release and Other Relief Under Detainee Treatment Act of 2005, and, in the Alternative, for Writ of Habeas Corpus, No. 06-1397 (D.C. Cir. Dec. 4, 2006).

Bahityar was living as a refugee with other Uighurs in an Afghan village when the United States began military operations in October 2001. Bahityar and seventeen other Uighur refugees fled over the mountains to a Pakistani village to escape the violence. They were welcomed by the Pakistani villagers who fed them and took them to a mosque; yet they were subsequently handed over in exchange for as much as a \$5,000 bounty per person, removed by U.S. troops against their will to Khandahar, and subsequently imprisoned in Guantánamo Bay, Cuba.⁶⁶

Despite the lack of credible evidence supporting such a designation, Bahityar was classified as an “enemy combatant” in 2004 by a Combatant Status Review Tribunal. As U.S. government documents confirm with respect to several other Uighur prisoners, it is likely that Bahityar was initially classified by a CSRT as a “non-enemy combatant” but was sent back for additional CSRT proceedings rather than be released.⁶⁷ Indeed, the Assistant Legal Advisor who reviewed Bahityar’s CSRT records noted that the Tribunal urged “favorable consideration for release of the Detainee” and “that he not be forcibly returned to the People’s Republic of China.” Moreover, five of the other Uighurs captured with Bahityar were declared by the United States to be non-enemy combatants more than a year ago and were released to Albania in May 2006. Yet he remains in Guantánamo nearly five years after his capture.⁶⁸ He has been cleared for release to a third country, yet no country has been found that will agree to accept him.

Ravil Mingazov, Russian refugee⁶⁹

Ravil Mingazov, a ballet dancer, performed with various dance troupes in Russia, before serving in the Soviet army before the dissolution of the Soviet Union. While Ravil’s family was not religiously observant, Ravil became more interested in Islam in the mid-1990s. Ravil has vigorously disavowed radical Islam and is committed exclusively to the peaceful practice of his faith. His renewed faith led him to pray regularly, restrict his diet and dress more conservatively. Russian society is not tolerant of religious minorities, and Ravil’s Muslim faith aroused considerable hostility and persecution. He was followed by Russian intelligence services; his house was ransacked and searched by security forces. Both he and his wife were denied passports, and they were forbidden from naming their son Yusef, a traditional Muslim name.



Ravil fled Russia to try to find a better home for his family. He was in a refugee camp in Afghanistan at the time of the U.S. invasion. He fled the violence of the war; seeking refuge, he

⁶⁶ Fearful of being returned to China, Mr. Mahnut and the other Uighurs initially told the Americans that they were Uzbeks from Afghanistan.

⁶⁷ See *In re Petitioner Ali*, Petition for Original Writ of Habeas Corpus, ___ U.S. ___, 6 (Feb. 12, 2007) (noting that Uighur Petitioner Ali was found to *not* be properly classified as an enemy combatant before a second Combatant Status Review Tribunal was ordered to convene, and classified him as an “enemy combatant”); William Glaberson, *Guantánamo Detainees’ Suit Challenges Fairness of Military Repeat Hearings*, N.Y. TIMES, May 15, 2007.

⁶⁸ According to CSRT records, the factual circumstances surrounding Mr. Mahnut’s capture and detention – and the circumstances surrounding most of the other Uighurs still detained – are virtually indistinguishable from the circumstances of the Uighurs who were released. *China’s Gitmo Refugees*, Wall Street Journal, Apr. 24, 2006.

⁶⁹ Ravil Mingazov is represented by Doug Spaulding and Allison Lefrak at Reed Smith LLP.

made his way to Pakistan. Soon after he arrived in Pakistan, however, he was taken to a prison by Pakistani police and eventually to a U.S. military base in Afghanistan and then to Guantánamo.

Ravil is the only remaining Russian in Guantánamo. Relying on diplomatic assurances, the U.S. government repatriated seven Russians in 2004 despite documented U.S. Department of State reports of severe religious persecution against Muslims in Russia.⁷⁰ Each returned detainee was charged with criminal conduct and committed temporarily to prison. Upon their release from prison, they were further harassed, abused and persecuted by Russian authorities.⁷¹

OBLIGATIONS OF THE UNHCR AND RESETTLEMENT COUNTRIES

International refugee problems generally need international responses, including the cooperation of multiple states with the capacity to safely resettle refugees unable to return to their home countries for fear of persecution. Third-country resettlement is an important tool to share the burden and responsibility of refugees.

Despite voicing strong statements in opposition to the continued use of Guantánamo for extra-legal detentions,⁷² only two countries have thus far agreed to accept Guantánamo's refugees unable to return to their home countries for fear of persecution. Though not a traditional resettlement country, Albania agreed to resettle eight men – five Chinese Uighurs, an Uzbek, an Algerian and an Egyptian. In August 2007, the British government requested that the United States release five men – none of whom were British citizens – and transfer them to the United Kingdom. In a letter from the British Foreign & Commonwealth Office to the attorneys for these men, a representative of the British government emphasized that this was a humanitarian gesture borne from the need for the international community to share responsibility for the closure of Guantánamo:

The US Government has recently taken steps to reduce the numbers of those detained at Guantanamo Bay and to move towards the closure of the detention facility. These steps include an increasing emphasis on engagement with third countries over the transfer and resettlement of those detained. . . . While the Government does not normally make representatives of this kind [urging the release of non-citizens in custody], the decision to do so in this case arises out of the exceptional nature of the Guantanamo Bay detention facility and the [British] Government's desire to take action to help bring about its closure and to reduce the number of those detained there.⁷³

As with any other humanitarian disaster, Guantánamo's man-made refugee crisis requires the diligent and collaborative efforts of the UNHCR and resettlement countries, particularly in Europe, as well as the United States.

⁷⁰ See, e.g., United States Department of State, *International Religious Freedom Report* (2006).

⁷¹ See, e.g., Human Rights Watch, *The Stamp of Guantánamo: The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States*, Mar. 2007.

⁷² See fn. 3, *supra*.

⁷³ Letter from Paul Welsh, US Section, North America Team, United Kingdom Foreign & Commonwealth Office, to Clive Stafford Smith, Legal Director, Reprieve, of 8/7/07, at 2.

Albanian Prime Minister Berisha commented in June 2006 that he was surprised that the United States and several European countries that call for the closure of Guantánamo had refused to resettle some of the small number of Guantánamo detainees who are refugees. "Big countries don't like to deal with small problems," he said. This may explain why dozens of other innocent men continue to be detained in Guantánamo despite their exoneration, but it is a woefully inadequate response from the international community which must act to settle the men as refugees rather than allowing them to continue their unlawful and indefinite incarceration in Guantánamo or perhaps face persecution if repatriated to their home countries for lack of any alternative.

CONCLUSIONS

Guantánamo's refugees are an international problem requiring an international solution that incorporates the expertise and resources of UNHCR and resettlement countries, including the United States and many European countries. As evidenced by the U.S. government's own records, most of these men were wrongly detained and present no threat to the United States or any other country. The international community must accept responsibility to find them refuge. They must not face the impossible choice of continued indefinite detention or forcible repatriation to torture or other persecution.