



29 March 2006

Reject the Use of Diplomatic Assurances in all cases of Real Risk of Torture or other Ill-treatment

The undersigned non-governmental organizations (NGOs) call upon the members of the Council of Europe's Group of Specialists on Human Rights and the Fight Against Terrorism (DH-S-TER) to reject proposals to establish minimum standards for the content and use of diplomatic assurances in respect of a risk of torture or other ill-treatment at their meeting in Strasbourg on 29-31 March 2006.

These NGOs also reiterate their call on the member States of the Council of Europe to absolutely reject the use of diplomatic assurances against such risk for the following reasons:¹

- The use of such assurances undermines the integrity and broader enforceability of the universal absolute and non-derogable prohibition of torture and other ill-treatment under international treaty and customary law.
- Assurances are being sought where the requesting State has already determined that there is a risk of torture or other ill-treatment in the receiving State – in most cases from States that regularly and flagrantly fail to implement their obligations regarding the prohibition of torture and other ill-treatment.
- Such assurances create a double standard by purporting to provide protection for a select few detainees (though ultimately failing to do so), while acknowledging and tolerating the broader breach of the prohibition against others.
- Given the secretive nature of the practice of torture and other ill-treatment, the threat of continuing abuse of an individual who remains in the custody of his or her abusers, and the risk of reprisals against detainees or their family members, post-return visits to one or a few individuals cannot provide effective enduring protection against a real risk of torture or other ill-treatment.
- Diplomatic assurances inherently lack a legally-enforceable and effective remedy for the individual in the event of breach.
- The use of diplomatic assurances in death penalty cases is of little or no assistance in analyzing their use in cases of risk of torture or other ill-treatment.

¹ These points are elaborated in other documents already before DH-S-TER, including DH-S-TER(2005)011, DH-S-TER(2005)012 and DH-S-TER(2005)013.

- Establishing “minimum standards” for the content and use of diplomatic assurances in transfers where individuals face a real risk of torture or other ill-treatment, rather than rejecting such use outright, will only encourage a proliferation of transfers in contravention of the prohibition of refoulement.
- NGO research confirms that diplomatic assurances against torture and other ill-treatment have been ineffective and unreliable in practice.

As highlighted by the March 2006 Human Rights Watch *Commentary on State Replies CDDH Questionnaire on Diplomatic Assurances*, the replies of states to the DH-S-TER questionnaire about the actual practice of use of Diplomatic Assurances only reinforce our concerns.

States should, where possible, prosecute terrorism suspects in criminal proceedings that meet international fair trial standards. Where this is not possible, relying on diplomatic assurances in order to transfer individuals to a real risk of torture is not an acceptable “quick fix”. Only measures which respect and reinforce human rights can offer a solution that will enhance real protection from acts of terrorism. Such measures should include permanent system-wide monitoring of places of detention by trained independent experts, with the necessary safeguards (including right to access to and confidential communication with all detainees, the right to review of records and the right of access to all areas of every place where a person is deprived of liberty, to conduct private interviews, and make periodic public reports). Detained individuals must have access to effective remedies from an independent judiciary. If, after a period of time, systemic measures have demonstrably eliminated the real risk of torture and other ill-treatment, transfers of such individuals to such states could be reconsidered, but never before.

Ultimately, there can be no minimum standard for the content and use of diplomatic assurances against a real risk to an individual of torture or other ill-treatment, because any such standard will fall far short of States’ absolute and non-derogable obligations pursuant to the international prohibition of torture or other ill-treatment. Adoption of minimum standards would also place DH-S-TER and the Council of Europe at odds with the international human rights experts that have already rejected the use of such assurances, including the UN High Commissioner for Human Rights, the UN Special Rapporteur on Torture, and the Council of Europe Commissioner for Human Rights. We therefore call on Council of Europe Member States to reaffirm the universal prohibition of torture and other ill-treatment and to reject any proposal to establish minimum standards for content or use of Diplomatic Assurances in the face of a risk of torture or ill-treatment.

Amnesty International
Association for the Prevention of Torture
Fédération Internationale des Ligues des Droits de l’Homme
Human Rights Watch
International Commission of Jurists
International Helsinki Federation for Human Rights
Redress Trust
Organisation Mondiale Contre la Torture