

To: Council of the European Union  
Justice and Home Affairs

Presidency  
Mr Rui PERREIRA  
Minister for the Interior of Portugal

Mr Alberto COSTA  
Minister for Justice of Portugal

Brussels, 7 November 2007  
Our ref: B-714

Dear Minister,

**Subject: Diplomatic assurances**

In view of the ongoing discussions at European level on how to secure removal of alleged terrorist suspects from EU territory, Amnesty International considers it imperative to emphasise once again the dangers of legitimising the use of "diplomatic assurances". As the JHA Council is about to meet, we take this opportunity to outline our concerns to the EU ministers for justice and home affairs.

Amnesty International is very concerned that certain EU Member States not only wish to rely on diplomatic assurances to facilitate the removal of foreign nationals to countries where there is a real risk that the person would be subjected to torture or other ill-treatment, but are furthermore seeking to afford political legitimacy to this practice by promoting an EU position on the use of such measures in the expulsion of alleged terrorist suspects. We have noted, in this regard, side discussions within the Council, attempts to bring the issue on the Council's formal agenda, and the G6 joint declaration of 18 October where the G6 Ministers of Interior explicitly state that they will aim to achieve an EU consensus on diplomatic assurances.

The argument put forward is that diplomatic assurances can provide an "effective way forward to protect both national security and the human rights of those who allegedly pose a threat". Amnesty International believes that this is misleading and contrary to EU Member States' obligations under international law.

The ban on torture and other ill-treatment is absolute and prohibits transferring people - no matter what their crime or suspected activity - to a place where they would be at risk of torture or other ill-treatment (the *non-refoulement* principle). The absolute nature of the prohibition of torture and other ill-treatment, including the obligation of states not to expose people to risk of torture or other ill-treatment in other countries, is enshrined in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the related case-law, Article 4 of the Charter of Fundamental Rights of the European Union, as well as in the national constitutions and laws of the Member States.

Amnesty International maintains that diplomatic assurances are not an effective guarantee against torture and other forms of ill-treatment in the receiving state as demonstrated by a growing body of

evidence. They thus represent nothing more than an attempt by States to circumvent their international obligations, and as such have been denounced by international human rights experts.

The United Nations High Commissioner for Human Rights, the UN Special Rapporteur on Torture and the Commissioner for Human Rights of the Council of Europe have all spoken out against the use of diplomatic assurances as a means to return people to countries where they face the risk of torture or other ill-treatment. In December 2005, the UN High Commissioner for Human Rights, Louise Arbour, described diplomatic assurances as "having an acutely corrosive effect on the global ban on torture and cruel, inhuman and degrading treatment."

Within the European Union, the Network of Independent Experts on Fundamental Rights stated in an opinion issued in May 2006 that States could not resort to diplomatic assurances where there are substantial grounds for believing that a person would be in danger of torture or ill-treatment upon return. In its final resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, the European Parliament called on the Council to adopt a common position ruling out the acceptance of diplomatic assurances where there are substantial grounds for believing that individuals would be in danger of being subjected to torture and ill-treatment.

The European Parliament's Resolution notably recalled and condemned the deportation by Sweden in December 2001 of Mr El-Zari and Mr Agiza on the sole basis of diplomatic assurances from the Egyptian Government, which did not prevent them from being tortured upon return in Egypt. In May 2005, the United Nations Committee against Torture ruled that Sweden had breached its obligations under Article 3 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Another example is the judgement of a UK Court in April 2007, that blocked the UK Government's attempt to use diplomatic assurances against torture to facilitate the removal of two Libyan nationals suspected of terrorism, ruling 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.

Seeking diplomatic assurances against torture from a government not only acknowledges that torture and other ill-treatment take place in that country despite the global ban on torture, it also defies logic to presume that a government that routinely flouts its binding obligations under international law, and misrepresents the facts in this context, can be trusted to respect a commitment in an isolated case.

In order for torture and other ill-treatment to be prevented and eradicated, international law requires that systematic safeguards are implemented on a state-wide basis, at legislative, judicial and administrative levels. It is precisely the purpose of the EU's Guidelines on Torture to support the implementation of such structural safeguards and no *ad hoc* diplomatic arrangement can substitute for necessary reforms in the justice system.

While some argue that post-monitoring can nevertheless make assurances effective against torture, in fact the establishment of a special bilateral monitoring system for certain individuals would undermine the principle of equal protection for all under the existing UN instruments. Furthermore, it puts detainees in a position where they are forced to choose between staying silent or reporting torture or other forms of abuse in a situation where they are clearly identifiable. Moreover, it is unlikely that either the sending or receiving state would be willing to acknowledge that torture or ill-treatment had occurred after return, since to do so would be to admit a breach of a core obligation under international human rights law.

Should the EU endorse reliance on diplomatic assurances to remove alleged terrorist suspects from its territory, it risks finding itself complicit in torture and other ill-treatment and damaging its credibility as a global actor for the protection and promotion of human rights.

Amnesty International has consistently called for the Council to explicitly reject reliance on diplomatic assurances to facilitate the transfer of persons to a country where they may be at risk of torture or other ill-treatment. We will continue to make this call and to push the EU to increase its efforts towards the eradication of torture and other forms of ill-treatment by promoting the implementation of international standards and mechanisms against torture.

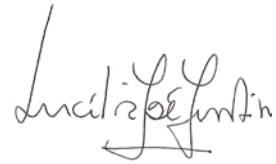
**To this end, Amnesty International calls on the Council to reject any attempt to establish an EU position legitimising the use of diplomatic assurances to facilitate the transfer of persons to a country where they may be at risk of torture and other ill-treatment.**

We hope that you will take the above into consideration in the course of your discussions.

Yours sincerely,



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Lucília José Justino  
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