

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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I am writing to express Human Rights Watch's profound concern at the Georgian government's intention to develop guidelines for the use of diplomatic assurances against torture as part of its anti-torture action plan. Human Rights Watch's research strongly indicates that such assurances do not provide an effective safeguard against torture and ill-treatment and as such they undermine the absolute obligation not to transfer a person to a place where he or she is at risk of such abuse (the nonrefoulement obligation).

In this vein, I am writing to express Human Rights Watch's profound concern at the Georgian government's intention to develop guidelines for the use of diplomatic assurances against torture as part of its anti-torture action plan. Human Rights Watch's research strongly indicates that such assurances do not provide an effective safeguard against torture and ill-treatment and as such they undermine the absolute obligation not to transfer a person to a place where he or she is at risk of such abuse (the nonrefoulement obligation).

We welcome the Georgian government's accession to the Optional Protocol to the Convention Against Torture (OPCAT) and the steps you are taking to implement the OPCAT. As you know, the Protocol requires states to establish independent national preventive mechanisms, and to facilitate monitoring visits by the new UN Subcommittee for Prevention. As we understand it, the anti-torture action plan is intended to give effect to those obligations. The proposal under the action plan to develop guidelines for the use of diplomatic assurances against torture, however, fundamentally contradicts the plan's very purpose. Assurances of humane treatment from governments that routinely practice torture and otherwise ill-treat detainees are inherently unreliable and do not reduce a person's risk of abuse on return.¹

We respectfully request that the Georgian authorities abandon the proposal to develop guidelines for the use of diplomatic assurances and refrain from engaging in any practice that could place an individual at risk of torture or ill-treatment.

Georgia's Legal Obligations

The Georgian government's obligations in relation to torture and ill-treatment are clear. Under the European Convention on Human Rights and Fundamental Freedoms (ECHR, article 3), the United Nations Convention Against Torture (CAT, article 3), and the International Covenant on Civil and Political Rights (ICCPR, article 7), torture and ill-treatment are prohibited, and no person can be transferred to a country where he or she is at risk of torture or ill-treatment (nonrefoulement). The principle of nonrefoulement is an absolute obligation deriving from the absolute and nonderogable nature of the international ban on torture.

Diplomatic Assurances Do Not Provide an Effective Safeguard against Torture

Diplomatic assurances against torture and ill-treatment from countries where torture and ill-treatment remain a serious problem are inherently unreliable and practically unenforceable. The vast majority of governments offering diplomatic assurances have long histories and continuing records of employing torture, a fact that most sending governments acknowledge. Governments with poor records on torture routinely deny that torture is used and fail to initiate investigations when allegations of torture are made. It is highly unlikely that these governments, which persistently breach the international ban on torture, would keep their promises not to torture a single individual.

Part of what makes such promises virtually worthless is the nature of torture itself. Torture is criminal activity of the most serious kind. It is practiced in secret using techniques that often defy detection (for example, mock drowning, sexual assault, internal use of electricity). In many countries, medical personnel in detention facilities monitor the abuse to ensure that the torture is not easily detected. And detainees subjected to torture are often afraid to complain to anyone about the abuse for fear of reprisals against them or their family members.

Human Rights Watch's past research indicates that diplomatic assurances are an ineffective safeguard against torture and ill-treatment in all transfer contexts -- including deportation, rendition, expulsion, and extradition -- where a risk of such abuse exists. Our research includes a number of cases where courts in Canada, Germany, Netherlands, and United Kingdom have stayed or halted extraditions because diplomatic assurances were determined to be unreliable and insufficient to mitigate the acknowledged risk of torture and ill-treatment. Courts in a variety of countries have concluded that there is in fact little added incentive for a government to abide by its assurances simply because the proposed transfer takes place in the extradition context. The absolute nonrefoulement obligation enshrined in the Convention Against Torture, ECHR, and ICCPR takes precedence over any extradition treaty or any bilateral or multilateral treaty on mutual legal and judicial assistance in criminal matters.

International Experts Oppose the Use of Diplomatic Assurances

In March 2006 a group of experts from Council of Europe member states met to debate the development of guidelines for the acceptable use of diplomatic assurances, but rightly decided not to establish such guidelines. In her statement for the occasion, Louise Arbour, the United Nations high commissioner for human rights, categorically opposed the creation of such guidelines stating, I strongly share the view that diplomatic assurances do not work as they do not provide adequate protection against torture and ill-treatment.²

A number of other high-level international experts have also opposed reliance on diplomatic assurances against torture and ill-treatment. The UN special rapporteur on torture, Manfred Nowak, has stated his firm opposition to reliance upon diplomatic assurances against torture and ill-treatment, expressing concern that this practice reflects a tendency on the part of states to circumvent the international obligation not to deport a person if there is a serious risk that he or she might be subjected to torture.³

Council of Europe Human Rights Commissioner Thomas Hammarberg firmly opposes the use of diplomatic assurances against torture and ill-treatment and stated in a June 2006 article:

Diplomatic assurances, whereby receiving states promise not to torture specific individuals if returned, are definitely not the answer to the dilemma of extradition or deportation to a country where torture has been practised. Such pledges are not credible and have also turned out to be ineffective in well-documented cases. The governments concerned have already violated binding international norms and it is plain wrong to subject anyone to the risk of torture on the basis of an even less solemn undertaking to make an exception in an individual case. . .the principle of nonrefoulement should not be undermined by convenient, non-binding promises of such kinds.⁴

The European Committee for the Prevention of Torture (CPT) has also expressed concern about reliance on diplomatic assurances in light of the absolute prohibition against torture.⁵

Monitoring Must be Universal

The OPCAT itself requires under article 14 that states parties grant the UN Subcommittee on Prevention, established by the OPCAT to conduct monitoring visits, universal access to any and all detention and prison facilities the committee designates for visitation. The subcommittee shall have access to any detainee and all interviews shall be conducted in private. This principle of universal and confidential access to prisoners is the international standard for effective monitoring. Diplomatic assurances against torture, if they include a monitoring mechanism at all, would substitute universal access for ad hoc, case-by-case monitoring, often in countries where international monitoring bodies such as the International Committee of the Red Cross and UN special mechanisms such as the special rapporteur on torture are not even permitted to visit. Employing assurances as a preventive mechanism in such circumstances weakens the international monitoring project envisioned by OPCAT and should not be considered an added measure of protection.

Conclusion

Human Rights Watch calls on Georgian government to reject firmly and absolutely the use of diplomatic assurances against torture and ill-treatment as an ineffective safeguard, and refrain from developing any guidelines for such assurances in the anti-torture action plan. To rely on such assurances would undermine the very purpose of the plan, and the Optional Protocol itself, which is to prevent torture and ill-treatment. We look forward to further collaboration with the Georgian government on the anti-torture action plan and to seeing the full implementation of the OPCAT in Georgia in the near future.

Sincerely,

Holly Cartner
Executive Director
Europe and Central Asia Division

Cc:

Manfred Nowak, UN Special Rapporteur on Torture
Thomas Hammarberg, Commissioner of the Council of Europe

¹ See Human Rights Watch, Still at Risk: Diplomatic Assurances No Safeguard Against Torture, vol. 17, no. 3(D), April 2005, <https://www.hrw.org/reports/2005/eca0405/>; Human Rights Watch, Questions and Answers: Diplomatic Assurances against Torture, November 2006, <https://www.hrw.org/backgrounder/eca/ecaqa1106/>. Human Rights Watch's research on diplomatic assurances can be accessed at: <https://www.hrw.org/doc/?t=da>

² Statement by UN High Commissioner for Human Rights Louise Arbour to the Council of Europe's Group of Experts on Human Rights and the Fight Against Terrorism (DH-S-TER), March 29-31, 2006, on file with Human Rights Watch.

³ United Nations, Press Conference by United Nations Representative on Torture Convention, October 23, 2006, http://www.un.org/News/briefings/docs/2006/061023_Nowak.doc.htm (accessed July 10, 2007).

⁴ Viewpoints: Torture Can Never, Ever Be Accepted, June 27, 2006, http://www.coe.int/t/commissioner/Viewpoints/060626_en.asp (accessed July 5, 2007).

⁵ European Committee for the Prevention of Torture, 15th General Report on the CPTs Activities, covering the period 1 August 2004 to 31 July 2005, CPT/Inf (2005) 17, paras. 38-39, <http://www.cpt.coe.int/en/annual/rep-15.htm>.

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