



‘Diplomatic assurances’ – No protection against torture or ill-treatment

Amnesty International’s campaign to stop torture and ill-treatment in the ‘war on terror’

Human rights are under threat. The absolute ban on torture and other cruel, inhuman or degrading treatment – one of the most universally accepted human rights – is being undermined. In the “war on terror”, governments are not only using torture and ill-treatment, they are seeking to justify it. They argue that interrogation methods which amount to torture or ill-treatment, and detention conditions which constitute ill-treatment, are both justifiable and necessary.

This is a crisis in the struggle to eliminate torture and ill-treatment, and we are therefore redoubling our efforts. We are urging the widest possible network of people to join us in reasserting the absolute ban on torture and ill-treatment, including methods currently being described as “coercive interrogation”. No euphemisms can justify the unjustifiable. We want to stop the torture and ill-treatment that is being inflicted in the “war on terror”. We also want the prohibition on such brutal treatment to emerge all the stronger from our campaign.

What are diplomatic assurances?

Some states have tried to justify extraditions and other transfers of individuals to countries with a known record of torture or ill-treatment, on the basis that the governments of those countries have provided assurances (so-called “diplomatic assurances”) that the individuals will be treated humanely. Such assurances may apply to a specific individual, or may be more generally applicable. They may be set out in a memorandum of understanding (MoU) or an exchange of letters between the two governments, or some less formal type of agreement. Such agreements may include provisions for monitoring the individuals concerned after their transfer. The existence and terms of such agreements may or may not be made public.

Why does Amnesty International oppose diplomatic assurances?

Amnesty International (AI) opposes the use of diplomatic assurances when they are used to circumvent states’ international legal obligations. AI believes that such arrangements cannot be trusted and that reliance on them when seeking to expel people to countries where they risk torture or other ill-treatment violates states’ obligations under international law.

Reliance on diplomatic assurances breaches states' international human rights obligations: Under international law, states are under the absolute and unconditional obligation not to expel, return or extradite any person to a country where they risk torture or other ill-treatment (the principle of *non-refoulement*). This obligation applies to all states, irrespective of whether they have signed up to the relevant human rights treaties, and to all forms of involuntary transfer, including extradition, deportation after serving a criminal sentence, or removal after refusal of asylum. It is also absolute – it permits no exceptions arising from circumstances such as war or public emergency, or individual factors such as offences allegedly committed or danger posed by the individual concerned. There are no international or regional treaty provisions, explicit or implicit, for the use of such assurances to alleviate a state's absolute obligation to respect the principle of *non-refoulement*.

In the context of the “war on terror”, diplomatic assurances are used as a basis for sending certain individuals to countries where the sending government acknowledges that it would otherwise be prohibited from sending them because they would risk torture or other ill-treatment. In these circumstances reliance on diplomatic assurances amounts to a circumvention of states' obligations under the principle of *non-refoulement*.

Diplomatic assurances are unreliable: Sending states seek diplomatic assurances because they recognise that in receiving states there is a risk of torture or other ill-treatment. This means that such arrangements are made with states where detainees risk being tortured or ill-treated, and the reason to seek that undertaking is the receiving state's failure to live up to its existing legally binding obligations.

Torture and other ill-treatment of detainees almost always happens in secret. States where it happens systematically deny it or claim that any incidents which they cannot plausibly deny are aberrations from the norm. The diplomats of those states make unequivocal assurances to other states that they do not torture or ill-treat detainees and that such acts are contrary to public policy. They routinely misrepresent facts to the media, to human rights NGOs and to UN human rights bodies.

An undertaking not to torture, made by a state which denies that its agents commit torture, and any breach of which will be done in secret, is inherently self-contradictory and cannot be relied on.

Allowing individual exceptions amounts to condoning the general practice: Any arrangements for protecting particular individuals against an acknowledged general risk of torture or other ill-treatment means that the sending state implicitly accepts the surrounding context of illegality. Instead, the sending state should be putting pressure on the receiving state to stop torture and ill-treatment. So, even if diplomatic assurances were to be successful in protecting particular individuals, they would be unacceptable on human rights grounds.

Monitoring cannot compensate for these deficiencies: It may be claimed that monitoring by diplomats or other officials of the sending state or by some other body can ensure that diplomatic assurances are complied with. Of course, visits to prisons are an essential safeguard against torture and ill-treatment, but they are by no means sufficient, even where they are done by an expert body. For example, in Iraq and Guantánamo Bay, torture and ill-treatment continued even though the International Committee of the Red Cross (ICRC) was conducting regular visits, monitoring abuse and protesting consistently.

Reliance on diplomatic assurances does not relieve states of their international human rights obligations: The obligation to ensure that an individual is not tortured or ill-treated applies to the sending state as well as to the receiving state. Diplomatic assurances, memorandums of understanding and post-transfer monitoring cannot relieve a sending state of its obligation of *non-refoulement*, and are no substitute for the receiving state's obligation to establish and implement properly functioning, system-wide safeguards, as required by international standards and recommended in AI's *12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State* (AI Index ACT 40/001/2005), <http://web.amnesty.org/library/index/engact400012005>.

Examples:

- The **United Kingdom** government is seeking to use diplomatic assurances as a justification for sending terror suspects to countries with a well documented record of torture or ill-treatment of detainees. By end-November 2005 it had negotiated MoUs with Jordan and Libya, and says that it is negotiating agreements with other north African and Middle Eastern countries.
- Two Egyptian asylum-seekers, Ahmed Hussein Mustafa Kamil 'Agiza and Muhammad Muhammad Suleiman Ibrahim El-Zari, were deported from **Sweden** to Egypt in December 2001. The men were bundled onto a US government-leased plane by masked US security agents who had reportedly hooded, shackled and drugged them. The Swedish authorities said they had obtained diplomatic assurances from the Egyptian authorities that the two men would not be harmed. Ahmed Hussein Mustafa Kamil 'Agiza and Muhammad Muhammad Suleiman Ibrahim El-Zari were held incommunicado for five weeks before Swedish diplomats visited them. They were allegedly tortured in Egyptian custody. 'Agiza later submitted a complaint against Sweden to the UN Committee against Torture, which held that Sweden had violated its obligation of *non-refoulement*.

What we are asking states to do:

- Reaffirm their commitment to the absolute obligation under international law not to return any person to a country where they risk torture or cruel, inhuman or degrading treatment or punishment;
- Refrain from making any attempts to get around this obligation by the use of diplomatic assurances, in the form of memorandums of understanding or in any other form;
- Establish and implement effective system-wide measures for the prevention of torture and ill-treatment, as required by international law and standards and recommended in AI's *12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State* (AI Index ACT 40/001/2005) <http://web.amnesty.org/library/index/engact400012005>.

Take action!

- Take action as part of AI's campaign – see www.amnesty.org and the campaign home page at <http://web.amnesty.org/pages/stoptorture-index-eng>
- Contact your national section/structure to get involved in their work on the campaign: see <http://web.amnesty.org/contacts/engindex> for contact details.