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**For Immediate Release:**

## **Reject Attempts to Legitimize No-Torture Promises**

*Council of Europe Initiative to Establish Standards for Diplomatic Assurances Threatens Global Ban on Torture*

(Strasbourg, December 7, 2005)—Council of Europe member states should flatly reject any proposals to establish standards for the use of diplomatic assurances in transfers of people to risk of torture, Amnesty International, Human Rights Watch, and the International Commission of Jurists said in a joint submission (available online at: <http://hrw.org/backgrounder/eca/eu1205/>) published today.

Amnesty International, Human Rights Watch, and the International Commission of Jurists made their call as government representatives began a meeting at the Council of Europe in Strasbourg, December 7-9, to consider an initiative to elaborate “minimum requirements” for reliance on diplomatic assurances – agreements between states, sometimes also represented as “memoranda of understanding,” that purportedly aim to protect an individual from torture and ill-treatment after transfer.

“Governments shouldn’t cloak diplomatic assurances with the legitimacy that they don’t deserve by creating standards for their use,” said Jill Heine, Legal Adviser of the International Legal and Organizations Program at Amnesty International. “They should see such arrangements for what they are – unacceptable attempts by states to justify forcibly sending people to a place where they risk torture or ill-treatment.”

Amnesty International, Human Rights Watch, and the International Commission of Jurists warned governments that creating a framework for the “acceptable” use of inherently unreliable and legally unenforceable diplomatic assurances is incompatible with states’ absolute obligation under international law to prevent torture and ill-treatment. This prohibition includes the obligation not to transfer people to places where they face a risk of such abusive treatment (the *non-refoulement* obligation).

“Diplomatic assurances have a proven record of failure,” said Veronika Szenté Goldston, Europe and Central Asia advocacy director of Human Rights Watch. “Our research

shows that instead of protecting the persons subject to the assurances from torture and ill-treatment, they have actually exposed them to such abuse. As a result, diplomatic assurances are used not to satisfy states' legal obligations, but rather to circumvent them.”

At the heart of the problem with diplomatic assurances is that the perceived need for such guarantees is in itself an acknowledgment that a risk of torture and ill-treatment exists in the receiving country. Diplomatic assurances create double standards and undermine the international system of protection against torture and ill-treatment. They divert attention from the systemic reforms required to prevent and eradicate torture in receiving states.

At the practical level, there is ample evidence to show that diplomatic assurances have not worked and there is nothing to suggest that refining them would result in adequate protection against torture and ill-treatment.

This is true even if the assurances contain arrangements for a post-return monitoring mechanism.

“Arguments that post-return monitoring can make diplomatic assurances work are fundamentally misguided,” said Gerald Staberock, Director of the Global Security and Rule of Law Programme of the International Commission of Jurists. “They ignore the very serious limitations of such monitoring, especially the fact that we are talking here about occasional visits to an isolated detainee who has every reason to fear reprisals if reporting mistreatment.”

The case of Ahmed Agiza, an Egyptian national forcibly returned to Egypt by the Swedish government with US involvement in 2001, is a glaring example of diplomatic assurances failing to fulfil their stated purpose, even when coupled with a post-return monitoring mechanism. Agiza has credibly alleged that he was subjected to torture upon return to Egypt despite regular visits by Swedish embassy representatives to him in prison. In a landmark decision in May, the United Nations Committee against Torture found Sweden to have violated its non-refoulement obligation in this case.

Rather than seeking to perfect an inherently flawed device, Amnesty International, Human Rights Watch, and the International Commission of Jurists said member states of the Council of Europe should expend their energy on assisting governments around the world to take the range of necessary legislative, administrative, judicial and other measures required to ensure system-wide implementation of the international obligation to prevent and prohibit torture.

“Attempting to create standards for diplomatic assurances is only going to encourage their use, undermine the universal ban on torture, and ultimately expose more people to abuse,” the organizations said.

Ironically, the governmental forum convening in Strasbourg – a group of experts established under the auspices of the Committee of Ministers Steering Committee for

Human Rights – is the same that in 2002 produced the most far-reaching set of standards to date to safeguard human rights in the fight against terrorism: the Council of Europe Guidelines on Human Rights and the Fight against Terrorism, which all member states of the Council of Europe have committed themselves to respect.

The practice of seeking diplomatic assurances against torture and ill-treatment is a global phenomenon, with governments of Europe and North America clearly leading the field. In Europe, Sweden and the United Kingdom have been among those most vocal in defending their use.

Governments' determination to use diplomatic assurances despite mounting evidence of their ineffectiveness has been coupled with an increasingly vocal and growing consensus among international experts and monitoring bodies, as well as some national courts, about the risks associated with their use. Manfred Nowak, the U.N. Special rapporteur on torture, for example, has consistently warned that “diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment” and called on governments to refrain from their use.

The joint submission on diplomatic assurances is available at:

<http://hrw.org/backgrounder/eca/eu1205/>

To read a joint NGO statement on diplomatic assurances from May 2005, please see:

<http://hrw.org/english/docs/2005/05/12/eca10660.htm>

To read Human Rights Watch's report “Still at Risk: Diplomatic Assurances No Safeguard Against Torture.”

<http://hrw.org/reports/2005/eca0405/>

**For more information, please contact:**

In Strasbourg, Jill Heine (Amnesty International): +44-79-32086178

In Strasbourg, Gerald Staberock (International Commission of Jurists): +41-793775446

In New York, Veronika Szente Goldston (Human Rights Watch): +1-212-216-1271