



Permanent Mission  
of the Federal Republic of Germany  
to the Office of the United Nations and  
to the other International Organizations  
Geneva



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### Note Verbale

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Note Verbale OHCHR/HRTB/CAT/2017 dated 7 February 2017, has the honour to submit the following contribution.

The Federal Republic of Germany very much appreciates that the Committee against Torture intends to update its General Comment on the article 3 of the Convention in the context of article 22. On Section IV, par. 19 and 20 of the draft ("Diplomatic assurances") the Federal Government would like to comment as follows:

As the Federal Republic of Germany has consistently held in the past, the extradition of a person to another State must always conform to international human rights standards. Most importantly, it must be ascertained that the person concerned will not be in danger of being subjected to torture or other inhuman treatment by the receiving state. In the view of the Federal Government, diplomatic assurances given by the receiving state that the person concerned will be treated in accordance with conditions set by the extraditing State are a way to ensure compliance with international human right standards, if those assurances meet strict requirements. These requirements are specified in the judgment of the ECHR of 17 January 2012 (Case of Othmann (Abu Quatada) v. The United Kingdom, No. 8139/09). According to this judgment, diplomatic assurances can under certain circumstances ensure adequate protection against the risk of ill-treatment, but there is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment.

To the  
Office of the  
High Commissioner for Human Rights  
Palais des Nations  
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The extraditing state has an obligation to assess the quality of assurances given and to determine whether, in light of the receiving State's practices they can be relied upon. This is the case if, inter alia, the following factors are fulfilled:

- the assurance is specific and not general and vague
- the person who has given the assurances can bind the receiving State
- if the assurances have been issued by the central government of the receiving State local authorities can be expected to abide by them
- there are long and strong bilateral relations between the sending and receiving States and the receiving State has followed diplomatic assurances in similar cases
- the compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers
- there is an effective system of protection against torture in the receiving State, it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs) and it is willing to investigate allegations of torture and to punish those responsible.

Contrary to this jurisprudence, par. 20 of the draft states that diplomatic assurances should not be used under any circumstances. The Federal Government does not share this view, but rather remains convinced that the use of diplomatic assurances under the strict requirements specified by the ECHR does not constitute a violation of the Convention. It would therefore welcome a revision of this section in line with the jurisprudence of the ECHR.

Although in most cases a state in which an extradited person will be in danger of being subjected to torture or other inhuman treatment will not be able to provide trustworthy assurances and to show an effective system of protection against torture, the possibility of assurances in specific individual cases should be taken into account.

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 12 April 2017

