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The President of the Swiss Confederation

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Courrier A

Mrs
Holly Cartner
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Bern, 4 April 2007

Dear Mrs Carter,

I would like to thank you for your letter of 14 December 2006 regarding Switzerland's position on diplomatic assurances. I apologise for the delay in replying. This is due to the fact that several federal offices had to be consulted about the issues raised in your letter.

I understand your concerns. The recourse to diplomatic assurances against the use of torture in the framework of the transfer of persons can be problematic, notably with regard to the principle of *non-refoulement*. This position has been defended by Switzerland both in the Council of Europe and in the United Nations and has not changed. Recourse to diplomatic assurances in order to circumvent the absolute ban on torture has always been condemned by Switzerland, even in the present context of the fight against terrorism.

As for Swiss practice, a distinction must be made between cases of return and cases of extradition. Diplomatic assurances are an appropriate instrument only in cases of extradition, because the requesting state has a crucial interest in respecting such assurances. If it failed to honour an assurance, it would jeopardise the continuation of cooperation in this area. In cases of return in accordance with legislation on asylum and on foreign nationals, it is forbidden to request such guarantees for legal reasons.

Extradition is not permitted if there is a specific risk that an imperative norm of international law such as the ban on torture and on other inhuman or degrading treatment could be violated. If the person against whom proceedings have been instituted invokes such a danger, the authorities automatically carry out a risk analysis. In other cases, the analysis is carried out automatically whenever the specific circumstances and the overall human rights situation in the country concerned seem to require it. If this analysis leads to the conclusion that a risk of violation cannot be excluded, the possibility of eliminating this risk by obtaining guarantees is examined. These guarantees are given in legally binding form in accordance with international law. Switzerland asks for additional guarantees, which

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are not necessary per se and are not required by international law, only in cases where the risk that the person's basic rights could be violated is minimal. In such cases, Switzerland, by requesting guarantees, is clearly not trying to circumvent the ban on torture or the principle of *non-refoulement*. On the contrary, it is going beyond the obligations imposed on it by international law.

Switzerland referred with complete transparency to the only case in which the recourse to guarantees was not successful. This case, which you mention in your letter, concerned the extradition of two Turkish citizens to India on 3 October 1997. It should be stressed that this was a case which did not concern the ban on torture. Following this incident, Switzerland did not accept any further requests for extradition from India.

The declarations by the UN High Commissioners for Human Rights, the Council of Europe and the Commission of the European Parliament refer to guarantees given in connection with various forms of return, whether general or individual and specific (e.g. extraordinary renditions). No negative conclusions can be drawn here with regard to the effectiveness of the guarantees provided in relation to extraditions. The Swiss authorities have no knowledge of any case in which torture has been definitely proven to have taken place after an extradition accompanied by guarantees.

Finally, it should be stressed that in Switzerland the judiciary plays a major role in the control of administrative decisions regarding expulsion or extradition.

In the light of these observations, I can assure you that Switzerland will continue to advocate the crucial importance of the absolute ban on torture as well as the importance of human rights in the framework of the fight against terrorism.

Yours Sincerely

Micheline Calmy-Rey