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EUROPEAN COURT OF HUMAN RIGHTS REAFFIRMS THE ABSOLUTE PROHIBITION ON RETURN TO TORTURE

Strasbourg, 28 February 2008 -- The European Court of Human Rights today reaffirmed that the ban on deporting people to countries where they are at risk of torture or ill-treatment is absolute and unconditional. The judgment in *Saadi v Italy* is being hailed as a major reassertion of the importance of the rule of law by eleven international human rights groups, including Amnesty International, the Association for the Prevention of Torture, the AIRE Centre, Human Rights Watch, INTERIGHTS, the International Commission of Jurists, JUSTICE, the Medical Foundation for the Care of the Victims of Torture, Open Society Justice Initiative, REDRESS, and the World Organization Against Torture (OMCT).

This judgment comes at a time when deportation to states known to practice torture and ill-treatment is occurring with troubling frequency in the name of the 'war on terror'. The Court reaffirmed the long-standing rule that no circumstances, including the threat of terrorism or national security concerns, can justify exposing an individual to the real risk of such serious human rights abuses.

Today's unanimous judgment by the Grand Chamber of the Court was handed down in the case of *Saadi v Italy* which concerns the decision of the Italian authorities to deport Nassim Saadi, a Tunisian national lawfully residing in Italy, to Tunisia. In his absence, Mr Saadi had been convicted in Tunisia of terrorism-related offences, and was sentenced to 20 years imprisonment. Before the European Court Mr Saadi claimed that he would be at risk of torture and ill-treatment in Tunisia where mistreatment of alleged terrorists is routine and well-documented.

The Government of the United Kingdom intervened in the case to try to overturn the absolute prohibition on torture and ill-treatment. It argued that the right of a person to be protected from such treatment abroad should be balanced against the risk he posed to the deporting state. In the 1996 case of *Chahal v United Kingdom* the Court rejected this argument and held that the European Convention prohibited expulsion to countries where there is risk of torture and ill-treatment in all circumstances. This conclusion has been consistently reaffirmed by the Court in its subsequent judgments.

The UK Government's intervention in Saadi replicates its intervention – together with the governments of Lithuania, Portugal, and Slovakia – in another case still pending before the Court: the case of *Ramzy v the Netherlands* which involves deportation to Algeria. These attempts to undermine fundamental human rights with assertions that national security and public safety are under threat, are often based on information that the governments seek to keep secret even from the individual affected.

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Today the European Court was resolute in upholding the approach established by its earlier decisions and followed by other international courts and bodies. The judgment reaffirmed that the transfer of individuals to a countries where they face a real risk of torture or other ill-treatment is prohibited absolutely, and that the law cannot allow for exceptions. The Court recognised that *“States face immense difficulties in modern times in protecting their communities from terrorist violence. It cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3 [of the European Convention, prohibiting torture and other ill-treatment].”*

The judgment also addressed the issue of ‘diplomatic assurances’ and whether a state’s duty not to deport where there is a risk of torture or ill-treatment can be mitigated by promises of humane treatment from the state to which the individual is to be deported. The Court held that such assurances do not automatically offset an existing risk, emphasising *“that the existence of domestic laws and accession to treaties were not sufficient to ensure adequate protection against the risk of ill-treatment.”* The court left open whether assurances might ‘in their practical application’ provide a sufficient guarantee against the risk of ill-treatment. In practice, once such a risk is established, the Court has never found assurances capable of displacing it. A growing number of international actors – including the UN High Commissioner for Human Rights, the UN Special Rapporteur on Torture, and the Council of Europe Commissioner for Human Rights – hold that diplomatic assurances against torture and ill-treatment are inherently unreliable and practically unenforceable, and thus do not provide an effective safeguard against torture and ill-treatment.

The text of the European Court’s judgment can be accessed at www.echr.coe.int

Amnesty International - www.amnesty.org.uk

The Association for the Prevention of Torture - www.ap.t.ch

The AIRE Centre – www.airecentre.org

Human Rights Watch - www.hrw.org

INTERIGHTS - www.interights.org

The International Commission of Jurists - www.icj.org

JUSTICE - www.justice.org.uk

The Medical Foundation for the Care of the Victims of Torture - www.torturecare.org.uk

Open Society Justice Initiative - www.justiceinitiative.org

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