

**Observations of New Zealand on the Committee Against Torture's draft revised  
General Comment No.1 (2017) on the Implementation of Article 3 of the  
Convention in the Context of Article 22**

**24 March 2017**

- 1) New Zealand thanks the Committee for its work on draft revised General Comment No. 1 on the implementation of article 3 of the Convention in the context of article 22, and appreciates the opportunity to submit comments on paragraphs 19 and 20 of the draft.
- 2) New Zealand commends the Committee for its commitment to provide general comments on the *Convention Against Torture and other forms of Cruel, Inhuman, or Degrading Treatment or Punishment* (CAT) and its readiness to accept comments from stakeholders on the issue of diplomatic assurances and to engage in a discussion about their use.
- 3) New Zealand shares the Committee's view that diplomatic assurances should not be used as a loophole to undermine the principle of non-refoulement. However, New Zealand considers that the General Comment does not accurately reflect the current state of international law in this area, or the fact that the practice of seeking diplomatic assurances is well established internationally. Because of this, New Zealand cannot accept the suggestion in paragraph 20 of the draft Comment that diplomatic assurances are *per se* contrary to the principle of non-refoulement.
- 4) New Zealand considers that there are circumstances in which it is both possible and appropriate for a State to take diplomatic assurances into account, consistent with the principle of non-refoulement.
- 5) In New Zealand's view, diplomatic assurances (or a lack thereof) can form part of a State's assessment of whether the "substantial grounds" test required by Article 3 of the CAT has (or has not) been met. The extent to which such assurances may be taken into account will depend on all the factors of the case, including the human rights situation in the receiving State, the risk factors associated with the individual, and the quality and practical enforceability of the assurances.

- 6) This conclusion is supported by jurisprudence including from the European Court of Human Rights in the *Othman (Abu Qatada)* case.<sup>1</sup> In order to be given any weight in the assessment of risk, diplomatic assurances must meet certain minimum quality and reliability thresholds. A State must rigorously analyse the specific risk factors (that might lead to torture or ill treatment) applicable to an individual, and ensure that any assurances comprehensively address the risk factors identified.<sup>2</sup>
- 7) Any assurances should be accompanied by an assessment of the likelihood of compliance, and a mechanism to enable compliance to be objectively verified after the return of the individual.<sup>3</sup>
- 8) New Zealand considers that, where diplomatic assurances meet the strict thresholds established in relevant case law, they can be employed consistently with the principle of non-refoulement, and indeed can provide a mechanism to promote compliance with a State's obligations under the CAT. Conversely, where the diplomatic assurances provided do not meet the necessary quality and reliability thresholds, it would not be appropriate for the sending State to take them into account.
- 9) New Zealand requests the Committee to reconsider paragraphs 19 and 20 of revised draft General Comment No. 1 in light of these comments and the current state of international law in this area.

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<sup>1</sup> *Othman (Abu Qatada) v United Kingdom* (813/09), Fourth Section, ECHR, 17 January 2012

<sup>2</sup> *Ibid* at 194-195

<sup>3</sup> *Ibid* at 24