**General Discussion on the Draft Revised General Comment on the implementation of Article 3 of the Convention in the context of Article 22**

**Comments by the Government of Finland**

**27 April 2017**

Madame Chairperson, Distinguished Members of the Committee, Ladies and Gentlemen,

Finland regards the UN Treaty Bodies' General Comments as useful tools for interpreting treaty-based obligations. General Comments contribute to a greater understanding of our commitments thereby facilitating greater compliance. The Government welcomes the Committee's initiative to update its General Comment No. 1 and the transparent consultative process in this regard.

We have already submitted our written comments on the draft and now I will focus on a few paragraphs.

As regards preventive measures to guarantee the principle of “non-refoulement” and with reference to paragraph 18e of the draft general comment, we consider that observing the principle of “*non-refoulement*” and implementing a person’s right to effective remedies in the context of a decision to remove the person from the country do not in all cases require that the person’s appeal should have an automatic suspensive effect. Indeed, it is essential that any allegation about a risk of treatment in violation of the prohibition of torture, as well as any claim for possible suspension of the enforcement of the decision, be investigated impartially and carefully. However, neither the EU Return Directive nor the case-law of the European Court of Human Rights requires that an appeal should have an automatic suspensive effect.

Therefore, we propose to add to the paragraph for instance the wording “*in cases where there are substantial grounds for believing that the person concerned would face a risk of being subjected to torture*” or some other corresponding wording to reflect the above-mentioned case-law. It must be noted, however, that the subparagraph at hand is to be considered as a recommended best practice according to its chapeau.

As regards application of Article 3 of the Convention to the merits of a communication, and with reference to paragraph 40 of the draft comment, we consider thatanyone alleging that he or she would face a risk of being tortured should always be able to make an arguable claim in support of the allegation. This is without prejudice to the fact that the State is always obliged to explain how it has assessed the individual case on the basis of available information. Therefore, instead of a reversed burden of proof, rather a divided burden of proof should apply in the situations described in this paragraph.

As regards paragraphs 41–44 of the draft comment which deal withthe national procedure, we consider that they are not relevant to the question on how the Committee examines the merits of a communication. Therefore we propose that the Committee consider excluding these paragraphs from this particular section of the General Comment.

Thank you.