The Government of the Netherlands welcomes the initiative by the Committee against Torture to prepare a revised General Comment No. 1 entitled “General comment on the implementation of Article 3 of the Convention in the context of Article 22”, which had been adopted on 21 November 1997 (A/53/44, Annex IX). Ahead of the general discussion on the revised General Comment, to be held on 28 April 2017, the Government of the Netherlands would like to submit the following comments on Section IV, paragraphs 19 and 20 (Diplomatic assurances), of the draft text (CAT/C/60/R.2).

The Government of the Netherlands underlines, as expressed in paragraph 19, that in the context of the transfer of a person from one State to another, that person should be treated in accordance with international human rights standards at all times. The State that extradites a person to another State shall ascertain that the person concerned will not be in danger of being subjected to torture or other inhuman treatment by the State to which he/she is expelled.

The Government of the Netherlands is of the opinion that 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 rights standards, if those assurances meet strict requirements. These requirements are specified in the judgment of the European Court of Human Rights of 17 January 2012 (Case of *Othman (Abu Qatada) v. the United Kingdom*, appl. no. 8139/09). According to this judgment, diplomatic assurances can under certain circumstances ensure adequate protection against the risk of ill-treatment. However, there is an obligation to examine whether the assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment.

It seems that, contrary to the case-law of the European Court of Human Rights, paragraph 20 of the draft text suggests that diplomatic assurances are contrary to the principle of “non-refoulement”, provided for by Article 3 of the Convention, per se. The Government of the Netherlands is of the view that the use of diplomatic assurances, under the strict requirements as specified by the European Court of Human Rights, does not constitute a violation of the Convention. It would therefore welcome a revision of section IV of the draft text to take the possibility of diplomatic assurances in individual cases with specific requirements into account.