



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment or
Punishment**

Distr.
RESTRICTED*

CAT/C/41/D/316/2007
26 November 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Forty-first session
(3 - 21 November 2008)

DECISION

Communication No. 316/2007

<u>Submitted by:</u>	L. J. R. (represented by J. L. B.)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Australia
<u>Date of the complaint:</u>	5 April 2007 (initial submission)
<u>Date of present decision:</u>	10 November 2008

Subject matter: Extradition with alleged risk of torture;

Procedural issue: Non substantiation; incompatibility with the Convention;

Substantive issue: Risk of torture upon return; treatment contrary to the Convention while in prison;

Articles of the Convention: 3, 16.

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Forty-first session

Concerning

Communication No. 316/2007

<i>Submitted by:</i>	L. J. R. (represented by J. L. B.)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of the complaint:</i>	5 April 2007 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 10 November 2008,

Having concluded its consideration of complaint No. 316/2007, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complaint is submitted by L. J. R., a citizen of the United States born in 1971. When the complaint was submitted, L. J. R. was in prison in Australia and an extradition order to the United States of America was pending against him. He claimed that his extradition to the United States, would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1.2 By letter dated 10 January 2008, the State party informed the Committee that the complainant had been surrendered to the United States on 9 January 2008.

The facts as presented by the complainant

2.1 The complainant was arrested in Orange, New South Wales, Australia, on 19 September 2002 under a provisional arrest warrant. On 12 November 2002, the Minister for Justice and Customs received an extradition request from the USA in relation to one count of murder allegedly committed by the complainant in May 2002, as he was the subject of a felony complaint before the Superior Court of California, San Bernardino, Barstow District. The request indicated that, pursuant to Article V of the Treaty on Extradition between Australia and the USA, the District Attorney would not seek or impose the death penalty on the complainant. In December 2002, a magistrate determined that the complainant was eligible for surrender and committed him to prison pending the completion of the extradition proceedings.

2.2 The complainant unsuccessfully challenged the magistrate's decision on his eligibility to surrender in the Supreme Court of New South Wales, the Full Court of the Federal Court, and the High Court. At issue, *inter alia*, was the application of s. 22(3) of the Extradition Act of 1988, under which the eligible person can only be surrendered in relation to a qualifying extradition offence if, *inter alia*:

- (a) the Attorney-General is satisfied that there is no extradition objection in relation to the offence;
- (b) the Attorney-General is satisfied that, on surrender to the extradition country, the person will not be subjected to torture;
- (c) where the offence is punishable by a penalty of death—by virtue of an undertaking given by the extradition country to Australia, one of the following is applicable:
 - (i) the person will not be tried for the offence;
 - (ii) if the person is tried for the offence, the death penalty will not be imposed on the person;
 - (iii) if the death penalty is imposed on the person, it will not be carried out.

2.3 Before the Federal Court, the complainant, *inter alia*, claimed that he would be subjected to torture in California, and that his trial would be prejudiced because of race and religion, as he was a Hispanic-Muslim. He alleged that the US law enforcement authorities had intentionally released prejudicial pre-trial publicity against him. In particular, he referred to the America's Most Wanted programme, featuring his case, which identified him as the deceased's killer, and to discussion about his case in on-line chat rooms created in California, which demonstrated that the local population was hostile towards him.

2.4 The adverse publicity had been obtained by prison guards in Australia and released to other inmates. This had led to him being physically and sexually assaulted by prison guards and other prisoners on numerous occasions over a 12 month period while detained at Long Bay prison. In particular, he claims that he was poisoned by unknown persons; burned with hot water by other prisoners; hit over the head by other prisoners and then dragged; his cell bed was defecated on by police dogs; he was forced to strip naked and pose as a statue; threatened by a prison guard to be placed into an area with violent inmates. After one incident, he was hit and had to be given stitches to the head, as documented in hospital records. In December 2003 he was transferred to the Silverwater Remand Centre. In April 2004, after he was called a "piece of shit" by a prison guard, he filed a formal complaint. As a result, he was beaten by a group of guards. He reported another incident of beatings by prison guards which occurred in January 2005.

2.5 According to the complainant, these alleged attacks demonstrated the likelihood that he would be treated similarly in a US prison, which would amount to torture under s. 22(3)(b) of the Extradition Act. He also provided written submissions regarding prison conditions in California, including the high rate of HIV infection. The risk of him contracting HIV or hepatitis C was very high, due to the adverse publicity his case had received, rendering him more vulnerable to physical and sexual assaults. Furthermore, he provided documents as evidence of racial segregation and discrimination in the Californian prison system.

2.6 The complainant also claims that he risked being placed in solitary confinement, sentenced to death, despite the assurances given, and being subjected to a lengthy period of detention on death row. The District Attorney in California had specified that based on the facts, he would be seeking a First Degree Murder verdict from the jury for wilful, deliberate and premeditated murder, which carries a sentence of twenty-five years to life in prison.

2.7 The Embassy of the US provided diplomatic assurances on 28 February 2005, stating that, based on the information provided by the Deputy District Attorney, the US “assures the government of Australia that the death penalty will not be sought or imposed” against the complainant. A further assurance was given by the new District Attorney in California later in 2005, which stated that the District Attorney’s Office “will not seek to impose the death penalty on [L. J. R.] on the instant matter”. The complainant claimed that as it is the jury which makes a decision as to the death penalty, even without an express endorsement of the prosecutor or judge, the assurances were irrelevant. A ‘special circumstance’, namely that the murder was committed during an offence of kidnapping, means that the penalty in his case could be death.

2.8 The complainant indicates that he is a Hispanic-Muslim accused of killing a white woman in Barstow, a predominantly white conservative community of San Bernardino County, largely made of Anglo-Christians. There is also a large presence of the military in Barstow, as it is very close to the Yermo Marine base, where he and the deceased person worked. The accusations against him, including information on his previous military convictions, were given extended coverage in local newspapers, radio and television. Hispanics and Muslims are significantly underrepresented and systematically excluded from jury service in Barstow. Furthermore, they are discriminated against in the community and there is a systematic pattern of incitement for hate crimes against them.

2.9 The complainant claims that, while investigating the murder in question, the police searched his house. As the search did not yield any result, he was taken to the Sheriff’s station for questioning. He was then handcuffed, put into an unmarked police car and driven to a remote site where he was assaulted in order to obtain information about the murder. The extradition request indicated that there were marks of injuries in his body when he was arrested by the police and implied that such injuries were the result of the struggle with the deceased person. However, there was nothing in the autopsy report allowing the conclusion that such a struggle had taken place.

2.10 In support of his allegations that torture is widespread in the US, the complainant alleges that between December 1998 and February 2000, when he was in the Army, he was held in a military prison on counts of disobedience to the military authorities, and tortured. As a result, several military guards were reprimanded and one was relieved of duty.

2.11 After the dismissal of the complainant's appeal by the Federal Court, on 16 June 2004, the Minister for Justice and Customs signed, on 31 August 2006, the surrender warrant. On 21 December 2006, the Federal Court dismissed the complainant's application for review of the Minister's decision. The Court deemed, *inter alia*, that it was not for it to determine whether the complainant might be tortured or whether the complainant could mount a successful extradition objection based on his race or religion. These were matters to be considered by the Minister. In that respect, no reviewable error by the Minister had been demonstrated.

2.12 In its decision on a further appeal, dated 9 August 2007, the Federal Court indicated that, under section 22(3)(b) of the Extradition Act, the Minister for Justice and Customs must be satisfied that, on surrender to the extradition country, the person will not be subjected to torture. The Minister concluded that the materials provided by the complainant did not establish that the conditions in the United States prisons were such that they should be regarded as cruel or inhumane or to involve degrading treatment or punishment. In short, they did not establish that the treatment of prisoners amounted to torture. The Court held that it was not for it to determine whether L. J. R. might be tortured and that, in any event, mistreatment or abuse in prison did not amount to torture.

The complaint

3.1 The complainant claims that his extradition to the United States would constitute a breach of article 3 of the Convention. He claims to have exhausted all domestic remedies, including a complaint with the Human Rights and Equal Opportunity Commission of Australia (HREOC).

3.2 He also claims that while being held in Australian prisons, he was subjected to treatment amounting to torture and cruel, inhuman or degrading treatment or punishment by other inmates or by prison guards. However, he does not invoke particular articles of the Convention. In the context of his opposition to the extradition, he addressed these claims to the Federal Court, New South Wales District. He also addressed them to HREOC.

State party's observations on admissibility and merits

4.1 On 29 November 2007, the State party provided observations on admissibility and merits. It submits that the allegations made in relation to article 3 should be ruled inadmissible as manifestly unfounded in accordance with rule 107(b) of the Committee's rules of procedure. In the alternative, the State party submits that the allegations should be dismissed as inadmissible on the grounds that the communication is incompatible with the provisions of the Convention, pursuant to article 22(2) of the Convention and rule 107(c) of the rules of procedure. Further, the State party submits that there is no evidence to support the complainant's allegations with regard to article 3 and that the allegations are therefore without merit.

4.2 Regarding the complainant's allegations of torture or inhuman or degrading treatment or punishment in Australian prisons, they should be declared inadmissible for being manifestly unfounded in accordance with rule 107(b) of the rules of procedure. As there is no evidence to support them, they are without merit.

4.3 As for the complainant's allegations that he will not receive a fair trial in the United States because of his race and religion, they fall outside the Committee's mandate. Accordingly, they should be declared inadmissible as incompatible with the provisions of the Convention.

4.4 The State party submits that, in addition to proving that an act would constitute torture under the CAT, in order to show that a State party would be in breach of its non-refoulement obligations under article 3, an individual must be found to be personally at risk of such treatment. It is not sufficient to show that there is a consistent pattern of gross, flagrant or mass violations of human rights occurring in the receiving state. Additional grounds must be adduced to show that the individual concerned would be personally at risk. The onus of proving that there is a foreseeable, real and personal risk of being subjected to torture upon extradition or deportation rests on the applicant. The risk need not be highly probable, but it must be assessed on grounds that go beyond mere theory and suspicion.

4.5 The State party submits that the complainant has not provided sufficient evidence in substantiation of his claim that, by extraditing him, Australia will breach article 3 of the Convention. He simply asserts that there is racial segregation, violence and a high level of disease in Californian prisons and that prisoners are subjected to solitary confinement and police brutality, without providing credible evidence to support these assertions. The communication does not provide any credible evidence that there is a "consistent pattern of gross, flagrant or mass violations of human rights" in the U.S.

4.6 The complainant's argument appears to be that there is such a degree of certainty that all inmates will be subjected to alleged ill-treatment that, undoubtedly, he personally will be subjected to that treatment after extradition. However, even the unreliable statistics cited in the complaint do not demonstrate any certainty that a prisoner in the United States will be subjected to the alleged treatment. There is thus no evidence in the case demonstrating that the complainant would be subjected to a foreseeable, real and personal risk of the alleged treatment if extradited.

4.7 The treatment and conditions that the complainant asserts he will face if extradited to the USA, even if proven, would not amount to torture under the definition in article 1 of the Convention. Nor does the communication demonstrate that any pain or suffering would be intentionally inflicted upon him for one of the reasons set out in article 1 of the Convention, or would be inflicted by or at the instigation of or with the consent or acquiescence of a public official, or person acting in an official capacity. Accordingly, the State party submits that the complaint is inadmissible as incompatible with the provisions of the Convention.

4.8 The State party submits that the complaint does not even on a *prima facie* base substantiate the allegation that the complainant will be segregated from persons of other racial backgrounds in a Californian prison, or that this would constitute torture under the Convention. In the alternative, it submits that this allegation is inadmissible as incompatible with the provisions of the Convention. Even if the allegation of racial segregation were proven, it would not amount to torture under the Convention. Furthermore, there is nothing to suggest that by extraditing the complainant to the United States, where he may be segregated from prisoners of other racial backgrounds for a period, he would be in danger of torture. There is no evidence to suggest either that the policy of racial segregation in Californian prisons was intended to inflict severe pain and suffering for reasons based on racial discrimination. It therefore does not constitute

torture under the Convention. There is no evidence to suggest that the intention of the policy of segregation in prisons is anything other than preventing violence.

4.9 Regarding the allegation that the complainant would be exposed to violence and sexual assault in prison, there is no evidence that he would be personally at risk of such violence. Furthermore, such violence would not amount to torture under article 1, given the lack of any requisite intent. There is no evidence in the complainant's submissions or otherwise to suggest that the conditions in Californian prisons amount to "institutionalised torture by government authorities". There is no evidence either to indicate that the complainant would be personally or particularly at risk of being the victim of sexual violence. The State party is not aware of any evidence that there is a consistent pattern of gross, flagrant or mass violations of human rights occurring in Californian prisons. The Human Rights Committee, in its concluding observations to the United States' reports under the International Covenant on Civil and Political Rights in 1995 and 2006, did not express concern that violence amongst or towards the prison population in the United States may amount to torture.

4.10 The Committee against Torture expressed concern in its concluding observations of 2000 on the report of the United States about ill-treatment in prisons. However, the Committee used the term "ill-treatment" and not "torture", implying that conditions in US prisons over the reporting period did not amount to "torture". Furthermore, the Committee's concerns regarding prison conditions related to sexual and other violence, which the Committee noted was more likely to be committed against "vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation". Persons of Hispanic origin comprise over 50% of the prison population in California, so there is no reason to suspect that the complainant is a likely victim of such violence.

4.11 The State party further notes that the physical and sexual abuse of prisoners is unlawful in all US States and that under section 206 of the Californian Penal Code, persons who commit torture are liable to prosecution and a maximum penalty of life imprisonment. Therefore, there are no grounds to believe that the complainant would be in danger of being subjected to torture due to exposure to prison violence in the US.

4.12 Regarding the risk of contracting an infectious disease in a Californian prison, the State party submits that the allegation should be declared inadmissible as manifestly unfounded. No evidence is provided which demonstrates that the complainant is personally at risk of contracting such a disease. Therefore, there is insufficient evidence on which to base a *prima facie* case. In the alternative, the State party submits that the allegation is inadmissible as incompatible with the provisions of the Convention. Even if the contentions regarding the prevalence of Tuberculosis, Hepatitis-C and HIV in Californian prisons and likelihood of the complainant contracting one of those diseases were true, there is no basis on which to believe that those conditions are imposed on prisoners with the intention of inflicting pain or suffering, for one of the purposes set out in article 1, at the instigation of, or with the consent or acquiescence of, a public official. Thus, the State party would not be in violation of its obligations under article 3 of the Convention.

4.13 Regarding the merits of this allegation, the complaint does not present credible evidence regarding the risk of contracting an infectious disease in a Californian prison. After searching a range of information sources, the State party was unable to locate reliable statistics on the rates

of Hepatitis-C and Tuberculosis infection in US prisons. As for HIV, the US Department of Health reported at the end of 2005 that the estimated prevalence of HIV in incarcerated populations was 2%. Such an infection rate does not amount to a “substantial risk” of the complainant being infected.

4.14 As for the allegations of solitary confinement, the State party submits that it should be considered inadmissible as manifestly ill-founded. The claim is based on mere speculation as to what might occur if the complainant were convicted and sentenced to imprisonment and cannot be taken to amount to *prima facie* evidence that the facts asserted will in fact occur. In the alternative, it should be declared inadmissible as incompatible with the provisions of the Convention. Even if the claim was substantiated, solitary confinement does not in itself constitute torture, or cruel, inhuman or degrading treatment or punishment, and must still meet the definition in article 1 of the Convention. There is no evidence to suggest that “solitary confinement” is used in Californian prisons in any way other than incidentally to lawful sanctions. As to the merits of such allegation, the State party has no reason to believe that solitary confinement is used generally, or would be used in the complainant’s case specifically.

4.15 The complainant alleges that he suffered injuries at the hands of US law enforcement and that this is evidence that he will be tortured if extradited. The State party submits that this allegation should be declared inadmissible as manifestly unfounded. No evidence is provided to corroborate the complainant’s story, which lacks in detail and clarity. The date or time of the alleged assault remain unclear. The San Bernardino County Sheriff’s Department appears to have documented each interview and encounter that they had with the complainant on 15 and 16 May 2002. There is no indication that the events to which the complainant refers occurred.

4.16 In the alternative, the State party submits that there are no substantial grounds to believe that the complainant would be in danger of torture if extradited based on his allegation to have been assaulted by US law enforcement officers. The detailed police reports of U.S. law enforcement officials’ encounters with the complainant on 15 and 16 May 2002 do not substantiate his claims. The reports also indicate that facial injuries were observed on the complainant the first time law enforcement contacted him, before the alleged assault took place.

4.17 The complainant claims that he will be subjected to long detention on death row if extradited, which would amount to torture. This allegation should be considered inadmissible as manifestly illfounded. The State party received assurances from the US that the death penalty will not be sought or imposed in the complainant’s case. He does not present evidence to suggest that these assurances are unreliable and the State party has no reason to consider that they will not be upheld. The Deputy District Attorney in the matter advised the State party in an affidavit that there are no aggravating circumstances to the case and that it does not attract the death penalty. On 28 February 2005, the US provided an undertaking that the death penalty would not be sought or imposed on the complainant. He did not provide evidence to discredit these assurances. The US has provided death penalty undertakings in the same form on previous occasions. The US has sought his extradition for a single offence of murder. In accordance with the speciality assurance under article XIV of the *Treaty on Extradition between Australia and the United States of America*, the complainant cannot be charged with further offences once extradited, without Australia’s consent.

4.18 The complainant claims that during his time in Long Bay Correctional Complex between December 2002 and December 2003, he was subjected to treatment amounting to torture or other cruel, inhuman or degrading treatment or punishment. The complainant does not point to an obligation under the Convention that the State party is alleged to have breached. However, the State party responds to these allegations in case they are considered to raise issues under articles 12, 13, 14 and 16.

4.19 The complainant availed himself frequently of a number of complaint mechanisms in connection with such allegations, including a complaint to the HREOC. However, his claims are manifestly illfounded. First, he does not provide evidence to support his allegations, many of which lack detail and specificity. Second, records do not substantiate such claims. In some instances, there is no record of a complaint filed, or any medical records, or witness evidence to support the claim. Where records exist, the incidents in question do not constitute torture or cruel, inhuman or degrading treatment or punishment. Medical records do not bear out the allegations of physical abuse. There are only two occasions of attendance for treatment: a case where he was assaulted by another inmate and taken promptly for treatment by prison staff, and a case involving use of handcuffs, where there was no injury and no treatment was required.

4.20 In May 2005, the HREOC reported that the complainant's allegations up to August 2003 were not substantiated, or did not amount to abuses of his rights. HREOC also received new complaints for the period between August 2003 and May 2006. However, it declined to proceed with these claims in view of the fact that the complainant had also lodged proceedings in the NSW Supreme Court on substantially similar allegations.

4.21 Whilst being held on extradition remand, the complainant had a history of making unfounded, exaggerated and false complaints relating to his treatment. For instance, in his complaint to HREOC, he claimed to have been hit with a taser gun by prison officers at Long Bay in June 2003. This claim cannot possibly be true given that those officers do not have taser guns. He reported to the Department of Corrective Services (DCS) that he was assaulted by a prison officer on 28 December 2002. He referred to this treatment as "torture" in his complaints to HREOC and in applications to the Minister. In fact, he alleged that, after a verbal confrontation with a prison officer, the officer "poked" the complainant in the chest with his finger. The incident was witnessed by another prison officer and a number of other inmates. On investigation it was found that the complainant had repeatedly refused to follow the officer's directions, that no physical force was used by the officer and that any physical contact was inadvertent. The complainant did not sustain any injuries from the incident, nor did he require medical attention. He has been held in protective custody, at his own request, for much of the time he has been held in NSW prisons. At his request, he has only been associating with a limited number of approved prisoners. This makes it unlikely that many of his allegations regarding his treatment by other prisoners are true. Regarding other allegations, he does not provide sufficient information for the State party to be able to address them. There are no dates provided, no information about the circumstances of each allegation and no indication as to the persons involved in each alleged incident. Sometimes he relates to actions of other prisoners, and there is no indication of any involvement of officials which might constitute official instigation, acquiescence or consent.

4.22 DCS records show that on 22 September 2003, he was involved in a fight with another inmate during which he was hit over the head with a milk crate. The incident was immediately

reported to police by prison staff. The complainant completed a report stating that the action or inaction of prison officers was not a cause of his injury. There is no evidence that prison officers were involved in, instigated or consented to the assault. He was taken promptly to the Long Bay Correctional Centre Clinic for treatment and from there was transferred to hospital, where he received stitches to his head and was discharged on the same day. He was seen again in the Clinic for follow up care on three occasions. HREOC considered the incident and concluded that there was no evidence that prison staff caused or condoned the incident.

4.23 The complainant attended the Silverwater Correctional Centre Clinic on 5 January 2005 complaining he had been bashed and handcuffed too tightly during a search for contraband. He was examined by clinical staff who found only reddened skin on his wrists. No treatment was required. This matter was raised in his second complaint to HREOC, which has since been discontinued.

Complainant's comments on the State party's observations on the admissibility and the merits

5. On 4 February 2008, the complainant's representative submitted that she did not wish to add anything to what had already been submitted to the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It notes that the State party does not contest the exhaustion of domestic remedies.

6.2 The Committee notes the complainant's allegations that he will not have a fair trial and that, despite the assurances given, he might be sentenced to death. These allegations, however, fall outside the scope of the Convention in the circumstances of the case. Accordingly, the Committee considers that part of the complaint inadmissible as incompatible with the provisions of the Convention. As for the rest of the allegations, the Committee notes the State party's objections to the admissibility, namely that the claims are unfounded or incompatible with the provisions of the Convention. However, it considers that such claims raise issues that must be dealt with at the merits stage. Accordingly, it considers such claims admissible and proceeds to their examination on the merits.

6.3 Regarding the complainant's claim that he was subjected to treatment amounting to torture and cruel, inhuman or degrading treatment or punishment while imprisoned in Australia, the Committee notes that the description of facts provided by the complainant lacks precision and that no detailed information is provided by him on the legal proceedings initiated regarding the incidents he refers to and the result of such proceedings. In these circumstances the Committee considers that, for the purpose of admissibility, the claim is unfounded, under rule 107 (b) of the Committee's rules of procedure.

Consideration of the merits

7.1 The issue before the Committee is whether the extradition of the complainant to the United States would violate the State party's obligations under article 3 of the Convention not to extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

7.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present. As to the burden of proof, the Committee also recalls its general comment on article 3 and its jurisprudence which establishes that the burden is generally upon the complainant to present an arguable case. Furthermore, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.4 The complainant claims that he will be at risk of torture if extradited to the United States in view of, *inter alia*: a) the prejudicial publicity against him identifying him as the author of the crime for which extradition is requested; b) prison conditions in California, including the high incidence of HIV and other infectious diseases, and the risk of him contracting such diseases; c) racial segregation and discrimination in the Californian prison system; d) the discrimination against Hispanics and Muslims in his community; e) the fact that he was tortured by police to obtain information about the murder he is accused of, and that torture is widespread in the United States; f) the possibility for him to be placed in solitary confinement and, if sentenced to death, to be subjected to a lengthy period of detention on death row.

7.5 The Committee is aware of reports of brutality and use of excessive force by US law-enforcement personnel and the numerous allegations of their ill-treatment of vulnerable groups, including racial minorities. It is also aware of numerous reports of sexual violence perpetrated by detainees on one another and that appropriate measures to combat these abuses have not been implemented.¹ However, the complainant's allegations remain of a general nature. He does not provide specific evidence about the ill-treatment he alleges to have been subjected to when questioned by the Californian police. No significant evidence is provided either that the conditions in the prison or prisons in which he would be held in California generally amount to

¹ See the Conclusions and recommendations of the Committee regarding the consideration of the second report of the United States, CAT/C/USA/CO/2, dated 25 July 2006, paras. 32 and 37.

torture within the meaning of article 1 of the Convention, or that the circumstances of his case are such that he would be subjected to treatment falling under that provision. Furthermore, the State party considered that the United States was bound by the assurances it provided to the effect that the author, if found guilty, would not be sentenced to death penalty.

8. For the abovementioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to the United States.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the extradition of the complainant to the United States did not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
