



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

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Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 581/2014^{*}, ^{**}**

<i>Communication submitted by:</i>	S.S. (represented by counsel, Rajwinder Bhambi)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	2 January 2014 (initial submission)
<i>Date of present decision:</i>	30 November 2016
<i>Subject matter:</i>	Expulsion to India
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture, non-refoulement
<i>Article of the Convention:</i>	3

1.1 The complainant is S.S., a citizen of India born in 1964. His request for asylum in Canada was rejected and, at the time of submission of the complaint, he was awaiting removal to India. He claims that his deportation would violate his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 2 January 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee requested the State party not to expel the complainant to India while the communication was being considered by the Committee.

1.3 On 5 June 2014, the State party requested the Committee to review its request for interim measures of protection. On 25 August and 12 September 2014, the complainant provided his comments on the State party's request for a review of the interim measures request. Having considered both parties' submissions, the Committee decided on 15 September 2014 to rescind its request on interim measures of protection.

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

** The following members of the Committee participated in examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.



The facts as presented by the complainant

2.1 The complainant submits that, on 22 July 2008, he and two other preachers of Sikhism were stopped and interrogated by the Indian police at the airport in Amritsar, India, as he returned from Canada. The police officers matched the complainant with a picture of a terrorist of similar appearance. Although the complainant strongly denied being involved in terrorism, the police officer struck and humiliated him. The complainant was then taken to a room and questioned, searched and accused of working for Sikh terrorists and of travelling abroad to meet with Sikh terrorists and to collect funds to revive terrorism in India. The complainant denied all accusations. The police took his fingerprints and photograph and made him provide a signature and informed the police of his district of the incident. The police also confiscated US\$500 from the complainant before releasing him.

2.2 On 1 September 2008, while returning from a Sikh temple in Amritsar, India to his village by bus, the complainant was stopped by the police and taken with two young people to the police station. It was alleged that the complainant had attended a meeting with terrorists at the temple, had worked with them, had promoted terrorism in Punjab and had hidden the terrorists' weapons at the temple, in order to earn commission payments from the terrorists. The complainant denied all the accusations. The complainant was detained and repeatedly tortured by the police. He was released following the intervention of an influential person in the community, who paid a bribe to the police. The complainant was ordered to report to the police every month. He was treated by a doctor.

2.3 On 10 November 2008, the police raided the complainant's home in India. He was arrested, transported to the police station and requested to identify militants arrested by the police whom he did not know. The police told the complainant that the terrorists had stated that he worked for terrorists and hid weapons at the Sikh temple. The complainant was tortured while detained for five days. He was released after the intervention of the same influential person of the community, who paid a bribe to the police. The complainant was treated by a doctor for his injuries.

2.4 On 4 May 2009, the complainant consulted a lawyer, who advised him to file a court case against the police. Following discussions with other family members, the head of the village was elected to file a court case against the police.

2.5 On 5 May 2009, the police raided the complainant's home and arrested him; he was detained for seven days, during which time he was tortured by the police. The police took his fingerprints and photograph and made him sign a blank piece of paper. The complainant was released after the payment of a bribe by the same influential member of the community. The complainant was again treated by a doctor. The complainant's injuries included burns on various body parts, partial amputation of his middle two fingers, injuries on both underarms, and a broken wrist and hand. The complainant still bears scars on his body, including stitches and burn marks. The complainant was hospitalized twice at a hospital in Amritsar, where he received antibiotics, antiseptics, anti-inflammatory medication, intravenous fluids, pressure bandages and stitches.

2.6 On 2 June 2009, the complainant, along with two acquaintances, fled to Canada. On 7 October 2009, he claimed refugee status in Montreal, but the claim was rejected on 21 May 2013. On 3 June 2013, the complainant sought leave to seek a judicial review of the decision of the Immigration and Refugee Board of Canada to the Federal Court. On 15 December 2013, the Federal Court refused to grant him leave to appeal.

2.7 The complainant was not offered a pre-removal risk assessment, since less than one year had elapsed since the denial of his refugee claim. At the time of submission of his complaint, he was subject to an active removal order. On 19 December 2013, the complainant went to the Canada Border Services Agency in Montreal. The officer of the Agency informed him that his application for leave to seek a judicial review from the

federal court had been declined, and that he was therefore liable to be removed to India. The complainant submits that he has exhausted all available and effective domestic remedies.

The complaint

3. The complainant claims that his deportation to India would violate his rights under article 3 of the Convention because he would be at personal risk of being persecuted, tortured and ill-treated.

State party's observations on admissibility and the merits

4.1 By note verbale of 2 July 2014, the State party submitted its observations on admissibility and the merits of the complaint. The complainant's claim was considered by the Refugee Protection Division of the Immigration and Refugee Board of Canada on 19 April and 1 May 2013. The Division is an independent, quasi-judicial, specialized tribunal that considers applications by foreign nationals seeking the protection of the State party because of a fear of persecution, torture or other serious violations of their human rights if they were to be removed to their country of origin.

4.2 The Division determines not only whether a person is a refugee within the meaning of the Convention relating to the Status of Refugees, but also whether the claimant is a person in need of protection under section 97 of the Immigration and Refugee Protection Act of Canada. Section 97 of the Act mandates the protection of persons facing a real risk of torture, within the meaning of article 1 of the Convention, on removal from the State party. Generally speaking, a person who is determined to be a "person in need of protection" has a statutory right under section 115 of the Immigration and Refugee Protection Act not to be removed. This statutory principle of non-refoulement is in addition to the rights guaranteed by the Canadian Charter of Rights and Freedoms.

4.3 The Refugee Protection Division holds oral hearings that are usually held privately and are conducted in an informal and non-adversarial manner. Officials from the Office of the United Nations High Commissioner for Refugees may observe the proceedings. Individuals seeking protection as refugees or protected persons are usually assisted by legal counsel and an interpreter and are given every opportunity to establish, through oral testimony and supporting documentary evidence, that they are refugees or persons in need of protection.

4.4 The State party further submits that members of the Division receive comprehensive, ongoing training in the provisions of the Convention relating to the Status of Refugees and other aspects of the State party's international legal obligations, including the obligation to protect against removal leading to torture or other equally serious violations of human rights. Division members are well informed and develop expertise in the prevailing conditions and events in countries where persecution or other human rights violations are alleged to occur. The Division comes to its conclusions based on the evidence adduced during the oral hearing and all available relevant documentation supplied to it. It communicates all its decisions in writing. The Division provides written reasons for all negative decisions, and for positive decisions if the Minister was not present when the Division rendered an oral decision, as well as reasons allowing a claim for refugee protection.

4.5 During the hearings on 19 April and 1 May 2013, the complainant was duly represented by counsel, had access to the assistance of an interpreter, and had a right to submit evidence and make submissions. The complainant provided oral testimony and had an opportunity to respond to questions posed by the Division to explain any perceived inconsistencies or ambiguities. By its decision dated 21 May 2013, the Division determined

that the complainant was not a refugee in need of protection, and that his removal would not subject him personally to a danger, believed on substantial grounds to exist, of torture within the meaning of article 1 of the Convention.

4.6 This decision was based on two grounds — that the complainant's claims were non-credible and that he has alternative possibilities for internal flight within India. The complainant continuously amended his testimony and, at times, contradicted himself when describing police treatment in his home country. While he claims that his hand had been broken as a result of torture, the doctor's letter he submitted does not corroborate this allegation. A letter from a Canadian doctor indicated that the complainant did have an old fracture of the hand.

4.7 The State party submits that the complainant also provided contradictory statements regarding affidavits from a doctor, a lawyer and a sarpanch (head of a village) in support of the claims. The complainant claimed to have contacted these persons on 19 April 2013, but later changed the date to 9 April 2013. These and other contradictions taken together, the State party submits, lead to the conclusion that the complainant has not presented credible and trustworthy evidence to substantiate his claim.

4.8 The State party further submits that, in addition to the lack of credibility, the Division found that there was no reason why the complainant could not safely reside in another part of India, for example Bangalore. The Division had considered the complainant's submission that he was not accused of any crime under Indian law. There is also documented evidence that the police would pursue a handful of cases against Sikhs in respect of individuals considered to be hard-core militants. The Division noted that there was no central police database and that records were kept locally. Security checks by police from another region are therefore extremely rare and difficult to conduct.

4.9 The State party submits that a judicial review of the Division's decision is available to the complainant, through a leave to appeal from the Federal Court. The complainant applied for this leave to appeal, but it was rejected on 28 October 2012 without any reason being given. On 21 May 2014, the complainant became eligible to apply for a pre-removal risk assessment, which he did on 30 May 2014. His removal has been stayed pending the outcome of the assessment. At the time of submission of his complaint, the complainant was not eligible to apply for the assessment or for permanent resident status on humanitarian and compassionate grounds.

4.10 The State party considers that individuals are not eligible to apply for a pre-removal risk assessment or application on humanitarian and compassionate grounds within 12 months of the decision of the Refugee Protection Division, in order to streamline the asylum system. The State party considers that risk assessments within 12 months are not generally necessary. The State party submits that it is only its good faith cooperation with the Committee's interim measures request that has allowed the complainant to remain in Canada and become eligible for the pre-removal risk assessment review. The State party contends that such interim measures should be appropriate only where there is strong evidence of a risk of irreparable harm if the claimant is returned to his or her home country.

4.11 In his complaint to the Committee, the complainant claims that, since his departure from India, his family members have been harassed by the police and security services. This claim regarding the family has not been put before domestic decision makers for consideration. In addition, the complainant has not made any reference to any risk to him from the security agencies, and has provided no evidence to the Committee in this regard. The State party submits that the fact that the complainant could pursue a domestic remedy in which his new allegations of risk on removal would be assessed renders this complaint inadmissible pursuant to article 22 of the Convention.

4.12 The State party submits that the complainant failed to substantiate a prima facie case that he personally faces a real risk of torture if returned to India. In addition, the complainant has not been able to substantiate his allegations of past torture. For example, in an affidavit, the complainant's wife claims that the complainant was arrested and tortured by the police, but provides no details or further information regarding these incidents. She does not claim that she personally witnessed the alleged mistreatment.

4.13 The complainant provides an affidavit from a Dr. M.S., which provides only general information regarding the complainant's condition. The document was drafted four years after the alleged mistreatment. The complainant also provides a letter from a lawyer, R.S., who submits that the complainant had sought legal advice from him, and that he told the complainant to file a formal complaint with the police regarding torture and mistreatment. The State party contends that this letter has no probative value. The lawyer does not claim to have witnessed the alleged torture or have detailed information about the alleged incidents.

4.14 As stated previously, the complainant further failed to substantiate the future risk of torture. Even if one accepts the allegations of past torture, the complainant must prove that he faces a risk of torture in the future, if returned to his home country. The complainant left his home country in 2009, and his spouse, children and siblings remain there. The complainant has not claimed to be a high-profile Sikh militant. He has further failed to provide any objective evidence that the police or other authorities in India would pursue him now, if he returns. The complainant's claims are based only on allegations found to be baseless by the Canadian decision makers.

4.15 The State party further contends that there is an alternative for the complainant to reside in another part of India. India is a secular State where religious freedom is respected by the Government.¹ Sikhs are able to practise their religion without restrictions in every state in India. Country reports make it clear that only high-profile Sikh militants continue to be at risk of arrest or of being pursued outside Punjab. Even when a country report indicates that Sikhs who hold or advocate particular political opinions may be subject to harassment, detention, arbitrary arrest or torture, such occurrences are typically confined to the Punjab area.² Country reports also indicate that police action does not ordinarily target any specific group or persons, but rather is motivated by the desire to extract a bribe. No general risk of ill-treatment exists for Sikhs who are returned to India, even if they express their ideological support for establishment of an independent state of Khalistan.³

4.16 The State party submits that the Refugee Protection Division, after full consideration of both the complainant's allegations and the situation in India, as adduced from objective reports, has determined that the complainant would not face a risk of torture if returned to India and that he would have the alternative of living in Bangalore, for example. There is nothing in the complaint to suggest otherwise. For this reason, and the other reasons mentioned above, the State party submits that the communication should be declared inadmissible.

Additional information from the complainant

5.1 In his replies, dated 31 August 2015 and 25 February 2016, responding to the State party's observations, the complainant submitted that the State party's domestic procedures are insufficient to provide a real guarantee against a possible violation of article 3 of the

¹ United States of America, Department of State, *India 2012 International Religious Freedom Report* (Washington, D.C., 2012).

² The State party refers to a 2013 report of the Research Directorate, Immigration and Refugee Board of Canada.

³ The State party refers to a 2013 report of the United Kingdom Home Office.

Convention. The complainant has submitted affidavits, reports from doctors and pictures depicting signs of torture as proof that he was subjected to torture in the past. Despite the absence of any real change for Sikhs in India, the State party is deporting them back to their home country, where they risk torture.

5.2 The complainant contends that he has established a strong prima facie case before the State party's domestic authorities and before the Committee. There is clear evidence, as submitted by the complainant, that he and his family have suffered torture and mistreatment. There is no reason to doubt these submitted documents. The State party is wrong in assuming that only high-profile Sikh militants are likely to be persecuted. In a report published in 2013, the United States Department of State suggested that the Government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents.

5.3 The complainant also reiterates his position towards the general human rights situation in India. There are reports of massive violations, including detention and torture of political activists, not only in Punjab, but in other parts of India as well. The complainant also refers to some documented evidence of mass graves and arbitrary detention of Sikhs. The State party authorities, including the Immigration and Refugee Board of Canada and the Federal Court, erred in applying the law and relied on erroneous findings of fact.

5.4 Regarding the suggested alternative of internal flight, the complainant submits that the alternative does not make sense. The State party's human rights obligations must be fulfilled, and the State party should not encourage impunity for those who subjected the complainant to abuse.

5.5 The complainant claims that, since his pre-removal risk assessment application has been denied, there are no domestic remedies left to him.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that, in the present case, the State party argues that the complainant has not availed himself of the pre-removal risk assessment process. The Committee also notes that, at the time of the consideration of the communication, the complainant's pre-removal risk assessment application had been considered and denied. Regarding the "new allegations" raised in the communication before the Committee, compared with the allegations placed before the domestic authorities, the Committee considers that the main thrust of the allegations put forward by the complainant remains the same throughout the proceedings. Accordingly, the Committee finds no obstacles to admissibility; it declares the communication admissible as far as the complainant's claim under article 3 of the Convention is concerned, and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 The Committee must determine whether the deportation of the complainant to India would violate the State party's obligations under article 3 (1) of the Convention not to expel or return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture there. The Committee recalls that the existence in a country of gross, flagrant or mass violations of human rights is not, in itself, a sufficient ground for believing that an individual would be subjected to torture.⁴ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that an individual might not be subjected to torture.

7.3 Recalling its general comment No. 1 (1997) on the implementation of article 3 of the Convention, the Committee reaffirms that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but it must be personal, present, foreseeable and real.⁵

7.4 The Committee takes note of the claim that the complainant was arrested and tortured by the police in Punjab. The Committee also notes that, according to the complainant, the State party's domestic authorities failed to take into consideration this information.

7.5 The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture and/or ill-treatment in the past, the question is whether he remains, at present, at risk of torture in India in the event of his forcible return there. The Committee notes that, while the complainant has made a number of assertions and allegations, he has not provided a clear evidence to substantiate the risk of torture, if returned to India.

7.6 The Committee also notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's accounts and submissions which cast doubt on his general credibility and the veracity of his claims. The Committee notes that the complainant failed to provide dates, locations and names of persons involved in the events central to his claim for protection, and notes in particular the lack of details and description regarding his alleged arrests and instances of torture suffered at the hands of the police authorities in Punjab.

7.7 The Committee further observes that the complainant merely stated before the Immigration and Refugee Board of Canada that he feared being subjected to torture if he was returned to India, claiming that he had been tortured in the past, and that he would be targeted again. The Committee notes, however, that the complainant does not put forward any evidence that the authorities in India would target him if he is returned.

7.8 The Committee recalls that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and that it is generally for the complainant to present an arguable case.⁶ In that regard, the Committee, in addition to the lack of detailed information about the alleged instances of torture, also notes the discrepancies as described by the State party. In the light of these considerations, and on the basis of all the information submitted by the complainant and by the State party, including information on the general situation of human rights in India, the Committee considers that the complainant has not provided

⁴ See communication No. 428/2010, *Kalinichenko v. Morocco*, decision adopted on 25 November 2011, para. 15.3.

⁵ See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

⁶ See, inter alia, communications No. 298/2006, *C.A.R.M. and others v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.

sufficient evidence to enable it to conclude that his forcible removal to his country of origin would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

8. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's expulsion to India would not constitute a violation of article 3 of the Convention.
