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HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13 – 31 March 2006

DECISION

Communication No. 1315/2004

Submitted by:	Mr. Daljit Singh (represented by counsel)
Alleged victim:	The author
State Party:	Canada
Date of communication:	21 September 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 29 September 2004 (not issued in document form)
Date of decision:	30 March 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Deportation to country of origin with risk of torture

Procedural issues: Interim Measures/Request by State party to lift Interim Measures

Substantive issues: Risk of torture and death, review of expulsion order, unfair "suit at law", and ineffective remedy

Articles of the Covenant: 2, 6, 7, 13, 14

Articles of the Optional Protocol: 1 and 2

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Eighty-sixth session

concerning

Communication No. 1315/2004*

Submitted by:	Mr. Daljit Singh (represented by counsel))
Alleged victims**:**	The author
State Party:	Canada
Date of communication:	21 September 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 30 March 2006,

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication is Mr. Daljit Singh, an Indian citizen, currently awaiting deportation from Canada. He claims that his deportation would result in violations, by Canada, of his rights under articles 2, 6, 7, 13 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

1.2 On 5 November 2004, the Human Rights Committee, through its Special Rapporteur on New Communications, requested the State party, pursuant to Rule 92 of its Rules of Procedure, "not to deport the author before it provides the Committee with information as to whether it intends to remove the author to India, and before providing to the Committee its observations on the communication, pursuant to Rule 97 (old 91) of the Rules of Procedure." On 9 November 2004, following a request for clarification, the Committee requested the State party, "not to deport Mr. Daljit Singh to India before the State party has made its observations either on admissibility or the merits of the author's allegations and the Committee has acknowledged receipt".

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The facts as presented by the author

2.1 The author lived in the village of Sonet, Ludhiana District, Punjab. He is the owner of a trucking company and owned four trucks. He is married and has two children. His wife and children remain in the village of Sonet. His mother, brother, sister and their respective families all live in British Columbia, Canada. His father died on 1 June 1999 in British Columbia.

2.2 On 15 September 1998, the author's brother-in-law and the driver of one of the author's trucks were stopped by police in Jammu and were accused of supporting a militant group. The author was arrested at 5.00am the following day at his home and detained by police. He claims that while in detention he was beaten and tortured. On 17 September, he was released thanks to the intervention of the mayor (Sarpanch), of the village, the village council and the president of the truckers' union, on the condition that he would report to the police about the militants' activities. A bribe was paid for his release. The author claims that his brother-in-law and his driver were detained for one week and tortured. They were released on the same conditions as he. He claims that all three of them had medical treatment after their release.

2.3 In April 1999, the author was arrested again because he was suspected of helping the militants transport arms, munitions and explosives. After two days of detention, during which he claims that he was tortured again, his release was granted upon the intervention of the village mayor (Sarpanch), with the condition that he report monthly to the police station with information regarding his driver and other militants. He claims that he underwent medical treatment following his release and suffers from post traumatic stress disorder as a result. Fearing for his life, he decided to flee India**.** He claims that his wife and son were tortured in April 2003 after his departure.

2.4 On 3 June 1999, the author applied for and received a tourist visa to enter Canada to attend his father's funeral. On 6 June 1999, he arrived in Canada and on 30 June 1999, he applied for asylum. On 15 December 2000, his refugee claim was heard by the Refugee Division of the Immigration and Refugee Board ("the Board"), which decided, on 28 February 2001, that the author was not a Convention refugee because his testimony was implausible. His account of events was found not to have been credible.

2.5 On 10 July 2001, the Federal Court denied the author leave to apply for judicial review of the Board's decision. On 5 November 2003, the author's Pre-Removal Risk Assessment Application ("PRRA") was assessed negatively. On 5 November 2003, his application for permanent residence in Canada on humanitarian and compassionate grounds was denied. On 18 December 2003, the author applied for leave to apply for judicial review of the PRRA decision and a motion for stay of removal. On 19 January 2004, the Federal Court granted the stay of removal until a decision on the leave to apply for judicial review was made. On 3 May 2004, leave to apply for judicial review was denied by the Federal Court.

The complaint

3.1 The author claims that, if he is removed to India, the State party would be in violation of articles 6, and 7 of the Covenant, to the extent that he will be subjected to torture, have no possibility of obtaining medical treatment, and possibly lose his life. In support of his claim, he refers to the torture he allegedly suffered in 1998 and 1999, and the allegation that his family members were beaten and harassed by the police since his departure.

3.2 The author claims that domestic proceedings leading to the removal order also violated articles 13, 14, and 2, of the Covenant. He claims that article 13 was violated by the "procedures" employed in this case and that the PRRA procedure is contrary to the Canadian Charter for Rights and Freedoms. He claims a violation of article 14, as the domestic authorities failed to consider carefully the evidence submitted in support of his case. Medical reports and photographs establishing that he and some of his family members are victims of torture, affidavits from the mayors of the surrounding villages about the problems he had had with the police, and a report following an investigation from the Sikh Human Rights Group into the incidents in question were not considered by the domestic authorities. In addition, information from other sources on the general human rights situation in India was not considered including, a Human Rights Watch Report of 10 June 2003, and an academic journal. The Board's and the PRRA's analysis of the human rights situation in India is said to be inaccurate. The author requests the Committee to review the evidence he submitted to the Federal Court, which in his view is sufficient proof of his current psychological state and the risk he will face if removed. [1]

3.3 The author also claims a violation of articles 14 and 2, as the legal remedies available to him are ineffective. He alleges that there is no independent scrutiny in Canada of the risk of torture that asylum seekers may face upon return to their country of origin, and that procedures are administrative and result in summary decisions of deportation. PRRA officers are not independent, since they are employees of the Ministry which wishes to deport the applicant, and there is no effective judicial control of their decisions. An applicant must first apply for leave to appeal to the Federal Court and if granted the Court may only review errors of law. The author refers to the judgment of the Federal Court in a separate case, in which the Court set aside the decision of the immigration officer as it was considered to have been unreasonable and sent the matter back for reconsideration, to demonstrate that the PRRA procedure is ineffective He claims that the effectiveness of the judicial remedies in Canada was severely criticized by the Inter-American Commission of Human Rights, in a report dated 18 September 2001, on the situation of human rights of Asylum Seekers within the Canadian refugee Determination system (2000).

State party's submission on admissibility and merits

4.1 On 22 December 2004, the State party contested the admissibility and merits of the communication. It submits that although it is of the view that the author has not exhausted domestic remedies, it is not contesting admissibility on this ground, given the lack of merit of the author's claims and the State party's wish to have the case dealt with as soon a possible.

4.2 The State party argues that the author has not sufficiently substantiated his claims under articles 6 and 7, for the purposes of admissibility. He confines himself to broad allegations

[1] The author provides the following: information on the general human rights situation in India from NGOs; an affidavit from an Indian lawyer corroborating his story; a medical report of 31 May 2000 which concludes "this man's objective physical findings and his subjective allegations of torture are not incompatible"; a psychological report of 20 June 2000, which concludes that it is plausible that the post traumatic stress disorder suffered by the author results from the traumatic events reported by him, in particular torture in detention; photocopies of photographs of the author's back (too difficult to assess); and affidavits from mayors of villages in his region corroborating his story.

that he would suffer a severe risk of torture based on the same facts and evidence as presented to Canadian tribunals. The State party relies on the findings of the Board and PRRA officer with respect to the author's lack of credibility, and submits that it is not within the scope of the Committee to re-evaluate findings of credibility or to weigh evidence or re-assess findings of fact made by domestic courts or tribunals.

4.3 If the Committee wishes to re-evaluate the findings with respect to the author's credibility, the State party submits that his testimony about the relevant events contained contradictions, inconsistencies and improbabilities. It provides examples of such contradictions including the following: part of the author's written account was strikingly similar, in parts identical, to accounts from other unrelated claimants, also from India; the author's oral and written accounts about his employee, whom police allegedly accused of being involved with the militants, were contradictory; the allegations concerning his brother-in-law were contradictory and lacked credibility, in particular the allegation that although he had been caught with arms, explosives, and fake currency in his truck, he was released without charge, and continues to live in India; and similarly that the author's son, who was a registered owner of one of the trucks, had also been able to remain in India.

4.4 As to a photo the author provided to support the claim that his wife and son were tortured in April 2003, which was presented for the first time to the PRRA officer, the State party submits that the officer did not accord this photo any weight, considering that it could have been any woman and any young man on a hospital bed covered in bandages. Nor was it proof that even if the photo depicted the author's relations, that they had been tortured. The State party argues that if the author was able to obtain a photo of them in hospital, he could also have obtained a medical report corroborating their injuries, which he failed to do. If they had been tortured, the State party questions why they continue to live in their home town and have neither fled to another part of India nor out of the country altogether.

4.5 As to the medical report submitted to the Board, despite the conclusion that "this man's objective physical findings and his subjective allegations of torture are not incompatible", the Board did not attach probative value to the medical report because of its negative assessment of the credibility of the author and contradictions in his story about the origins of scars on his back. As to the psychological report, although the psychologist concluded that her analysis led her to believe that it was completely plausible that her diagnosis of post traumatic stress disorder is a result of the impact of the traumatizing events the author alleged to have undergone, the Board considered that there was no direct evidence, other than his own allegations, that he was exposed to traumatic events. Since the allegations were not found to be credible by the Board, the psychologist's report which was based on those allegations was not given probative value. The State party submits that doubts about the most important aspects of the author's story so seriously undermine his credibility that his allegations, are insufficient to substantiate his claim that he would be at risk of death or cruel and unusual treatment if returned to India.

4.6 As to the human rights situation in India, the author has not established that he would be at "personal risk" in India. Even if the human rights situation in India on occasion gives rise for concern, it is not sufficient by itself to be the basis of a violation of the Covenant if the author returns there. However, in the event that the Committee wishes to consider the human rights situation in India, the State party submits that the situation does not provide corroboration of the author's allegations. The human rights situation in India pertaining to

Sikhs has improved so much that there is negligible risk of torture or any other ill-treatment on the part of police towards Sikhs. The State party refers to the country reports relied upon by the PRRA officer (Danish Immigration Service Report of 2001 and US Country Report 2002), stating that the situation of Sikhs in the Punjab is now stable and that only those considered to be high-profile militants may be at risk. The State party submits that it has taken into consideration the other reports submitted by the author including a 1999 report entitled "Lives Under Threat", which describes the present persecution of Sikhs in India, as well as a 2003 report by SikhSpectrum.com monthly which discusses judicial impunity for disappearances in the Punjab. The State party submits that the fact that abuses of human rights occurred in the past and impunity may continue in some cases does not render the author's story credible or substantiate his allegations. As to the judgement of the Federal Court in the case of Singh Shahi, in which the Court set aside the decision of the immigration officer and sent the matter back for reconsideration, the State party argues that this case demonstrates that the process is effective, as cases that warrant reconsideration will be reviewed. In this regard, the State party refers to the decision of the Committee against Torture, which having considered the case of B.S.S., did not find a violation of the Convention, and in fact commented on the effectiveness of the judicial remedies in Canada.[2]

4.7 The State party submits that the author has not substantiated his allegation, even on a prima facia basis, that he would be killed if returned to India. On article 7, the State party submits that the allegations do not establish risk at a level beyond mere "theory or suspicion" and do not establish a real and personal risk of torture or cruel, inhuman or degrading treatment or punishment. In the alternative, if it is suspected that the author was tortured in the past, which the State party denies, it was not in the recent past and is not by itself proof of a risk of torture in the future.

4.8 In the alternative, the State party argues that if the author does face a risk of death, torture or cruel, inhuman or degrading treatment or punishment if he returns to the Punjab, he has not shown that he does not have an internal flight alternative. Even though he may face hardship should he not be able to return home, that hardship would not amount to any treatment in violation of the Covenant.[3] Finally, even if all the contradictions in his story were overlooked and his evidence were regarded as credible, the fact that he allegedly fears mistreatment by the police if returned to India, and documentary evidence shows that at the present time this type of abuse is only directed against high profile militants. As the author is not a high profile militant, he is not someone who is likely to be targeted by the police.

4.9 As to the claims under articles 2, 13 and 14, the State party submits that these claims are inadmissible on the grounds of incompatibility with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol. It invokes the Committee's jurisprudence to demonstrate that article 2 does not recognise an independent right to a remedy but arises only after a violation of a Covenant right has been established. In the alternative, the Covenant rights alleged to have been violated therein are rights protected in the Canadian Charter of

[2] B.S.S v. Canada, Communication No. 183/2001, Views adopted on 12 May 2004.

[3] In this regard, it refers to the decision of the Committee against Torture, in B.S.S v. Canada, Communication No. 183/201, Views adopted on 12 May 2004, in which it found that although resettlement outside the Punjab would constitute a considerable hardship for the complainant the mere fact that he may not be able to return to his family and his home village does not amount to torture within the meaning of article 1 of the Convention.

Rights and Freedoms. It is argued that article 13 does not apply to the author, as he was determined not to be at risk in India, is subject to a lawful removal order and is not thus "lawfully in the territory" in Canada. The State party invokes the Committee's General Comment 15 and its finding in Maroufidou v. Sweden[4], in which article 13 is considered to regulate only the procedure and not the substantive grounds for expulsion, and its purpose is to prevent arbitrary expulsions. The author has not established that the proceedings leading to the removal order against him were not in accordance with lawful procedures, or that the Canadian Government abused its power.

4.10 The State party submits that refugee and protection determination proceedings do not fall within the scope of article 14. They are in the nature of public law, the fairness of which is guaranteed by article 13.[5] In the alternative, if the immigration proceedings are considered to be the subject of article 14, the State party argues that they satisfy the guarantees contained therein. The author's case was heard by the Refugee Division of the Immigration and Refugee Board, an independent tribunal. He knew the case he had to meet, was represented by counsel, and had a full opportunity to participate, including testifying orally and making written submissions. He had access to judicial review, as well as the right to make a humanitarian and compassionate application.

4.11 As to the author's general claims relating to the scope of judicial review by the Federal Court and the PRRA procedures, the State party notes that it is not within the scope of the Committee to evaluate the Canadian system in general, but only to examine whether in the present case Canada complied with its obligations under the Covenant. In any event, there are previous decisions of international tribunals, including this Committee, which considered the impugned processes to be effective remedies[6]. While the Committee against Torture recently questioned whether the PRRA process could be effective in the case of one complainant[7], due to its assumption that the risk assessment would be limited to new evidence in that case, in the current case, the PRRA officer considered all of the submissions and evidence presented

[4] Communication No. 58/1979, Views adopted on 9 April 1981.

[5] In this regard, it refers to Y.L. v. Canada, Communication No. 112/1981 (1986), Decision adopted on 8 April 1986, V.M.R.B. v. Canada, Communication No. 236/1987, Decision adopted on 18 July 1988, and Ahani v. Canada, Communication No. 1051/2002, Views adopted on 29 March 2004.

[6] Inter-American Commission on Human Rights, Organisation of American States, Report on the Situation of Human Rights of Asylum Seekers within the Canadian refugee determination system (2000). Human Rights Committee Views: Abu v. Canada, Communication No. 654/1995, Views adopted on 18 July 1997; Badu v Canada, Communication No. 603/1994, Views adopted on 18 July 1997, Nartey v. Canada, Communication No. 604/1994, Views adopted on 18 July 1997. Committee against Torture Decisions: P.S.S. v. Canada, Communication No. 66/1997, Views adopted on 13 November 1998; P.S. v. Canada, Communication No. 86/1997, Views adopted on 18 November 1999; R.K. v. Canada, Communication No. 42/1996, Views adopted on 20 November 1997; L.O. Canada, Communication No. 95/1997, Views adopted on 19 May 2000; M.A. v. Canada, Communication No. 22/1995, Views adopted on 3 May 1995. European Court of Human Rights: Vilvarajah and Others v. United Kingdom, 14 E.H.R.R- 218 (1991), para. 126.

[7] See Falcon Rios v. Canada, Communication No. 133/1999, Views adopted on 23 November 2004.

by the author, including new evidence as well as that previously submitted to the Board, in her assessment of the risk he might face upon return.

4.12 If the Committee were to find the communication admissible, the State party requests the Committee to find the case without merit.

Author's comments

5.1 On 20 March and 3 September 2005, the author commented on the State party's submission. He sets out the historical situation in the Punjab from the 1980s onwards in great detail to demonstrate that the author would be at risk of torture if returned there. On the alleged contradictions in his story, the author submits that it is not unusual that his story might resemble the stories of other Sikh truck drivers, as there is a high number of Sikhs in the trucking industry and many of them have been detained and tortured for giving rides to militants, or because of suspicion that they were carrying ammunition for the militants. He denies that he provided contradictory evidence on his employee and submits that his brother-in-law is in hiding and that his son has faced severe harassment. Despite the State party's claim to the contrary, the author insists that the pictures of the marks on his back were presented to the Board. He denies that no new evidence was presented to the PRRA and refers to the affidavits of the four local mayors (Sarpanch) relating to the danger he would suffer on return and the detention of his wife and son.

5.2 As to his claims of torture, the author submits that according to the evidence presented before the Indian Human Rights Commission, the Indian courts and international human rights organisations, the detention and torture he has described is consistent with the *modus operandi* of the Punjab police. The author notes that quotations from the Danish Immigration Service report referred to by the domestic authorities do not reflect the true conclusions of the report. Arbitrary arrests continue to take place, individuals other than those who are high profile are at risk, and there is no clear internal flight alternative. Other reports, including the Amnesty International Report of 2003, attest to this claim. The author provides further information to demonstrate the inadequacy of the system of review of asylum claims under the PRRA and the Federal Court.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 As to the author's allegation that he was not afforded an effective remedy to contest his deportation, the Committee observes that the author has not substantiated how the Canadian authorities' decisions failed in this case thoroughly and fairly to consider his claim that he would be at risk of violations of articles 6 and 7 if returned to India. In these circumstances, the Committee need not determine whether the proceedings relating to the author's deportation fell within the scope of application of articles 13 (as a decision upon which an alien lawfully present is expelled) or 14 (determination of rights and duties in a suit at law) [8]. This part accordingly is inadmissible under article 2 of the Optional Protocol.

[8] . See Committee's Views on communication No.1051/2002, Ahani v. Canada, para 10.5.

6.3 The Committee recalls that States parties have the obligation not to expose individuals to a real risk of being killed or subjected to torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement[9]. The Committee must therefore decide whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his removal to India, the author would be subjected to treatment prohibited by Articles 6 and 7[10]. The Committee notes that the Refugee Division of the Immigration and Refugee Board, after thorough examination, rejected the asylum application of the author on the basis of lack of credibility the implausibility of his testimony and supporting evidence (para. 2.4 above) and that the rejection of this Pre-Removal Risk Assessment application was based on similar grounds. It further notes that in both cases applications for leave to appeal were rejected by the Federal Court (para. 2.5 above). The author has not shown sufficiently why these decisions were contrary to the standard set out above, nor has he adduced sufficient evidence in support of a claim to the effect that he would be exposed to a real and imminent risk of violations of articles 6 and 7 of the Covenant if deported to India. The Committee accordingly concludes that his claim is also inadmissible as insufficiently substantiated under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.

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

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[9] See General Comment No.20[47], 1992, paragraph 9.

[10] . See Views on communications 706/1996 , T. v. Australia, 4 November 1997, paragraphs 8.1 and 8.2; No.692/1996, A.R.J. v. Australia, 28 July 1997, paragraph 6.9