



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

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Committee against Torture

Communication No. 512/2012

**Decision adopted by the Committee at its fifty-fifth session
(27 July-14 August 2015)**

<i>Submitted by:</i>	Mr. Y (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	6 January 2012 (initial submission)
<i>Date of present decision:</i>	28 July 2015
<i>Subject matter:</i>	Deportation to Pakistan
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies
<i>Substantive issues:</i>	None
<i>Articles of the Convention:</i>	Articles 3 and 22



Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)

concerning

Communication No. 512/2012*

Submitted by: Mr. Y (not represented by counsel)

Alleged victim: The complainant

State party: Canada

Date of complaint: 6 January 2012 (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 28 July 2015,

Having concluded its consideration of complaint No. 512/2012, submitted to it by Mr. Y under article 22 of the Convention,

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

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Mr. Y, a Pakistani national born on 2 September 1957. He claims that his deportation to Pakistan would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is not represented by counsel.

1.2 On 18 July 2012, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author to Pakistan while the complaint was being considered. On 30 April 2014, the Committee, acting through the same Rapporteur, denied the request of the State party to lift interim measures.

The facts as presented by the complainant

2.1 The complainant asserts that in 1988, he and his family converted to the Shia faith and joined the Pakistan Peoples Party (PPP) and that in 1990, when the PPP lost its status as the ruling party to the Islami Jamhoori Ittehad, he began to be targeted by “Sunni activists” who were living in the neighborhood and who did not approve of his conversion to the Shia faith and membership in the PPP. In March 1991, Sunni activists beat his 7-

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

year-old son in the street for no apparent reason, and when the complainant approached the activists, they told him that Shias are non-believers whose presence is no longer tolerated in Pakistan. When he tried to report the incident, the police refused to register the complaint on the ground that they could not file a report against members of the ruling party. The same day, eight Sunni activists broke into the complainant's home and beat him, telling him that converts deserved to die.

2.2 The complainant maintains that the local police, rather than providing him with support after the attack in his home, a few days later raided his home and arrested him, keeping him blindfolded and moving him from one place to another without any explanation. He claims that he was detained in a dark cell and given only one meal a day; that he was forced to stay awake throughout the night; that the police officers yelled at him that he would remain in detention unless he renounced his support for the PPP and converted back to the Sunni faith; that the officers beat him, dragged him across the floor, kicked him and interrogated him concerning his involvement with Shia leaders and his activities with the PPP; that he was not allowed family visits or access to a lawyer; and that his entire body and face were swollen due to the constant torture he endured. On one occasion, the complainant was taken into an interrogation room where he was kicked, punched and cursed at, causing him to fall on the floor and crack his nasal bone, which resulted in a loss of blood and blinding pain. The police officers forced him to stand up, gave him a towel for his bleeding nose, and told him they would free him if he signed a blank piece of paper and dated it 19 September 1991. He signed the paper out of fear of further beatings. Later that night, the officers blindfolded him, ushered him into a van and left him in a deserted area about 2 kilometres from his home. He managed to reach a friend whom he called from a nearby grocery store. The friend took him to the hospital, where he underwent an X-ray examination, which revealed a fracture of his eye socket and nasal bone. The complainant stayed at the hospital for a few days to be operated on. During his stay at the hospital, the complainant's friends told him that his family had left their home to go into hiding in a village in Maqboolpur, which is about 210 kilometres away in the Jhang District. The complainant submits that because his house had been looted and his family had fled, he decided to join his family in the Jhang District. He soon realized, however, that this area was more dangerous, owing to a higher level of religious intolerance. He was soon identified by the leading party as an opponent once he started attending Shia services, and his friends alerted him that he was on the hit list of the political party Sipah-e-Sahaba, and should therefore leave the country. The complainant alleges that when he was in detention, his wife's uncle, a fanatical Sunni cleric named S.A., had tried to convert the complainant's wife back to the Sunni faith, and that S.A. had always opposed his niece's marriage to the complainant because the latter did not belong to the extended family and had ruined his niece's life by converting to the Shia faith.

2.3 The complainant submits that on 11 August 1992, he managed to flee to the United States of America with counterfeit documents. He filed an asylum application there based on political grounds and did not mention that the main reason for his departure from Pakistan was his religion because he had been told that the American authorities did not accept asylum applications based on religious grounds. The American immigration court, while not challenging his credibility, rejected his application on the ground that the situation was improving in Pakistan. However, the complainant argues that he remained in the United States for the following 10 years because the American authorities were considering granting amnesty for illegal immigrants. The amnesty policy for illegal immigrants was cancelled in the wake of the events of 11 September 2001. The complainant therefore decided to flee to Canada in 2003 and seek asylum there, as he feared being removed to Pakistan, where he believed he would be a victim of an honour crime by his wife's uncle.

2.4 The complainant maintains that while he was in the United States, he kept in touch with his wife through the Internet and through phone calls, but that when he moved to Canada in 2003, his wife suddenly fell out of touch. His relatives informed him that his wife's uncle had persuaded her to file for divorce and convert back to the Sunni faith. The divorce was pronounced in December 2003, but the complainant only found out about it in May 2004. The complainant asserts that the divorce ignited tensions among his relatives; that his ex-wife's relatives stated that he had ruined her life and that they would avenge this; that one of his nephews was murdered; that the complainant's cousin, her son and her niece were also subsequently murdered; and that the complainant's ex-wife's relatives admitted to committing those murders and threatened that they would kill him if he returned to Pakistan.

2.5 The complainant claims that he arrived in Canada on 3 March 2003 and filed his refugee claim on the same date. He was informed that he would be given a hearing, but he never received any notice of the time and place of the hearing. He was later informed that he had not appeared at the hearing and that his refugee claim had been rejected on that basis. The complainant then filed an application for a pre-removal risk assessment (PRRA), which was rejected on 18 October 2011 on the ground that he had not established a risk of being killed, persecuted, tortured or subjected to cruel, inhuman or unusual treatment or punishment should he be returned to Pakistan. After the PRRA application was rejected, the complainant applied to the Federal Court for judicial review; that application was rejected on 13 July 2012.

The complaint

3.1 The complainant claims that the State party would violate article 3 of the Convention by removing him to Pakistan, where he faces persecution by three different groups. He asserts that he is at risk of being harmed by the ruling political parties in Pakistan (namely, the Islami Jamhoori Ittehad, which is a coalition consisting of the Muslim League, Jamaat-e-Islami and a few other parties); by unnamed religious parties that have been killing thousands of Shia Muslims over the past two decades in Pakistan; and by his former in-laws, who, led by his ex-wife's uncle S.A., have vowed to obtain revenge because the complainant made his ex-wife convert to the Shia faith. The complainant asserts that he would "definitely be tortured and killed" if he were to return to Pakistan.

3.2 The complainant recalls that in 1991, he was illegally arrested, detained and tortured by members of the Islami Jamhoori Ittehad, which has become influential in Pakistan. He argues that one of the perpetrators, I.K., has been involved extensively in kidnappings, drug trafficking, rape, killings and torture and personally knows S.A., which renders the complainant more vulnerable. The complainant submits that the police has never taken any action against I.K.

3.3 The complainant argues that he most fears persecution by unspecified religious parties, some of which have become increasingly involved in bombings and killings of Shia Muslims. He maintains that if he returns to Pakistan, he will be targeted by those religious parties and the police will not do anything to protect him, especially since S.A. wields influence throughout the country.

3.4 As for the fears of persecution from his former in-laws, the complainant argues that the previous four killings that occurred within his family were premeditated, and that the killers were not convicted because they left very little evidence. He maintains that the perpetrators are therefore free, and that the police is not actively investigating the crimes because the victims' families are not wealthy enough to offer bribes and are not well-connected with high-ranking officials or politicians. The complainant argues that if he returns to Pakistan, he will be discovered and targeted by his former in-laws.

3.5 The complainant submits translations or copies of the following documentation in support of his claims: a judgment dated 6 December 2003 granting the complainant's ex-wife's claim for dissolution of marriage; a police report filed in Lahore, Pakistan, by N.A. in 2005, concerning an attack on his son, who the complainant states is his nephew; a police report filed in Lahore concerning what the complainant refers to as the triple murder of his cousin, her son and her brother's daughter in 2009; an affidavit dated 16 August 2011 from M.M., who states he is the complainant's cousin and generally supports the complainant's allegations concerning the threat he faces from political rivals and his in-laws; and an affidavit dated 16 August 2011 from K.M., who states he is the President of the Pakistan Canada Cultural Equation of Manitoba and a longtime friend of the complainant and claims that the complainant will face grave danger if he returns to Pakistan, due to his membership in the PPP and his conversion to the Shia faith.¹

State party's observations on admissibility and the merits

4.1 On 9 January 2013, the State party submitted its observations on admissibility and the merits of the communication. The State party adds certain facts concerning the complainant's refugee status applications. It notes that the complainant's refugee claim in the United States was rejected in 1993, and that the complainant alleges that the reason for which the claim was rejected was that the political situation in Pakistan was improving. The complainant also claims that he had been advised not to raise a risk of persecution based on religious belief in his asylum application in the United States and that therefore the United States officials had considered only his claim of persecution on account of his political beliefs. The complainant remained unlawfully in the United States until March 2003, when he came to Canada. The complainant's refugee claim in Canada was deemed abandoned on 22 April 2004, after he failed to confirm his readiness to appear for his refugee hearing and further failed to appear at a hearing in the abandonment proceedings.

4.2 The State party considers that the communication is inadmissible due to the failure by the complainant to exhaust domestic remedies, because he never enquired into or applied for a reopening of his abandoned refugee claim. The refugee claim would have afforded him an oral hearing on the merits of his claim for protection. The complainant has also had 10 years to apply for residency on humanitarian and compassionate grounds (H&C), and has not done so.

4.3 The State party further considers that the communication is inadmissible because it is manifestly unfounded. The complainant has not substantiated that he is at personal risk of torture or other serious harm in Pakistan. He has not provided any independent evidence to substantiate his allegations of police mistreatment 20 years ago. He claims to fear harm as a supporter of the PPP, which is currently in power in Pakistan. Current country reports on Pakistan do not suggest that he would face a personal risk of torture at the hands of religious extremists, either as a supporter of the PPP or as a convert to Shiism. Concerning his claims of a risk of harm from religious extremists, he has not substantiated that he would be personally targeted by extremist groups on account of his Shia faith. A quarter of the population in Pakistan belongs to the Shia faith, and while there have been some attacks by extremist Sunni groups against Shia gatherings, religious sites and practitioners in recent years, a significant portion of this violence appears to have been against Hazara Shias.²

¹ The complainant also provides various newspaper articles and reports relating to honour killings, sectarian violence, and killings for blasphemy in Pakistan.

² The State party cites United States Department of State, 2011 International Religious Freedom Report: Pakistan, pp. 1 and 22, available from www.state.gov/j/drl/rls/irf/2011/; Human Rights Watch, World Report 2012: Pakistan; Amnesty International, *Amnesty International Report 2012: The State of the World's Human Rights*, p. 262 ff.

Recent human rights and religious freedom reports on Pakistan do not refer to any incidents of torture or other mistreatment of Sunni Muslims who convert to Shi'ism.³ Lastly, the complainant has not provided independent evidence to support his allegations concerning the alleged threat of future harm from his former in-laws. There is no reason to believe that his ex-in-laws would seek to harm him today, more than 20 years after his departure from Pakistan. Moreover, the documentation provided by the complainant does not establish a risk of such harm. The divorce papers state that the marriage was dissolved because of the complainant's cruelty and because he abandoned his ex-wife to go to the United States; they do not establish that the complainant's in-laws are responsible for the divorce, or that they bear ill-will towards him. The police reports do not establish a link between the deaths of the complainant's relatives and the alleged harm he fears, nor do they suggest that the perpetrators were motivated in any way by a desire to retaliate against him. The personal letters provided were written by individuals who have an interest in seeing the complainant remain in Canada and who reside in Canada and therefore lack first-hand knowledge of the allegations made. The letters feature hearsay and broad allegations in relation to the complainant's claims. Moreover, the newspaper clippings provided by the complainant indicate that honour killings are mostly related to sexual infidelity, and there are no reports of honour killings due to religious conversion. The clippings reporting sectarian violence against Shias in Pakistan do not establish that the complainant would be personally at risk of torture upon removal.

4.4 The State party also considers that the communication is inadmissible pursuant to rule 113 (c) of the Committee's rules of procedure and article 22 of the Convention, because the harm the complainant fears at the hands of his former family members does not constitute torture within the meaning of article 1 of the Convention. He fears being the victim of an honour killing at the hands of non-governmental actors. The Committee has consistently held that fears of harms inflicted by non-governmental actors without the consent or acquiescence of the State fall outside the scope of torture as defined by article 1 of the Convention.⁴

4.5 The State party further considers that the Committee is not competent to reevaluate findings of credibility or fact made by competent domestic authorities. The allegations set forth by the complainant are substantially the same as those made in the PRRA and before the Federal Court of Canada. The national proceedings disclose no manifest error or unreasonableness and were not marred by serious irregularities.

4.6 Finally, the State party considers that the communication is wholly without merit, for the reasons set forth above.

Complainant's comments on the State party's observations

5.1 On 30 May 2013, 7 August 2013, 16 August 2013, 4 September 2013, 7 November 2013, 10 July 2014, 27 November 2014 and 10 June 2015, the complainant provided additional comments and documentation. He asserts that he abandoned his refugee claim owing to the State party's failure to communicate with him, not because of any error on his part. The complainant had a lawyer when he filed his refugee claim, but the lawyer stopped pursuing the case when he did not get paid (the complainant's application for legal aid was

³ The State party cites United States Department of State, 2011 International Religious Freedom Report: Pakistan and *Amnesty International Report 2012*.

⁴ The State party cites, inter alia, communications Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, Views adopted on 15 May 2000, para. 13.8; No. 218/2002, *L.J.R.C. v. Sweden*, decision adopted on 22 November 2004, para. 5.2; and No. 49/1996, *S.V. v. Canada*, Views adopted on 15 May 2001, para. 9.5.

rejected and he did not have sufficient funds to pay the legal fee). The complainant then decided to pursue his claim without assistance from counsel, but never received a call or mail from the Immigration and Refugee Board, because the correspondence sent by the Board went to the wrong address.

5.2 In response to the State party's observation that he did not try to have his refugee claim reopened, the complainant states that he contacted "some consultants", who told him that it had been over a year and the Immigration and Refugee Board might not reopen his case, so he should wait for the immigration department to call him for a PRRA application. The complainant states that he had "no choice but to wait for their call". He also maintains that when he found out that his refugee claim had been abandoned, he called the Board and his call was taken by a rude agent "who became very angry at him for abandoning the claim". The complainant further argues that when he informed the agent that he had not received any mail from the Board, she replied: "Don't lie to me, I can send you back." The agent then advised the complainant that his lawyer should file an application for a reopening of the claim. As he did not have a lawyer and was unable to procure one because he could not afford the required \$2,000-\$5,000 upfront fee, he asked "some consultants" about reopening the claim, but they told him that only lawyers were able to file such applications.

5.3 In response to the State party's observation that he has not filed an application for humanitarian and compassionate consideration, the complainant states that he asked some consultants about the application process and determined that there were three reasons it was not an effective remedy for him: the application would take more than two years to be decided, and the complainant has seen several individuals be deported while their applications for humanitarian and compassionate consideration were pending; the application "requires a lot of things to get approved", according to the immigration consultants the complainant spoke with, for example, the complainant would have to get a full-time job and establish himself in Canada financially and socially; and the application would require a lot of money to pay processing and legal fees, and the complainant does not have the necessary means.

5.4 In response to the State party's observation that he did not provide enough evidence to support his claim, the complainant asserts that he had only 14 days to submit a list of evidence, and another 14 days to submit the evidence itself (or 10 days, taking into account the 4 days of mail transmission time). That was not sufficient time to obtain documentation from Pakistan, and his relatives could send him only the two police reports that they had. Although he requested an oral interview in his PRRA application, this was not considered by the PRRA officer, although it is allowed by law. The complainant further asserts that the immigration officer confused the targeted killings with general sectarian violence. The complainant reiterates that he will be targeted if he returns to Pakistan. He submits documentation and affidavits from friends and relatives who assert that he would be at risk if he returns to Pakistan.⁵

⁵ Specifically, the complainant submits the following documentation:

(a) An affidavit from his cousin, who states that the complainant's ex-in-laws spread hatred towards the complainant due to his conversion to the Shia faith, and had his then-wife divorce him. The complainant's cousin also states that his son was killed by a gunshot wound in 2005 "as a consequence of supporting" the complainant; that he filed a police report about the incident, which led to the arrest of K., who was a friend of the deceased; that S.A., a fanatical Sunni cleric who had wanted the complainant's ex-wife to obtain a divorce, provided bail for K. to be released from jail; and that S.A. then said to the cousin, "See, I did what I said to you.";

(b) An affidavit from another cousin, D., who states that S.A. told D. that he would kill the complainant and his relatives because the complainant had committed a sin by converting to the Shia

faith and had involved his niece in that sin as well; that S.A. swore to kill the complainant and his relatives; that S.A. and his accomplices are waiting for the complainant to return so that they can kill him; that S.A. and his accomplices already broke into D.'s home and murdered his daughter, his sister and her son; that S.A. and his accomplices also kidnapped D.'s nephew at that time and then fled; that the police reluctantly arrested the accomplices and brought charges against them; that the police were unable to locate D.'s nephew; that D. received messages from S.A. to have the case against his accomplices dismissed, or he would kill D.'s nephew; and that because S.A. is rich and powerful, the police did not bring charges against him;

(c) An affidavit from the complainant's uncle, who states that S.A. threatened to kill the complainant due to the latter's conversion to the Shia faith;

(d) An affidavit from a cousin of the complainant's ex-wife, who states that S.A. threatened to kill the complainant due to the latter's conversion to the Shia faith; that members of the coalition party had the complainant unlawfully arrested, detained and tortured, and raided the complainant's house and destroyed his furniture and other belongings; that after his release, the complainant was under medical treatment for a few months; that the complainant then moved to Jhang, but was forced to return because militants belonging to the coalition party spotted him in Jhang; that the complainant then fled to the United States in August 1992; that most of the assailants who targeted the complainant's cousin and his family are now out on bail, and that S.A. is waiting for the complainant's return in order to kill him; and that S.A. has developed a good relationship with the government leaders who had the complainant arrested and tortured 22 years ago;

(e) An autopsy report from the Punjab Forensic Science Laboratory, dated 29 November 2005, which does not clearly indicate the name of the deceased, but states that the deceased was killed by bullets;

(f) A post-mortem report for "I., alias T.";

(g) A chemical examiner's report apparently dated 24 July 2009 stating that the article received was stained with blood. The article is identified as "churri";

(h) A post-mortem report for "Z.", stating that all injuries were caused by a firearm and included damage to the skull and brain;

(i) A post-mortem report for D.'s son, deceased on 25 June 2009. The report states the cause of death as throttling/smothering leading to asphyxia and death;

(j) A chemical examiner's report, apparently dated 19 July 2009, stating that the article received ("cotton"), was stained with blood;

(k) A post-mortem examination memo dated 26 June 2009, stating that the cause of death of Z. was strangulation (throttling) leading to asphyxiation and death as a result of bullet wounds;

(l) A document dated 5 September 2012, entitled *The State vs. M.S., etc.* The document states that the accused persons A., S., and M.N. were in custody;

(m) Other documents purporting to relate to the prosecution of M.S. and others. One such document states that the named persons were charged with, among other things, the kidnapping of Z.A. (nephew of the complainant), aged 1 and a half years, the theft of a television, and an unspecified act perpetrated against Q., K.B., R., alias B., and Z., alias F., while armed with deadly weapons. The acts allegedly occurred on 25 June 2009;

(n) Other post-mortem documents;

(o) A police report dated 25 June 2009, describing the accusations of D. relating to the persecution encountered by the complainant at the hands of his ex-in-laws;

(p) Various documents relating to the prosecution of F.H. and others, G.M., A.A., N. and K., who were accused of forming an unlawful assembly while armed with deadly weapons, and of firing on I., alias T. One of the documents states that all defendants declined to plead guilty. In response to the State party's observation that the complainant did not provide this evidence to the State party previously, the complainant states that he received this evidence in March and August 2013, but that because some of the documents were not legible, he needed additional time to procure legible copies of the documents, and was able to do so in November 2013;

(q) A notarized affidavit from C.M.A., President of PPP Lahore, stating, inter alia, that the Pakistan Muslim League-N and Jamaat-e-Islami officials who were involved in the complainant's arrest, detention and torture have since been promoted to high-level positions, and continue to be "angry" with the complainant because they lost the 1990 election due to his efforts; that the

5.5 In response to the State party's observation that the communication is inadmissible as manifestly unfounded, the complainant states that although the affidavits he provided were from close family members, these family members were victimized because of him. He maintains that the State party appears to be unaware of the nature of police investigations in Pakistan; that the police would have tortured and arrested him during the investigation of the relevant cases if he had been in Pakistan; that the Pakistani police has been on the payroll of the Pakistan Muslim League-N (PML-N) party, which had him arrested, for the past 35 years in Punjab; and that that party victimizes its political opponents through the police and has ties to Lashkar-e-Jhangvi (LeJ) and Tehreek-e-Taliban Pakistan. The complainant also argues that although the State party observes that the alleged perpetrators are being prosecuted by the Government of Pakistan, those legal proceedings are just for "drama to show the public that everything is going well", and all of the suspects are out on bail and are living comfortably in their homes. He further asserts that the State party did not explain its observation that the harm feared by him does not constitute torture under article 1 of the Convention.

5.6 In his further submission dated 27 November 2014, the complainant adds to the factual background of the complaint, and specifies that his life is being threatened by three different parties: the Government of Pakistan; the anti-Shia groups LeJ and Sipah-e-Sahaba, which have always enjoyed strong relations with the PML-N and have resumed killing campaigns against Shi'a Muslims throughout Pakistan; and S.A., who is currently a member of the Khatm-e-Nabowat party and who enjoys a strong relationship with the PML-N. He asserts that he was an active member of the PPP and actively campaigned for Benazir Bhutto in the 1988 elections in Lahore, that he was later the campaign manager of the PPP for several constituencies in Lahore, and that due to his campaigning, some of the PML-N candidates for office suffered humiliating defeats in their constituencies. The complainant maintains that after that election, the PML-N hunted and punished those members of the opposition who had caused problems for the party, and that he was one of the party's prime targets. The complainant states that the PML-N had him arrested on false charges, after which he was not taken to a police station but rather to a torture cell.

5.7 The complainant submits that he was put in a cold, dirty and dusty room, was tied up and had a cloth put around his mouth. He was tortured for several days and interrogated about the whereabouts of his colleagues, and several methods of torture were used: cold water was poured over his face, he was hit with sticks and he was punched in the stomach and face. The punches to his face broke several bones in his face and deformed it and he had to have surgery, in which the doctors put a plastic plate under his left eye. When he was released from the torture cell, he found out that his wife and children had gone into hiding in Jhang and reunited with them, but was soon tracked down by S.A., who was a member of Jamaat-e-Islami and a friend of the founding members of the LeJ; and, even before his release, S.A. had confronted the complainant's wife and his other family members, blaming the complainant for ruining his niece's life by making her commit blasphemy and vowing to avenge this. The house where the complainant was hiding did not have a telephone, and one day, a neighbor banged on the door and told the complainant that he had received a phone call from the complainant's cousin in Lahore, who had advised that the complainant flee Jhang because S.A. had found out that he was staying there and was about to arrive with three cars full of thugs from the Jamaat-e-Islami and LeJ parties. He had no choice but to leave his wife and children and flee. Because he had no money, he had to run on foot for

complainant was a good and honest worker in the PPP and does not want to return to Pakistan for fear that his life will be in danger; and that PPP Lahore can "say without a doubt that he will definitely get killed upon his arrival in Pakistan".

miles before he was able to find a ride; he managed to arrive in Lahore and after obtaining a passport and borrowing money, he fled Pakistan.

5.8 The complainant submits that he arrived in the United States and filed a refugee application, which was denied. Because he had no money and did not know anyone there, he was forced to go into hiding. He still feared for his life because he had witnessed the power and influence wielded by the PML-N and extremist parties in Pakistan. For a long time, he felt scared when someone was walking behind him on the street and when he heard strange noises at night. During this time, "they" were constantly knocking at the doors of his relatives and asking for his address. The complainant asserts that during the 1990s, a ferocious power struggle between the PML-N and the PPP continued, and ordinary party workers continued to be tortured and killed. Many of his friends and colleagues were killed in such clashes, and although he missed his wife and children and often cried about it, he could not think about returning to Pakistan because it would mean certain death. After General Pervez Musharraf came to power, Punjab Province remained the stronghold of the PML-N mafia. The complainant further submits that sometime around 2003, through an acquaintance of his sister, the family members of his wife found out that he had moved to Canada, and located him and sent him messages for about a year, telling him to divorce his wife. The complainant's family members tried to persuade them to leave the complainant alone, but S.A. remained hostile. When an argument broke out between the families, some of the complainant's family members were killed. His other family members tried to have S.A. arrested after the killings but were unsuccessful. The hostility between the families continued to increase and in 2009 S.A. arranged the murder of more members of the complainant's family in order to show what he was capable of doing. Around that time, the PML-N government in Punjab was again coming into conflict with the PPP, which tried to topple the PML-N.

5.9 The complainant argues that in early 2010, when the prosecution of those who murdered his family members was beginning to progress towards success, S.A. became worried and discussed the matter with his friend S.S., the second-highest-ranked official in the PML-N, and the brother of N.S. The friend advised S.A. that they should offer blood money to the complainant's family members and ask them to forget everything. The complainant maintains that, accordingly, S.A. sent a group of people, led by the same PML-N candidate who had suffered a humiliating defeat in an election due to the complainant's campaigning in 1990, to visit the complainant's family members and that instead of offering blood money, the candidate began to ask angrily about the complainant's whereabouts. As the negotiations did not progress, the group sent by S.A. left angrily. From then on, "they" continued to threaten his family members into accepting blood money and revealing his address. Many of the complainant's family members are now reluctant to take his calls out of fear of what might happen to them, and he does not know if his family members would be willing to help him again. The PML-N members continue to ask his family about his whereabouts, and all of the persons who murdered his family members are now out on bail.

5.10 In a letter dated 12 May 2015, the Committee asked the complainant whether he had filed a second PRRA application and, if not, why he had not done so. In his comments dated 10 June 2015, the complainant states that he has not filed a second PRRA application for the following reasons: he is not authorized to submit any application directly to the State party while his communication is pending before the Committee; he is afraid that if he submits another PRRA application, he will be deported while it is pending, because the official who issued him a deportation order on 21 December 2011 told him that the second PRRA application would not stay his removal; the State party will not make an unbiased decision on his case because it continues to try to justify its previous decision without analysing the new evidence he has submitted; and the Office of the United Nations High Commissioner for Human Rights is more resourceful and is better informed about the

complex situation in Pakistan and can render a better decision on his case. The complainant also submits that he is from a third world country where individuals who claim their human rights are threatened, scared away and/or punished. He fears that the Canadian immigration officials will become angry if he requests additional information and will deport him. In this connection, the complainant refers to his assertion that when he called the Immigration and Refugee Board in 2005, the official with whom he spoke threatened to send him back to Pakistan.⁶ This fear still haunts him and prevents him from asking for information and help from the authorities.

State party's further observations on admissibility and merits

6.1 In its observations dated 17 April 2014, the State party again considers that the complainant has not exhausted domestic remedies. The new evidence the complainant submitted to the Committee, relating to the events surrounding the deaths of his family members, was not submitted to decision makers in Canada for review, and the Committee has repeatedly held that new evidence, such as medical or documentary evidence emerging after domestic proceedings have concluded, must be subjected to domestic review in order to give the authorities the opportunity to examine the evidence.⁷ It is for domestic tribunals, and not the Committee, to evaluate facts and evidence.⁸ Furthermore, the complainant has been eligible since 22 December 2011 to apply for a new PRRA, which would have provided for a risk assessment and consideration of the new evidence. He has not done so. The complainant further failed to pursue his abandoned refugee protection claim in 2005, and the documents he provided to the Committee do not provide a credible explanation for his lack of effort to take reasonable steps to pursue the claim. Although it appears that correspondence from the Refugee Protection Division was sent to the wrong address, all three pieces of misdirected correspondence were also sent to the complainant's counsel, in accordance with the information he provided in his Personal Information Form on 15 April 2003. There is no indication that the complainant informed the Immigration and Refugee Board that his counsel had stopped pursuing his case. Applicants are instructed in the Personal Information Form to immediately notify the Board if counsel is retained or changed. After learning in 2005 that his claim had been considered abandoned, the complainant did not attempt to have the claim reopened. He states he contacted "some consultants" and was told that, owing to the passage of time, reopening was not possible. This explanation is not founded in fact or law, as the complainant was permitted under then-existing rules to have his abandoned refugee claim reopened. He would have been eligible to file such an application in 2005, on the basis that he had not received any hearing-related communications from the Refugee Protection Division. Moreover, errors made by privately retained counsel are not attributable to the State and cannot by themselves constitute an excuse for non-exhaustion of domestic remedies.⁹ Finally, the State party reiterates its observation that the complainant has had over 10 years to file an application on humanitarian and compassionate grounds, which is a domestic remedy that must be exhausted. There is no requirement to hire a lawyer for such an application, and the State party's website provides the application form, guidelines for applicants and links to organizations that provide free services for immigrants. The State party therefore considers

⁶ See paragraph 5.2.

⁷ The State party cites communication No. 35/1995, *K.K.H. v. Canada*, decision of inadmissibility adopted on 22 November 1995.

⁸ The State party cites, inter alia, communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, para. 7.6.

⁹ The State party cites communication No. 395/2009, *H.E.-M. v. Canada*, decision adopted on 1 July 2011, para. 6.4; and No. 284/2006, *R.S.A.N. v. Canada*, decision adopted on 17 November 2006, para. 6.4.

that the reasons presented by the complainant as to why he has not filed such an application do not excuse his failure to file.

6.2 The State party further considers that the communication is inadmissible because it is manifestly unfounded. It considers that the new evidence the complainant provided to the Committee does not support his allegations of a risk based on fear of harm at the hands of his former in-laws in Pakistan. The new evidence does not address any current risk to the complainant based on his past political affiliation with the PPP in the 1990s. The affidavits submitted by the complainant's family should be given little or no weight, as the family members have a subjective interest in the complainant remaining in Canada. The documents detailing the court proceedings against the alleged perpetrators in the murders of the complainant's family members in 2005 and 2009 are procedural in nature and provide no details regarding the substantive proceedings against the accused or their outcome. Furthermore, even if this evidence were accepted, it appears to suggest that the perpetrators are being prosecuted by the State, and that there is no State acquiescence in the alleged risk of harm the complainant fears. Finally, the initial police reports of the murders of the complainant's family members in 2005 and 2009 provide a greater level of detail about the complainant's personal history in Pakistan than about the circumstances of the alleged murders. This does not reflect the nature of information likely to be found in a police report, and therefore calls into question the authenticity of the document. A domestic decision maker would be best placed to determine the authenticity of the documents that are purported to be official.

6.3 The State party reiterates its observations on admissibility regarding article 1 of the Convention, and concludes that the communication is wholly without merit.

6.4 In a note verbale dated 12 May 2015, the Committee asked the State party to provide observations on the effectiveness of the PRRA procedure, and on the eligibility of the complainant to file a second PRRA application. In its observations dated 7 July 2015, the State party reiterates that the complainant has been eligible to apply for a second PRRA since 22 December 2011. The State party further argues that, contrary to the complainant's submission, his complaint before the Committee is not a bar to submitting a new PRRA application, nor is the permission of the Committee required to submit such an application. Rather, individuals like the complainant, whose applications for protection have been rejected but who have remained in Canada since receiving notification of their negative PRRA determination, may make an application for a new PRRA at any time following the negative determination.¹⁰ No prior notification is required. While, as the complainant notes, a statutory stay of removal is not available pending the determination of a second or subsequent PRRA, an application may be made to the Federal Court for a judicial stay of removal pending the disposition of the PRRA application. An administrative deferral of removal may also be requested and, if refused, an application for leave and for judicial review of the refusal may be made. If the PRRA application were negatively determined, a judicial stay of removal may be sought pending an application for leave and for judicial review of any negative PRRA determination. An administrative deferral of removal may also be requested in such circumstances. Alternately, if the complainant applied for a new

¹⁰ The State party notes that section 112 (2) (c) of the Immigration and Refugee Protection Act currently renders those who have received a negative PRRA determination ineligible to apply for another PRRA until 12 months have elapsed since that determination. This provision took effect in August 2012. Consequently, had the complainant applied for a second PRRA at any time following notification of his negative PRRA determination on 21 December 2011 and before August 2012, he would not have been subject to the 12-month period of ineligibility to reapply. If the complainant had made an application for a second PRRA after August 2012, the 12-month period of ineligibility would have elapsed as of 18 November 2012, one year from the date of the first PRRA determination.

PRRA and was determined by a PRRA officer to be a person in need of protection, he would not be removed from Canada and would be eligible to apply for permanent residence status.

6.5 Upon a subsequent PRRA application, applicants may provide evidence and written submissions in support of their application. However, a second PRRA is not intended to be an appeal of the first determination, and determinations based on evidence and allegations of risk in a previous PRRA are considered final for the purposes of subsequent PRRA applications. PRRA officers may therefore limit a subsequent PRRA to a re-examination of the evidence in the light of any changes that have occurred since the previous PRRA was determined. However, the officers have the discretion to consider evidence that predates the previous PRRA decision if it is in the interests of justice to do so. In the present case, the new evidence submitted by the complainant to the Committee substantially relates to events occurring in 2005 and 2009, which predate the complainant's negative PRRA determination in November 2011. However, the complainant states that the new evidence could not have been assembled in the time provided at the time of his first PRRA application, mainly because it took time to persuade his relatives in Pakistan to assist him in obtaining documents, as they feared reprisals on the part of the Government of Pakistan. A new PRRA would provide domestic decision makers with the first opportunity to determine whether it is in the interests of justice to consider the new evidence the complainant has submitted to the Committee. Furthermore, it would be open to the complainant in a new PRRA application to raise the new and current risks he would allegedly face by the LeJ in Pakistan and to provide the notarized letter from the president of the PPP in Lahore describing the current threats he is said to face in Pakistan. For all these reasons, the State party asserts that the PRRA process is an effective domestic remedy available to the complainant that renders the communication inadmissible for non-exhaustion.

6.6 Concerning the complainant's abandonment of his refugee claim, the State party notes the complainant's further comment that he contacted the Immigration and Refugee Board by phone in 2005 after becoming aware that his case had been deemed abandoned, and was threatened over the phone by an unidentified woman at the Board. The State party notes that the complainant had not previously raised this alleged exchange or indicated in any of his submissions to this Committee that he had taken any steps to contact the Board directly after learning that the Board considered his case to have been abandoned. The State party accordingly submits that the Committee should decline to accord this explanation any weight, and maintains that the complainant failed to exhaust this effective domestic remedy.

6.7 Concerning the procedure for applications for humanitarian and compassionate consideration, the State party notes that while an administrative stay is not available on application, applicants can seek to have their removal judicially stayed or administratively deferred while their application is being considered. The State party considers that the complainant's comments about the alleged ineffectiveness of this domestic remedy do not justify his failure to exhaust it.

6.8 Regarding the complainant's new claim in his submission dated 27 November 2014 that he fears being tortured by the LeJ upon return to Pakistan, the State party considers that the complainant has not substantiated this argument on a prima facie basis, for several reasons. First, the complainant's own narrative, as set out in domestic proceedings and in his initial complaint to this Committee, does not support this claim. In his PRRA application submitted in August 2011, the complainant made no mention of the LeJ, nor did he more broadly claim a fear of persecution in Pakistan by religious extremists. The complainant states in his submission dated 27 November 2014 that he was not provided a fair opportunity to present his entire claim for consideration because he was not provided an oral hearing as part of the PRRA process. The State party considers that although the

complainant did not have an oral hearing, he had a full opportunity to present his evidence and to have it considered by the PRRA officer. Moreover, the complainant's PRRA decision was subject to judicial review by the Federal Court, and the complainant was represented by counsel. There is no indication in the decision that any allegation of unfairness in the PRRA process was raised before the Court, and the Court ultimately concluded that the decision of the officer was reasonable. Consequently, the State party submits that the complainant's comments in this regard should not be given any weight by the Committee.

6.9 The State party notes that the complainant did not mention a fear of the LeJ in his initial submissions to the Committee. The State party submits that these omissions call into question the complainant's current claim that he will be targeted by the LeJ if returned to Pakistan. The complainant's claimed fear appears to be based instead on his evolving view of the current situation in Pakistan, rather than objective evidence that would establish that he would personally be at risk of torture by the LeJ if returned there. According to the complainant, the PML-N has in the past few years developed ties with the LeJ and the latter have restarted "killing campaigns" against Shias throughout Pakistan. While the objective country reports demonstrate a rise in sectarian violence against Shias in Pakistan in recent years, evidence of generalized violence cannot establish, in itself, sufficient grounds for determining that the complainant would be personally at risk in Pakistan.¹¹ Rather, additional grounds must be adduced to establish that such a risk exists.¹² As described in objective country reports, the LeJ is an extremist group in Pakistan that is considered to be the militant wing of the Sipah-e-Sahaba political party. That party, a political rival of the PPP, came into existence in the early 1980s with the aim of turning Pakistan into a Sunni state. Both the LeJ and Sipah-e-Sahaba are banned by the Government of Pakistan.¹³ Although the LeJ is reported to have historical links to the Pakistani military and intelligence agencies, the military denies any ongoing links.¹⁴ The group is reported to operate with impunity in certain areas of Pakistan, such as Punjab Province and Karachi. According to recent reports, there has been a sharp rise in sectarian violence in Pakistan, mostly concentrated in Quetta, Kurram, parts of Karachi and Gilgit Baltistan.¹⁵ Militant groups have been reported as targeting political leaders, the security forces, tribal leaders, minority religious groups and schools. The majority of attacks have been against the Shia community. Although attacks against Shia Muslims occur in all regions across Pakistan, they are particularly prominent against Hazara Shias in Quetta.¹⁶ The complainant's profile as a former door-to-door campaigner for the PPP in the 1988 elections who left Pakistan more than 20 years ago, before the LeJ even came into existence, does not indicate that he would be personally targeted by the LeJ on behalf of the PML-N or any other group if he returned to Pakistan. Nor has the complainant pointed to any objective evidence that would suggest that he would be specifically targeted by the LeJ based on his conversion to the Shia faith. In this regard, the State party observes that recent reports do not raise incidents

¹¹ The State party cites communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.3.

¹² The State party cites communication No. 177/2001, *H.M.H.I. v. Australia*, decision adopted on 1 May 2002, para. 6.5.

¹³ The State party cites, inter alia, United Kingdom of Great Britain and Northern Ireland, Home Office, "Country information and guidance — Pakistan: religious freedom" (2014), para. 2.5.6.

¹⁴ The State party cites Human Rights Watch, "Pakistan: deter escalating attacks on Shia Muslims" (2013).

¹⁵ The State party cites, inter alia, United Kingdom, Home Office, "Country information and guidance — Pakistan: fear of the Taliban and other militant groups" (2014).

¹⁶ The State party cites, inter alia, Australia, Refugee Review Tribunal, "Pakistan militant groups", Issues Paper (2013), fifteenth page.

of torture or other mistreatment of Sunni Muslims solely on the basis that they have converted to Shi'ism.¹⁷

6.10 The State party notes that the complainant has submitted what appears to be a notarized letter from Muhammad Asghar, the president of PPP Lahore, dated 20 November 2014, in support of his claim that he will be targeted by the PML-N or extremist groups if returned to Pakistan. The letter describes the nature of the complainant's participation in the PPP in the 1988 election campaigns, in which the PPP formed the government in Pakistan, and the events leading to the complainant's departure from Pakistan in 1992. The letter further describes retaliation by the Islami Jamhoori Ittehad and the PML-N against members of the PPP throughout the 1990s, and the "strong ties" between the LeJ and Sipah-e-Sahaba and the PML-N. According to Mr. Asghar, the complainant continues to be sought by the PML-N because of his role in its defeat in the 1990 elections and because of his ex-wife's uncle's connections with those groups. Without seeking to prejudge this evidence, the State party observes that this letter provides only the most general overview of the political tensions between the PPP and PML-N since 1988 without pointing to any objective sources upon which these statements are based. The letter further lacks any information regarding the nature of Mr. Asghar's involvement in the PPP other than his title as President of the Lahore branch; no information is provided about the length of time he has occupied this position. The State party also notes that the letter contains only vague references to the political "enemies" of the complainant who will seek him out if returned to Pakistan. There is no indication in the letter that Mr. Asghar has any personal knowledge of the events described, including those related to the complainant's treatment in Pakistan, or the statements regarding the intention of the PML-N, the police or the uncle of the complainant's former wife to seek him out upon his return. For all of these reasons, the State party submits that the Committee should decline to give that document significant weight in assessing the complainant's claims.

6.11 Finally, the State party considers that the Committee has consistently expressed the view that the fear of harm inflicted by non-governmental actors without the consent or acquiescence of the State clearly falls outside the scope of torture as defined in article 1 of the Convention.¹⁸ The complainant's allegations regarding fear of harm by his former in-laws and by extremist groups, which would include the LeJ, are based on the actions of non-governmental actors and are therefore incompatible with the definition of torture set out in article 1. While the complainant claims that the LeJ operates as an extension of the governing PML-N party in Pakistan, the complainant has not produced any objective evidence that the Government of Pakistan consents or acquiesces to sectarian violence perpetrated by the LeJ against persons of the Shia faith. As noted above, both Sipah-e-Sahaba and the LeJ are banned by the Government of Pakistan. Moreover, although there is not a clear consensus in the country reports, the State party considers that some recent reports suggest that the Government of Pakistan is making efforts to prevent religiously motivated attacks from occurring. According to the United States Department of State's 2013 International Religious Freedom Report on Pakistan, Pakistani authorities arrested several extremist leaders responsible for attacks on Shia communities, including LeJ leaders.¹⁹ In late 2013, the President, Mamnoon Hussain, and the Prime Minister, Muhammad Nawaz Sharif, issued public statements condemning a major attack on Shias in Punjab Province. The Chief Minister of Punjab Province has also created at least one

¹⁷ The State party cites United States Department of State, 2013 International Religious Freedom Report: Pakistan; Human Rights Watch, World Report 2015: Pakistan; and *Amnesty International, Report 2014/15: The State of the World's Human Rights*, p. 281 ff.

¹⁸ The State party cites, inter alia, *V.X.N. and H.N. v. Sweden*, para. 13.8, and *L.J.R.C. v. Sweden*.

¹⁹ The State party cites pp. 14-16 of the report.

judicial commission in response to sectarian attacks.²⁰ The State party also considers that the complainant's claim that the police will charge him with blasphemy at the urging of his former in-laws and torture him if he returns to Pakistan is highly speculative. The complainant's allegations do not fit within the definition of torture set out in article 1 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee must ascertain whether the complainant has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely to bring effective relief to the alleged victim. The Committee notes the State party's argument that the complainant has been eligible to apply for a new PRRA since 22 December 2011 but has not done so, and that the new process would allow the complainant to present his new risk-related evidence that has not yet been evaluated by the State party's authorities. It also notes the complainant's assertion that a new PRRA application would not stay his removal. It takes note of the State party's observation that although a statutory stay of removal is not available pending the determination of a second or subsequent PRRA, an application may be made to the Federal Court for a judicial stay of removal pending the disposition of the PRRA application, and that an administrative deferral of removal may also be requested. However, the Committee observes that the second PRRA process would not shield the complainant from removal to Pakistan during the assessment of the risk he might face in Pakistan in the light of the new evidence. It notes that the acceptance rate for PRRA applications appears to be very low,²¹ and that applicants who have received a negative decision from the Immigration and Refugee Board or on a prior PRRA application must wait 12 months before applying for another PRRA procedure.²² The Committee observes that although PRRA decisions are subject to judicial review, the PRRA procedure itself does not afford a hearing before a judicial tribunal but instead involves an evaluation made by a single administrative officer.²³ Accordingly, it considers that the second PRRA process cannot be considered as offering the author an effective remedy.

7.3 The Committee notes the State party's argument that the complainant has not exhausted domestic remedies because he abandoned his refugee claim and failed to apply to have it reopened. The Committee observes that while the complainant asserts that he was unable to pursue his refugee claim due to the error of the State party, whereby the Refugee Protection Division sent his hearing notice to an incorrect address, the State party has

²⁰ Ibid.

²¹ See Canada, "Formative evaluation of the Pre-Removal Risk Assessment Program", in which it is stated that between 2002 and 2006, the PRRA acceptance rate was 2.7 per cent. Available from www.cic.gc.ca/english/resources/evaluation/prra/section4.asp.

²² See Canada, "Limits on pre-removal risk assessments and applications for humanitarian and compassionate consideration". Available from www.cic.gc.ca/english/refugees/reform-ppra.asp.

²³ See Canada, "Processing PRRA applications: PRRA decisions". Available from www.cic.gc.ca/english/resources/tools/refugees/prra/decisions.asp.

observed that the same mail was also sent to the complainant's counsel, and that the complainant had failed to notify the Immigration and Refugee Board, as instructed, that his counsel was no longer pursuing his case. It also observes that although the complainant asserts that he relied on the erroneous advice of consultants that his abandoned refugee claim could not be reopened and that he was required to be represented by a lawyer in such proceedings, the consultants were apparently privately retained. The Committee recalls that errors by privately retained counsel cannot be attributed to the State party.²⁴ In the light of the foregoing, the Committee considers that in the circumstances of the present case, the complainant has not substantiated his assertion that the refugee claim process was an unavailable or ineffective remedy.

7.4 Accordingly, in the light of the complainant's failure to apply to have his refugee claim reopened before the Immigration and Refugee Board, the Committee is satisfied with the argument of the State party that, in this particular case, there was a remedy which was both available and effective, and which the complainant has not exhausted. In the light of this finding, the Committee does not deem it necessary to examine the State party's assertion that the communication is inadmissible as manifestly unfounded.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (5) (b) of the Convention;
- (b) That this decision shall be communicated to the complainant and to the State party.

²⁴ See *H.E.-M. v. Canada*, para. 6.4, and *R.S.A.N. v. Canada*, para. 6.4.