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Committee Against Torture
Thirty-second session
(3-21 May 2004)

DECISION

Communication No. 183/2001

Submitted by :	Mr. B.S.S. (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	Mr. B.S.S.
State Party:	Canada
Date of complaint:	7 March 2001
Date of present decision:	12 May 2004

* Made public by decision of the Committee against Torture.

ANNEX

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

Thirty-second session

concerning

Complaint No. 183/2001

Submitted by :	Mr. B.S.S. (represented by counsel, Mr. Stewart Istvanffy)
Alleged victim:	Mr. B.S.S.
State Party:	Canada
Date of complaint:	7 March 2001

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

Meeting on 12May 2004,

Having concluded its consideration of complaint No. 183/2001, submitted to the Committee against Torture by Mr. B.S.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Views under article 22, paragraph 7, of the Convention

1.1 The complainant is Mr. B.S.S., an Indian national, born in 1958, currently residing in Québec/Canada and awaiting deportation to India. He claims that his forcible return to India would constitute a violation by Canada of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 4 May 2001, the Committee forwarded the complaint to the State party for comments and requested, under Rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to India while his complaint was under consideration by the Committee. On 19 February 2004, the State party requested the Committee to withdraw its request for interim measures, pursuant to Rule 108,

paragraph 7, of the Committees rules of procedure or, alternatively, to make a final determination on the complaint at its earliest convenience. By letter of 2 March 2004, counsel asked the Committee to maintain its request for interim measures, pending a final decision on the complaint. These requests became moot on 12 May 2004, when the Committee adopted its Views on the complaint.

1.3 On 31 March 2003, the complainant requested the Committee to suspend the consideration of his complaint, pending the outcome of legal proceedings under a new Pre-Removal Risk Assessment (PRRA) procedure, but to maintain its request under Rule 108, paragraph 1, of its rules of procedure. On 25 April 2003, the Committee informed the complainant and the State party that it had decided to suspend consideration of the complaint, as well as its request to the State party not to expel the complainant, insofar and as long as his removal would be automatically stayed under Section 162 of the Immigration and Refugee Protection Regulations.

The facts as submitted by the complainant:

2.1 The complainant is from the Punjab province in India. His religion is Sikh. His wife and three children continue to live in the Punjab.

2.2 According to an "investigation report" dated 12 March 1993 by Mr. S.S., a human rights lawyer at Patiala (Punjab), which substantially relies on the testimony of the complainant's father, his daughter and other villagers, two armed men came to the home of the complainant's family in April 1991 asking the complainant for food while pointing a gun at him. They remained for half an hour. Later that night, the police arrested the complainant accusing him of harboring terrorists. He was allegedly detained in a special torture cell where he was interrogated and beaten by the police. He was released after two days when his father paid a bribe.

2.3 Pursuant to the same report, the complainant was arrested a second time in September 1991 after six family members of a police officer had been killed in a nearby village. The complainant was detained in an unknown place where he was allegedly subjected to torture by the police again. He was released at the intervention of a local politician and subsequently went to Jaipur (Rajasthan) in order to hide from the Punjab police. The police reportedly continued to harass his family, on one occasion, arrested the complainant's brother. When the police started to investigate his whereabouts in Jaipur, the complainant decided to leave the country following his father's advice.

2.4 On 1 September 1992, the complainant left India for Brazil, then traveled to Mexico, and entered the United States on 22 September 1992. On 30 October 1992, he entered Canada and applied for refugee status. When he was returned to the United States, the U.S. immigration authorities asked him to leave the country before 29 November 1992. The complainant subsequently remained illegally within the United States. He failed to report for an examination of his refugee application which was scheduled for August 17, 1993 at the Canadian border post at Lacolle.

2.5 On 24 November 1993, the Indian Consulate in New York issued a passport for the complainant.

2.6 The complainant reentered Canada on 4 August 1994 at Vancouver and made a new refugee claim in Montreal on 16 August 1994. On 13 October 1994, a removal order was issued against him by the Canadian immigration authorities. He was refused Convention refugee status by the Convention Refugee Determination Division of the Immigration and Refugee Board on 4 November 1996, but applied for leave to apply for judicial review of that decision. Leave was denied by the Federal Court of Canada on 29 May 1998.

2.7 In the meantime, the complainant filed an application in the Post-Determination Refugee Claimants in Canada (PDRCC) class. Together with that application he submitted a copy of a document resembling a warrant for arrest which, according to that document, had been issued against him by the Indian authorities on 8 May 1994. His application was rejected by letter of 10 March 1997 informing him that the removal order had become effective and that he had to leave Canada before 16 April 1997. The post-claim determination officer's notes to the file state that the copy of the arrest warrant had only been provided at a late stage of the proceedings and that no explanation was given as to why the arrest warrant had been issued in 1994 purportedly for events dating back to 1991. The complainants request for leave to apply for judicial review of the decision rejecting his application was denied by the Canadian Federal Court on 29 August 1997.

2.8 On 2 October 1997, the complainant applied for an exemption from the regular application of the *Immigration and Refugee Protection Act*[1] on the basis of humanitarian and compassionate grounds. The application contained new evidence including an article, dated 10 August 1997, from a Chandigarh (Punjab) newspaper stating that the complainant's family was still being harassed by the Punjab police and that his life would be at risk if he were returned to India; a medical report, dated 25 April 1995, from an Indian doctor confirming that he had treated the complainant for a fractured leg and a bleeding ear on 21 September 1991; and a medical report, dated 14 March 1995, from a Montreal doctor certifying a hearing defect on the complainant's right ear as well as a 3 cm scar on his right leg and concluding that these symptoms were concordant with his allegations of torture. The complainant's humanitarian and compassionate application was denied on 4 November 1997. However, during the examination of the complainant's request for leave to apply for judicial review of that decision, it became apparent that the immigration officer had not considered all the evidence before him. The State party agreed to reconsider the humanitarian and compassionate application, and the court proceedings were discontinued.

2.9 On 4 June 1998, another immigration officer made a further risk assessment and, despite new evidence, concluded that the complainant would not be at risk of torture or inhumane treatment if returned to India. By letter, dated 13 August 1998, the complainant was advised that his second humanitarian and compassionate application had also been rejected. He filed an application for leave to apply for judicial review which was granted by the Federal Court.

2.10 By decision of 2 October 1998, the Federal Court ordered a stay of execution of the removal order. The Court held that the complainant had raised a serious issue to

[1] The Act was amended on 1 November 2001.

be tried and determined, on an interlocutory basis, that he would suffer irreparable harm if deported to India. By decision of 24 November 1998, the Federal Court granted the application for judicial review setting aside the decision of the immigration officer rejecting the complainant's second humanitarian and compassionate application and referring the matter back for reconsideration. Although the Court rejected the complainant's claim that the immigration review scheme in Canada was in violation of articles 7[2] and 12[3] of the Canadian Constitution, it held that the immigration officer's decision was unreasonable since it failed to give due weight to new evidence presented by the complainant and because it relied on irrelevant considerations.

2.11 The complainant's humanitarian and compassionate application was subsequently reviewed by another immigration officer who was also trained as a post-claim determination officer and, after a lengthy analysis of the facts and evidence, refused the application on 13 October 2000, based on, *inter alia*, the following considerations: (a) doubts about the authenticity of the arrest warrant given its form and the absence of any corroborating evidence; (b) the lack of an identifiable source and/or the outdatedness of most of the reports and newspaper articles submitted by the complainant on the situation in Punjab; (c) the contradiction between the fact that, according to the testimony of his family and neighbors in his home village, the complainant was innocent and his claim of still being persecuted by the police; (d) doubts as to the evidentiary value of the translation of a newspaper article, dated 11 June, from a Vancouver weekly published in Punjabi language citing the case of the complainant; (e) the complainant's unexcused failure to report for the examination of his first refugee claim which was scheduled for 17 August 1993 at the Canadian border post; (f) the fact that the complainant had been issued a passport by the Indian consulate in New York on 24 November 1993, although he was allegedly being sought by the Indian authorities; (g) the fact that counsel raised the issue of the complainant's posttraumatic stress disorder accompanied by panic attacks, as diagnosed in a psychiatric report dated 30 August 1999, at a late stage of the proceedings, that his psychological condition had not prevented the complainant from working since January 1999, and that he had denied any mental disorder when completing immigration documents in October 1997 and in September 2000; (h) the complainant's low political profile and the fact that generally only human rights activists or Sikh militants and their respective families were in danger of being harassed by the Punjabi police[4]; (i) the fact that the complainant's family continues to live in the Punjab; (j) the complainant's protection by virtue of his father's good political connections; (k) the general improvement of the situation in the Punjab; and (l) the fact that the complainant was able to find a safe haven in the neighboring province prior to his departure from India in 1991.

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[2] "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[3] "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

[4] For that reason, the "notes au dossier" denied any similarity with the *Chahal v. United Kingdom* case in which the European Court of Human Rights decided that the deportation of a well-known supporter of Sikh separatism to India would constitute a violation of article 3 of the European Convention since his involvement in the Sikh separatist movement "would be likely to make him a target of interest for hard-line elements in the security forces who have relentlessly pursued suspected Sikh militants in the past". *See* European Court of Human Rights, *Chahal v. United Kingdom* (application no. 00022414/93), judgment of 15 November 1996, paras. 98 and 106-108 (citation at para. 106).

2.12 The complainant's request for leave to apply for judicial review was denied by the Federal Court on 2 March 2001.

The complaint:

3.1 Counsel claims that the complainant would be at a risk of torture in India and, therefore, Canada would be violating article 3 of the Convention if he were to be returned to that country. Moreover, owing to the complainant's posttraumatic stress disorder, he would be subject to severe emotional trauma upon return to India without the possibility of obtaining appropriate medical treatment, which in itself would constitute inhuman and degrading treatment, in violation of article 16 of the Convention.

3.2 Counsel also claims that the complainant has exhausted all domestic remedies. He further submits that remedies in the Canadian immigration review scheme are ineffective since immigration officers are not trained in human rights or in legal matters, in most cases fail to take into account the jurisprudence of the Immigration and Refugee Board and of the Federal Court or realistically to assess the situation in the refugee claimants' country of origin, are frequently exposed to pressure to produce high deportation numbers and generally show mistrust towards allegations made by refugee claimants.

State party's observations on admissibility and merits:

4.1 On 8 November 2001, the State party submitted its observations on the admissibility and, subsidiarily, on the merits of the complaint.

4.2 The State party concedes that the complainant has exhausted all available domestic remedies. However, the State party submits that the complaint is inadmissible because the evidence presented by him is insufficient to establish a *prima facie* violation of the Convention.

4.3 With regard to article 3 of the Convention, the State party submits that, pursuant to General Comment No. 1, this provision places the burden upon the complainant to establish that he would be at risk of being tortured if returned to India. According to the State party, the complainant's behaviour after his departure from India in 1992 is inconsistent with his alleged fear of torture, as reflected by his failure to apply for refugee status in the United States while he was living in that country, his failure to report for the examination of his first refugee claim by the Canadian authorities on 17 August 1993, as well as the renewal of his Indian passport in New York in 1993 which, in the State party's view, constitutes further evidence that the complainant does not fear Indian authorities and that he was not and is not being sought by them[5]. Furthermore, the State party questions the credibility of the complainant because of the dubious authenticity of the arrest warrant against him which had been issued two years after his departure from India, was not supplied to the Canadian authorities before December 1996, was typewritten lacking an official

[5] Reference is made by the State party to the Committee's decision in *E.A. v. Switzerland*, Communication No. 28/1995, UN Doc. CAT/C/19/D/28/1995, 10 November 1997, para. 11.4.

letterhead, and belonged to the type of documents which could be easily forged or obtained for a small fee in India.

4.4 The State party also submits that the medical reports supplied by the complainant merely confirm the existence of past injuries without providing evidence of the cause of these injuries. Doubts are also raised by the State party with regard to the psychiatric report diagnosing posttraumatic stress disorder which the complainant had never mentioned prior to 1999. The State party concludes that, even if these reports corroborated the complainant's allegation that he had been tortured in the past, this did not occur in the recent past, the decisive issue being whether a risk of torture continued to exist. With reference to the Committee's jurisprudence[6], the State party submits that even though past torture is an element to be considered when examining claim under article 3, the aim of the Committee's examination is to find whether the complainant would currently run a risk of torture, if returned to the country of origin.

4.5 Based on several reports on the human rights situation in India and, in particular, in the Punjab, the State party submits that there is no consistent pattern of gross, flagrant or mass violations of human rights in Punjab and that the situation in that province has improved over the past years as shown by the substantial decrease of both Sikh militarism as well as the targeting of Sikhs by the police. The State party doubts that the complainant was ever personally targeted by the police, suggesting that his alleged detention formed part of a past practice of false arrest by the Punjabi police with a view of obtaining a bribe. The State party further argues that only known Sikh militants or activists may still be considered at risk of being maltreated; the complainant, however, had never been a member of any political party or social movement.[7] Taking into account that the Committee had even rejected an article 3 claim by a high-profile Sikh militant who had been involved in the hijacking of an Indian Airlines airplane in 1981[8], the State party finds that torture cannot, in the circumstances of the present case, be considered a foreseeable and necessary consequence of the complainant's return to India.

4.6 With regard to the alleged violation of article 16 of the Convention, the State party argues that this provision does not apply to the complainant's situation because it follows from the *travaux préparatoires* of the Convention that issues of deportation or expulsion are exhaustively dealt with by article 3. The State party also submits that, according to the Committee's jurisprudence, "aggravation of the author's state of health possibly caused by […] deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party"[9]. Since the inability of a State to provide the best medical care does not, in the view of the State party, constitute cruel, inhuman or degrading treatment, the return of the complainant to India cannot constitute such

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[6] *X, Y and Z v. Sweden*, Communication No. 61/1996, UN Doc. CAT/C/20/D/61/1996, 6 May 1998, para. 11.2; *A.L.N. v. Switzerland*, Communication No. 90/1997, UN Doc. CAT/C/20/D/90/1997, 19 May 1998, para. 8.3.

[7] The State party points to the pertinent jurisprudence of the Committee to support this argument. *See* e.g. *P.Q.L. v. Canada*, Communication No. 57/1996, UN Doc. CAT/C/19/D/57/1996, 17 November 1997, para. 10.4.

[8] *T.P.S. v. Canada*, Communication No. 99/1997, UN Doc. CAT/C/24/D/99/1997, 4 September 2000, para. 15.5.

[9] *G.R.B. v. Sweden*, Communication No. 83/1997, UN Doc. CAT/C/20/D/83/1997, 15 May 1998, para. 6.7.

treatment either, even if his claim regarding the lack of appropriate medical treatment in India were substantiated.

4.7 In the alternative, if the complaint should be declared admissible, the State party requests the Committee to dismiss it on the merits, based on the same reasons as set out above.

4.8 With respect to the risk assessment by the Canadian immigration authorities, the State party submits that immigration officers are specially trained to assess the situation in the country of origin of refugee claimants and to apply domestic Canadian as well as human rights law including the Convention Against Torture. The State party considers the remedy of judicial review an adequate safeguard for the immigration officers' "relative lack of independence".

4.9 Lastly, the State party argues that the Committee should not substitute its own finding on whether there were substantial grounds for believing that the complainant would be at risk of being tortured if returned to India, since the national proceedings before the immigration and Refugee Board, as well as the Federal Court, do not disclose a manifest error or unreasonableness or any other irregularity, the evaluation of facts and evidence being a matter reserved to the national courts.

Complainant's comments:

5.1 In his comments dated 30 March 2002 on the State party's submission, the complainant reiterates that he would run a risk of being tortured, or even executed, if he were to be returned to India. He submits that some of the evidence supplied by the complainant was entirely ignored or belittled in the State party's submission, such as the investigation report by Mr. S.S., several newspaper articles and the *Chahal* judgment of the European Court of Human Rights, while other documents, in particular the arrest warrant and the article from the Vancouver weekly which explicitly mentioned the complainant, were not recognized as being authentic. Since all documents had been submitted in original to the Canadian authorities, it would have been easy for the State party to verify their authenticity.

5.2 The complainant submits that the State party seeks to undermine his credibility on secondary grounds, such as his delay in making a refugee claim, his failure to claim refugee status in the United States, the fact that he was issued a passport by the Indian consulate in New York, and the date of his arrest warrant, which are insufficient to refute the well-documented risk of torture in this case. Counsel submits that the complainant, in order to obtain a document to prove his identity, paid 500 $ to a Mr. S. to collect his passport at the Indian consulate in New York. With regard to the date of the arrest warrant, the complainant states that he does not know why it had been issued two years after his departure from India and that a possible explanation may lie in events in the Punjab of which he is not aware.

5.3 With respect to the medical and psychological reports, the complainant submits that these documents clearly establish he had been tortured, a fact which has never been seriously denied by the State party. The complainant denies the State party's allegation that the reports were only presented at a late stage of the

proceedings, explaining that at least the 1995 medical report had been supplied to the Canadian authorities at an earlier stage.

5.4 As further evidence, the complainant submits an affidavit by Mr. S.S.S., a friend and former officer of the Indian army who, subsequent to his dismissal from the army, became a Sikh activist, fled the country and was granted Convention refugee status in Canada in 1993. In the affidavit, he states that he met the complainant's family several times during a four-month visit to India in 1997 when he was told that the Punjabi police continued to harass the family and suspected the complainant of having contacts with terrorists abroad.

5.5 The complainant argues that the State party's submissions, in substantial part, merely repeat the arguments stated in the immigration officer's final decision, dated 13 October 2000, without explaining why the conclusion in two decisions of the Federal Court, that the complainant's deportation to India would expose him to a risk of irreparable harm, was disregarded in that decision. With regard to the denial of leave to apply for judicial review, counsel explains that judicial review was denied by a new judge who had just joined the Federal Court in March 2001.

5.6 According to the complainant, his risk of being tortured upon return to India is increased by the fact that he is perceived as a militant sympathizer since the Punjabi police has accused him of supporting Sikh militants. Moreover, his poor physical condition would add to the security forces' belief that he was involved in the armed struggle.

5.7 With respect to current human rights violations in India and, in particular, in Punjab, the complainant states that even though the situation has improved in comparison to the early nineties, torture in police and military custody is still widespread. In support of this claim, he submits several voluminous reports on continuing human rights violations in Punjab as well as on the Canadian refugee determination system.

5.8 With regard to the alleged violation of article 16 of the Convention, the complainant submits that this claim is not merely based on the lack of appropriate medical treatment in India, but also on the traumatic experience of returning to the country where he had been subject to torture.

5.9 The complainant maintains that Canadian immigration officers are generally not trained in human rights. Instead, they receive training on how to challenge the credibility of a refugee claimant. The complainant also reiterates that judicial review by the Federal Court constitutes an insufficient control over abuses by the immigration authorities, and cites the present case as an example for the inadequacy of that remedy.

State party's additional observations and counsel's comments:

6.1 In an additional submission of 12 November 2002, the State party argued that, apart from being unsubstantiated, the complaint was also inadmissible under article 22, paragraph 2, as incompatible with article 3 of the Convention, since no decision to remove the author had been taken at that stage, as well as under article 22, paragraph

5(b), of the Convention and Rule 107(e), of the Committee's rules of procedure, because the complaint had not exhausted remedies under the new Pre-Removal Risk Assessment (PRRA) procedure. Subsidiarily, the State party maintains that the complaint is without merit.

6.2 The State party submits that, under the new Immigration and Refugee Protection Act of 28 June 2002, any person awaiting removal from Canada is entitled to a further risk assessment, based on fresh evidence, which automatically stays the removal order, if submitted within 15 days of the notification informing the applicant of the possibility to apply for PRRA protection. The assessment is conducted by a PRRA officer trained to apply the Geneva Convention relating to the Status of Refugees, as well as the Convention against Torture. In case of a negative PRRA determination, the applicant may apply for leave to apply for judicial review to the Federal Court, which can grant relief on grounds of a simple error of law or manifestly erroneous findings of fact. A decision of the Federal Court Trial Division can be appealed to the Federal Court of Appeal, if the judge of the Trial Division certifies that the case raises a serious question of general importance. The Appeal Court's decision is subject to further appeal to the Supreme Court of Canada. The applicant can apply to the Federal Court for an interim order staying removal pending the outcome of his applications and appeals before that Court.

6.3 The State party contends that, like the PDRCC risk assessment in the former legislation, the Pre-Removal Risk Assessment constitutes an effective remedy[10]; the same has been held by the Committee against Torture and the Human Rights Committee with respect to the remedy of judicial review.[11]

6.4 In addition, the State party rejects the complainant's argument that the Federal Court twice acknowledged his risk of being tortured upon return to India, arguing that the stay order of 2 October 1998 and the decision of 24 November 1999 on one of his applications for judicial review cannot be considered judicial findings of fact that the author would be at such a risk.

6.5 The State party challenges the documentary evidence produced by the author, on the basis (a) that the affidavit of Mr. S.S.S., who was able to spend four months in the Punjab in 1997 despite the fact that he had been granted refugee status in Canada, was merely based on statements of the complainant's family and friends in the Punjab and was as such self-serving and of little weight; (b) that the reports and studies on past human rights violations in the Punjab are insufficient to make out a personal and present risk of torture for the complainant, should he be deported to India; and (c) that the two medical reports of 1995 only referred to previous physical injuries, without making reference to post-traumatic stress disorder, which had been mentioned for the first time in the 1999 report, five years after the complainant made his refugee claim.

[10] In relation to the PDRCC risk assessment, the State party cites the Human Rights Committee's decisions on Communication No. 603/1994, *Badu v. Canada*, at para. 6.2; Communication No. 604/1994, *Nartey v. Canada*, at para. 6.2; Communication No. 654/1995, at para. 6.2.

[11] Apart from the above cited decisions of the Human Rights Committee, reference is made to the decisions of the Committee against Torture on complaints No. 66/1997, *P.S.S. v. Canada*, at para. 6.2; No. 86/1997, *P.S. v. Canada*, at para. 6.2; No. 42/1996, *R.K. v. Canada*, at para. 7.2; No. 95/1997, *L.O. v. Canada*, at para. 6.5; No. 22/1995, *M.A. v. Canada*, at para. 3.

7.1 In comments dated 31 March 2003 the complainant reiterates that he would be at a personal and present risk of torture in India, as confirmed by the Federal Court decisions stating that he "would suffer irreparable harm" (staying order of 2 October 1998) or "endure unusual, undeserved or disproportionate hardship" (judgment of 24 November 1999), if returned to that country.

7.2 The complainant denies that Canada's international human rights obligations are taken into account in the PRRA decision-making process, as this procedure was designed to refuse refugee status to "practically everybody", the denial rate totaling between 97 and 98 percent of all applicants.

State party's further submissions and counsel's comments:

8.1 On 19 February 2004, the State party informed the Committee that the complainant's PRRA had been concluded and requested it to lift its suspension of the consideration of the case, to adopt a decision on the admissibility and merits of the complaint as expeditiously as possible or, alternatively, to withdraw its request for interim measures, in accordance with Rules 108, paragraph 7, of its rules of procedure.

8.2 The State party argues that the evidence produced by the complainant does not support a finding that, as a result of his removal, he would suffer "irreparable damage" within the meaning of Rule 108, paragraph 1, of the rules of procedure, given his low personal profile, the fact that his alleged torture occurred more than 12 years ago, and that the human rights situation in the Punjab region has significantly improved during the 11 years following his departure. The absence of a risk of torture had been confirmed in four subsequent risk assessments conducted by four different officers; mere conjecture on the part of the complainant should not restrain the implementation of a removal decision that has been lawfully taken.

8.3 The State party submits that, on 14 May 2003, the complainant filed an application for permanent residence based on humanitarian and compassionate grounds and, on 10 September 2003, he also applied for a pre-removal risk assessment. Both applications were based on the same allegations as his initial refugee claim and the subsequent applications for protection. On 29 September 2003, the PRRA officer rejected the complainant's PRRA application, and ordered his immediate removal, determining that he would not be subject to risk of persecution, torture, risk of life or risk of cruel and unusual treatment or punishment if returned to India. Similarly, his humanitarian and compassionate application was denied on 30 September 2003, in the absence of a sufficiently substantiated risk of persecution.

8.4 The State party submits that, in the interest of finally disposing of the matter, it no longer contests the admissibility of the complaint on the basis of non-exhaustion of domestic remedies, although the complainant's application for leave to apply for judicial review was still pending before the Federal Court.

9.1 On 2 March 2004, the complainant submitted copies of the file relating to his PRRA proceedings and, on 20 April 2004, commented on the State party's further submissions. The evidence contained in the file includes (a) several reports on the human rights situation in Punjab, including a January 2003 Amnesty International

report on impunity and torture in Punjab[12], identifying the failure to bring to justice police officers responsible for torture, deaths in custody, extra-judicial executions and disappearances during the militancy period from the mid-1980s to the mid-1990s as one of the reasons for the continuation of serious human rights violations; (b) several affidavits confirming the complainant's risk, including by a refugee and former human rights lawyer from Punjab now practicing law in Canada, who states that someone believed to have any contacts with militants, as the complainant, would be targeted by the police and unable to obtain court protection in Punjab; (c) a translation of a resolution dated 27 August 2003 adopted by the municipal council ("panchayat") of the complainant's village, confirming that his life would be at risk upon return and criticizing the harassment of his family by the local police; (d) a letter dated 3 October 2003 from Mr. S.S. to the same effect; and (e) a letter dated 10 April 2004 from the complainant's son, stating that his family suffers from constant harassment by the Criminal Investigation Department (CID), as well as the resulting social isolation, and that he fears for his life[13].

9.2 Counsel summarizes the chronology of the complainant's legal recourses in Canada and informs the Committee that the Federal Court dismissed his application for leave to apply for judicial review on 17 February 2004.[14] He submits that, similar to the former PDRCC procedure, which was constantly criticized by the churches and refugee support groups in Canada, the PRRA procedure is considered to lack independence and impartiality by the Canadian Bar Association and human rights groups, its only purpose being to pretend that the State has assessed the danger before deporting an applicant. Neither the Committee against Torture nor the Human Rights Committee found this procedure to be an effective remedy; they only observed that it must be exhausted or that its ineffectiveness must be shown by a complainant.

9.3 The complainant challenges his pre-removal risk assessment on the following grounds: (a) The decision only focuses on events which occurred prior to his departure from India, but fails to consider the ongoing harassment of his family as well as the new evidence produced by him and the two Federal Court decisions of October 1998 and November 1999; (b) it erroneously states that arbitrary arrests of suspected Sikh militants or sympathizers have ceased in Punjab, contrary to reports of the Danish Immigration Service and the U.K. country assessment of India; and (c) it is based on the false assumption that an internal flight alternative exists in India, while human rights observers consider it impossible for a person targeted by the police to lead a normal life in India, since all new arrivals must register with the local police station and because neighbours will tell the police about any newcomer.

9.4 The complainant denies that the human rights situation in the Punjab has improved in the recent past; rather, the general incidence of torture has increased, according to Amnesty International. The Canadian Centre for Victims of Torture in Toronto and the *Réseau pour les victims de violence organisée* in Montreal confirmed that they continue to receive victims of serious torture from that region. Following the rise to power of the Congress party in Punjab in 2002, all police officers facing charges of torture and abuse were amnestied. New anti-terrorist legislation has further weakened the position of torture victims. The argument that only high profile Sikh

[12] AI Index ASA 20/002/2003
[13] The letter is enclosed with the complainant's submission of 20 April 2004.
[14] Copy of the decision is included in the complainant's submission of 2 March 2004.

militants are at risk in Punjab is rejected by most observers and contradicted by reports that, in many cases, previously targeted persons or their families are still being targeted.

Issues and proceedings before the Committee

10.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee notes that the State party concedes that domestic remedies have been exhausted. Thus, the question whether the legal remedies available under the Canadian immigration review scheme are ineffective, as alleged by counsel, does not arise in the concept of admissibility.

10.2 With regard to the complainant's allegation that the decision to return him to India would in itself constitute an act of cruel, inhuman or degrading treatment or punishment in contravention of article 16 of the Convention, the Committee notes that the complainant has not submitted sufficient evidence in substantiation of this claim. In particular, the Committee recalls that, according to its jurisprudence, the aggravation of the complainant's state of health possibly caused by his deportation does not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.[15] Although the Committee recognizes that the complainant's deportation to India may give rise to subjective fears, this does not, in the Committee's view, amount to cruel, inhuman or degrading treatment, as envisaged by article 16 of the Convention. The Committee therefore observes that the complainant's claim under article 16 of the Convention lacks the minimum substantiation that would render this part of the complaint admissible under article 22 of the Convention.

10.3 With respect to the complainant's claim under article 3, paragraph 1, of the Convention, the Committee finds that no further obstacles to the admissibility of the complaint exist. The Committee accordingly proceeds with the consideration of the merits.

11.1 The Committee must evaluate whether there are substantial grounds for believing that the author would be personally in danger of being subjected to torture upon return to India. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

11.2 In this regard, the Committee takes note of the reports submitted by the complainant, confirming that incidents of torture in police custody have continued after the end of the militancy period in Punjab in the mid-1990, and that perpetrators have not been brought to justice in most cases. It also notes the State party's argument

[15] *G.R.B. v. Sweden*, Communication No. 83/1997, UN Doc. CAT/C/20/D/83/1997, 15 May 1998, para. 6.7.

that the human rights situation in the Punjab has improved during the eleven years following the complainant's departure from India

11.3 However, the Committee recalls that the aim of the determination is to establish whether the complainant would be personally at risk of being subjected to torture in India. It follows that, even if a consistent pattern of gross, flagrant or mass violations of human rights could be said to exist in that country, such a finding would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture upon his return to India; additional grounds must exist to show that he would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.4 The Committee notes that the complainant submitted evidence in support of his claim that he was tortured during his detention in 1991, including medical and psychiatric reports, as well as written testimony corroborating this allegation. However, the Committee considers that, even if were assumed that the complainant was tortured by the Punjabi police, it does not automatically follow that, thirteen years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to India.

11.5 Insofar as the complainant claims that he currently remains at risk of being tortured in India, the Committee notes that, while confirming the risk of him being subjected to torture, as well as his family's continuing harassment, by the Punjabi police, the evidence produced by the complainant, including affidavits, letters and a document which is said to contain a resolution adopted by the municipal council of his home village, merely refers to his risk of being tortured *in Punjab*. The Committee considers that the complainant has failed to substantiate that he would be unable to lead a life free of torture in another part of India. Although resettlement outside 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 as such amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention.

11.6 Regarding the effectiveness of judicial remedies available under the Canadian immigration review scheme, the Committee notes that the final decision on the complainant's deportation was taken after a lengthy and detailed assessment of the risk of returning the complainant to India, in four subsequent proceedings. The Committee also observes that, prior to that decision, the State party agreed to review the complainant's humanitarian and compassionate application when it became apparent that the evidence submitted by him had not been duly considered. Similarly, the Committee takes note of the fact that the Federal Court did not hesitate to refer the case back for reconsideration on the basis that the reviewed decision on the complainant's humanitarian and compassionate application also lacked an appropriate evaluation of the evidence.

11.8 In the light of the foregoing, the Committee concludes that the complainant has failed to establish a personal, present and foreseeable risk of being tortured if he were to be returned to India.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to India would not constitute a breach of article 3 of the Convention.

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