



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

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**Committee against Torture**  
**Forty-sixth Session**  
9 May – 3 June 2011

**Decision**

**Communication No. 336/2008**

<i>Submitted by:</i>	Harminder Singh Khalsa et al. (represented by counsel, Werner Spirig)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	18 February 2008 (initial submission)
<i>Date of present decision:</i>	26 May 2011
<i>Subject matter:</i>	Deportation of the complainants from Switzerland to India
<i>Substantive issue:</i>	Risk of torture upon return to country of origin.
<i>Procedural issue:</i>	None
<i>Article of the Convention:</i>	3

[Annex]

\* Made public by decision of the Committee against Torture.

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-sixth session)**

concerning

#### **Communication No. 336/2008**

*Submitted by:* Harminder Singh Khalsa et al. (represented by counsel, Werner Spirig)

*Alleged victims:* The complainants

*State party:* Switzerland

*Date of complaint:* 18 February 2008 (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 26 May 2011,*

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

*Having concluded* its consideration of complaint No. 336/2008, submitted to the Committee against Torture by Werner Spirig on behalf of Harminder Singh Khalsa et al. 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 complainants, their counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

1.1 The complainants are Mr. Harminder Singh Khalsa and his family, Mr. Karan Singh and his family, Mr. Jasvir Singh and Mr. Dalip Singh Khalsa.<sup>1</sup> They are Indian citizens

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<sup>1</sup> Mr. Harminder Singh Khalsa, born on 14 December 1963, lives with Mrs. Navpreet Kour, born on 5 January 2007, and their common children Kour Harmehar and Singh Harbaaz, both born in Switzerland. They are not married but consider each other as spouses. They could not marry due to the fact they could not get the necessary identity documents from the Indian authorities. Mr. Karan Singh, born on 19 April 1961, lives with Mrs. Kour Tarvinder, born on 2 April 1969 and their common children Singh Kanttegh and Kour Keeratwaan, both born in Switzerland. They are not married but consider each other as spouses. They could not marry due to the fact they could not get the necessary identity documents from the Indian authorities. Mr. Jasvir Singh, born on 15 August

belonging to the ethnic group of Sikhs. At the time of submission of the present complaint they were residing in Switzerland and were subject to orders to leave to India.<sup>2</sup> They claim that their deportation from Switzerland to India would constitute a violation of article 3 of the Convention against Torture. They are represented by counsel, Mr. Werner Spirig.<sup>3</sup>

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention by Note Verbale, dated 25 February 2008. At the same time, the Rapporteur on new complaints and interim measures requested the State party not to deport the complainants to India while their case is under consideration by the Committee, in accordance with rule 114, paragraph 1 (previously rule 108, paragraph 1), of the Committee's Rules of procedure. On 4 March 2008, the State party informed the Committee that the complainants will not be deported while their case is being examined by the Committee.

### **The facts as presented by the complainants**

2.1 On 29 September 1981, Karan Singh and Jasvir Singh were among a group of five persons who high jacked an airplane of the Indian Airlines on its flight between New Dehli and Srinagar (Kashmir) to Lahore in Pakistan. With this action, they protested against the arrest of Mr. Sant Jarnail Singh Bhindranwala, the leader of the movement fighting to have a separate Sikh state, and the killing of 36 Sikhs by the Indian security forces. At the time of this event, Karan Singh and Jasvir Singh were both members of groups which wanted a separate Sikh state, respectively the All India Sikh Students' Federation and Dal Khalsa.

2.2 In 1984, Dalip Singh Khalsa and Harminder Singh Khalsa were among a group of nine persons who high jacked an airplane of the Indian Airlines to Pakistan to respond to the attack of the Indian army on the Sikh Holy City of Amritsar and to draw the attention of the international community to the killings of thousands of innocents. The group belonged to the All India Sikh Students' Federation.

2.3 None of the passengers in either airplane were injured. The complainants were arrested by the Pakistan police. They were tried before a special court in Lahore. In January 1986, Dalip Singh Khalsa and Harminder Singh Khalsa were sentenced to death but their sentences were commuted into life imprisonments based on a general amnesty following the accession of Mrs. Benazir Bhutto to the post of Prime Minister. Karan Singh and Jasvir Singh were sentenced to life imprisonment. All complainants were released from prison at the end of 1994 and were ordered to leave the country. They left Pakistan and went to Switzerland where they applied for asylum immediately upon arrival in 1995.

2.4 In Switzerland, the complainants were heard by the Swiss Federal Office for Refugees, which rejected their asylum claims on 10 July 1998. The complainants filed appeals, which the Swiss Asylum Board rejected on 7 March 2003. From 7 March 2003 to 19 December 2007, the complainants filed several petitions for the negative asylum decisions to be reconsidered, which were all rejected. On 19 December 2007, the Federal Administrative Tribunal gave its final decision, confirming the refusal to grant them

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1943, lives apart from the rest of his family, which is in India. Mr. Dalip Singh Khalsa, born on 20 April 1953, lives apart from the rest of his family, which is in India.

<sup>2</sup> The first, second and third complainants were ordered to leave by 22 February 2008 and the fourth by 31 January 2008. The counsel submits that, according to the law in force as of 1 January 2008, after those dates the complainants could have been arrested and deported at any moment.

<sup>3</sup> The complainants submitted four separate communications but indicated that the communications are identical because they follow the same reasoning. Accordingly the communications were registered as one case.

asylum, reasoning that it could not find any good reasons to believe that the Indian security forces would consider the complainants as dangerous enemies of the Indian State.

2.5 The complainants have been living peacefully in Switzerland since 1995. Two of the complainants have founded families. They are very active in the Sikh community. Karan Singh is the President of the first Sikh temple built in Switzerland. Mr. Harminder Singh Khalsa is the Vice-President of the Sikh temple. The complainants submit that they continued to be involved in political activities during their stay in Switzerland and that the Indian authorities are well aware of that. Karan Singh participated as observer in the 56<sup>th</sup> session of the Commission on Human Rights in Geneva, but was forced to leave early, because Indian Security Service people followed and harassed him. At the same time his relatives in India were harassed by the police. In 1998 Harminder Singh Khalsa participated in a conference which was opposed by the Indian government and reports of that appeared in a newspaper. In 2003, at a demonstration against the Indian Government in Bern, Karan Singh gave an anti-governmental speech. In 2007 a human rights conference was held in the new Sikh temple in which two of the complainants participated. The participants held a demonstration in front of the UN building in Geneva. Afterwards the parents of the complainants were harassed by the police and were warned of “dire consequences” if they did not stop their sons from organising anti- Indian rallies.

### **The complaint**

3.1 The complainants submit that their deportation from Switzerland to India would constitute a violation of article 3 of the Convention against Torture because they would face serious threats to their health and lives. They claim that the Indian security forces still want to prosecute them for having hijacked two Indian planes. To support this allegation, the complainants submit that on 22 June 1995, the Indian Central Bureau of Investigation wrote a letter to the Canadian immigration authorities, requesting their assistance in capturing two of the participants in the 1984 airplane’s hijacking.

3.2 The complainants also indicate that two members of the group who participated in the 1984 hijacking, and who had been acquitted by the Pakistan Special Court in 1986 and released from prison, were killed by the Indian Security Forces in mysterious circumstances when they returned to India in 1990. They provide affidavits of relatives of the two members killed and refer to the 7 March 2007 judgment of the Swiss Asylum Appeal Commission in the case of Harminder Singh Khalsa, which allegedly recognizes the death of those two former hijackers.

3.3 The complainants also refer to the case of Mr. K.S. who had also participated in the hijacking of a civilian Indian aircraft in 1984. After having served a 12 years’ imprisonment sentence in India, a month after being released from prison, his dead body which showed marks of injuries was found in a canal in a village in Rajasthan and a magistrate inquiry concluded that he had been tortured prior to being thrown in the canal. The inquiry did not, however, identify the perpetrator(s) and the death of Mr. K.S. was considered irrelevant by the Swiss asylum authorities.

3.4 The complainants submit that Indian security forces are actively searching for them because they have a high profile and their names appear constantly in newspapers reporting that their asylum claims had been rejected in Switzerland and that they would be soon deported to India.<sup>4</sup> They maintain that they submitted to the Swiss authorities copies of a

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<sup>4</sup> The complainants submit copies of articles (in translation) in the newspaper Daily Ajit Jalandbar dated 23 April 1003 and 18 May 2003; the first quotes the complainants’ names and report that the Swiss government ordered their deportation; the second reports that the complainants have gone

poster with pictures of individuals wanted for terrorist activities, among which were the pictures of two of the complainants and which was distributed in the region where they originated from (Jammu). They also submit that the houses in which they used to live in Jammu had been raided by the police. Further, they submit that the Head of the Indian Anti-Terrorist Cell in a television interview on 25 August 2005 called for the Government to press for their extradition to India.

3.5 The complainants submit that, because of their past involvement in the hijackings and their current political activities, they have high profiles as men who want a separate Sikh state. They maintain that the Indian authorities consider them a threat and are actively searching for them and that in case of their forced return to India they would be immediately arrested, subjected to torture or even killed. The complainants refer to a 28 April 2003 letter of the Human Rights Watch, which describes how the new anti-terror legislation could be used against them. They also refer to a 7 May 2003 letter of Amnesty International expressing concerns regarding their safety if returned to India.

#### **State party's observations**

4.1 On 21 April 2008, the State party submitted that it does not object to the admissibility of the complaint.

4.2 On 20 August 2008, the State party reiterates the facts related to the complainants' membership in the All India Sikh Student Federation and Dal Khalsa, their participation in the hijackings of airplanes, the criminal trials and sentences against them. The State party also confirms the dates of the complainants' asylum applications and of the subsequent unsuccessful appeals and requests for review of the asylum applications.

4.3 In relation to the existence in India of a consistent pattern of gross, flagrant or mass violations of human rights, the State party submits that, according to a decision of the Swiss Federal Council, dated 18 March 1991, India is considered as a country of origin without persecution. It notes that this creates a presumption which can be refuted in the course of an asylum application or of a demand to stay deportation.

4.4 The State party notes that the complainants do not allege that they had been tortured or maltreated in India, but rather use as evidence treatment to which other individuals had been subjected in similar situations. The State party refers to the example, presented by the complainants, of two members of their group, who had been arrested upon return by the security forces and killed. It maintains that these facts had been examined by the Swiss asylum authorities, which established that neither the moment, nor the precise circumstances of the deaths of these persons had been identified clearly and that the above events took place 18 years ago. It also maintains that the current situation of Sikhs in India and in particular of other participants in the hijackings of airplanes demonstrated that there is no risk of torture for the complainants if they are to return to India. In relation to the case of Mr. K.S., the State party maintains that the submitted report does not provide information on the motivation of his killing or on the perpetrators and therefore the responsibility for it, which the complainants attribute to the Indian authorities is only their supposition. In addition, the above events took place twelve years ago and can not be used to assess the possible risk existing at present.

4.5 The State party submits that, as of 1993, the situation in Punjab has become more stable and that a government had been elected following free elections. It notes that the Terrorist and Other Disruptive Activities Act was abolished eight years after its

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underground and escaped to Pakistan. They also submit a copy of an article mentioning the participation of one of the complainants in a demonstration in front of the United Nations office.

promulgation. Even after the assassination of the Prime Minister Beant Singh on 31 August 1995, the situation remained calm. As of 1995, the police in Punjab had been under scrutiny and, following an order of the Supreme Court, a Central Bureau of Investigation had started more than 1000 procedures against police officers. The newly elected government in 1997 announced that it would take measures against police officers at fault and that it would compensate the victims.

4.6 Concerning the poster with pictures of wanted terrorists, allegedly issued by the Indian police, the State party submits that the complainants did not deliver the original to the Swiss authorities, but presented a copy, on which it was not possible to identify whether any of the complainants' photos were present. Additionally the poster was not dated and it seemed improbable that the authorities would be looking for the complainants in that manner twenty years after the airplanes' hijackings.

4.7 Concerning the copies of the articles submitted by the complainants in support of the allegation that their names and activities were known to the Indian authorities, the State party submits that such copies have no evidentiary value and that the complainants could have easily obtained the originals and submitted them to the Swiss authorities at an earlier stage of the proceedings.

4.8 The State party submits that, even if the Indian criminal justice authorities were still looking for the complainants at present, that in itself would not be sufficient to conclude that they would be subjected to treatment contrary to the Convention. The Indian justice system is based on the British model and can be qualified as independent. Therefore, the complainants could hire attorneys and defend themselves. There is no evidence that they would be at a disadvantage because of their political activities. The State party also submits that seven individuals, who had participated in an airplane hijacking in 1984, had been deported to India, sentenced to life imprisonment, but had been liberated after 12 years and were never persecuted.<sup>5</sup> It maintains that numerous Sikh militants are back in India, that the Sikh movement has been "largely normalized" and that today Sikhs are a recognized religious minority, benefitting from effective constitutional protection. In addition, Sikhs live in great numbers in different states and therefore they have the option to relocate to an Indian state other than their state of origin. The State party notes that the current Prime Minister of India is Sikh.<sup>6</sup>

4.9 Regarding the political activities of the complainants in Switzerland, the State party submits that they did not demonstrate that they have participated in activities aiming to overthrow by force the democratic institutions, but rather that they were involved in non-violent political activities. It maintains that such activities are protected by the Indian Constitution and tolerated in practice and that they can not constitute grounds to fear treatment which is contrary to the Convention.

4.10 The State party maintains that there are no serious reasons to fear that the complainants would be exposed to real, concrete and personal risk of being tortured if returned to India. It submits that the Committee should find that the deportation of the complainants to India would not amount to a violation of article 3 of the Convention.

#### **Complainants' comments**

5.1 On 28 October 2008, the complainants note that the State party does not dispute the facts as submitted by them and that it accepts that the Indian anti-terror police might be

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<sup>5</sup> The State party refers to an article in BBC News dated 3 July 2007.

<sup>6</sup> The State party makes reference to the Country of Origin Information Report India of the British Home Office, Border and Immigration Agency, dated 31 January 2008, p. 87.

searching for them. They, however, disagree with the State party's assessment that: India has an effective penal justice system, which prosecutes police personnel committing human rights violations; that since 1993 the political dissent in India is no different from the same phenomenon in western democracies; that if the complainants are wanted by the police, there is no good reason to believe they might be tortured; and that the complainants are only low level Sikh activists abroad.

5.2 The complainants reiterate that three Sikh men involved in hijackings were killed upon their return to India by the Indian police, which was recognized by the Swiss Asylum Appeal Commission in its decision of 7 March 2003. They further submit that between 1999 and 2004 the Swiss authorities have granted asylum to at least six Sikhs, who had cases similar to theirs. They maintain that even the Pakistan authorities, after releasing them from prison, did not expel them to India, since they believe that the Indian security forces would torture and kill them.

5.3 The complainants reiterate that they are wanted by the police and that the Head of the Anti-terror Cell announced it in a television interview. They maintain that the poster presented to the Swiss authorities is genuine and that it has pictures of two of them at the age when they participated in the hijackings. They further submit that several Sikhs, who had returned from Europe between 2006 and 2008, had been questioned by the police about them.

5.4 The complainants maintain that they are very prominent figures in the radical European Sikh Community. They reiterate that on numerous occasions reports about their activities had appeared in the Indian media. They submit that, in March 2007, 27 Sikh organizations met in Switzerland and prepared a memorandum to the United Nations and that one of the complainants appeared as the spokesman of the assembly. On 10 April 2007, two of the complainants were among the Sikh representatives who participated in a meeting with the Special Rapporteur on human rights while countering terrorism. The complainants maintain that the Indian authorities want to apprehend all "Sikh militants" and "hardcore terrorists", such as themselves, and refer to a publication on the Pioneer website, dated 2 October 2006, which states that wanted Sikh terrorists have taken shelter in many countries, including Switzerland, and quotes the Head of the police in Punjab, who expressed hope that western governments will revise "their earlier stand of granting asylum to such people".

5.5 The complainants maintain that torture and mistreatment in police custody and extrajudicial killings continue to be widespread and quote the U.S. Country Report on Human Rights Violations 2007 in India,<sup>7</sup> which states that: "authorities often used torture during interrogations to extort money and as summary punishment [...]"; "human rights groups asserted that the new law had not decreased the prevalence of custodial abuse or killings"; "Security forces often staged encounter killings to cover up the deaths of captured non-Kashmiri insurgents and terrorists from Pakistan or other countries. [...] Most police stations failed to comply with a 2002 Supreme Court order requiring the central government and local authorities to conduct regular checks on police stations to monitor custodial violence."

#### **State party's additional observations**

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<sup>7</sup> Report available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100614.htm>, Section 1, *Respect for the Integrity of the Person, Including Freedom From*, para (c) Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and para (f) Arbitrary Interference with Privacy, Family, Home, or Correspondence.

6. On 17 February 2009, the State party submits that the allegations made by the complainants do not lead to the conclusion that they would be exposed to a real, personal and serious risk of torture in case they were deported to India. Even if the Indian authorities were interested in apprehending the complainants that would not necessarily mean that they would be tortured. The State party refers to the complainants' argument that several Sikhs, who had returned to India from Europe between 2006 and 2008, had been questioned by the police about them. It submits that, according to the written statement from one of these individuals that was provided by the complainants themselves, he did not allege having been tortured.

#### **Complainants' additional comments**

7. On 17 February 2010, the complainants submit additional documents on the case of a certain Mr. P.S. in support of their claims.<sup>8</sup> They maintain that, similarly to them, Mr. P.S. participated in the 1984 hijackings, served a 10 year sentence in Pakistan, led a peaceful life in Canada for 15 years, but was immediately arrested following his deportation to India on 26 January 2010 and placed in a high security jail, where he was detained in appalling conditions. He is said to be facing charges under the National Security Act. On 7 April 2010, the complainants submitted a copy of the *Grounds of Detention against Mr. P.S. under the 1980 National Security Act*, by the Commissioner of the Delhi Police, which states that the former "is, obviously, a person of danger to Indian citizens", that "he is enemical to the nation which was demonstrably proved by the fact that he took the hijacked plane to Lahore", that he is "a desperate and hardened criminal whose activities are prejudicial to the Security of the State as well as maintenance of public order" and that "there is every possibility that [...] he will indulge again in similar types of criminal activities." The report mentions the names of two of the complainants as accomplices (Dalip Singh Khalsa and Harminder Singh Khalsa). The complainants submit that it is obvious that the Indian police would accuse them of working against the government.

#### **State party's additional observations**

8. On 19 October 2010, the State party submits that the new documents submitted by the complainants do not lead to the conclusion that they would be exposed to a real, personal and serious risk of torture in case they are deported to India. It maintains that the complainants do not indicate whether the detention described in it was confirmed by the competent authorities. The State party further refers to the Committee's decision in case 99/1997, *T.P.S. v. Canada*, where it did not find a violation of article 3 of the Convention.

#### **Complainants' additional comments**

9. On 7 December 2010, one of the complainants, Dalip Singh Khalsa, submitted that on 25 November 2010, he was granted a regular stay permit. Accordingly the complainant has withdrawn his complaint. According to information from the State party's authorities, submitted on 18 February 2011, he had been granted a humanitarian permit, based on the fact that he has well integrated into the Swiss society. On 23 March 2011, the complainants submit that Mr. P.S. is still kept in custody and his plea to release him was dismissed by the court on 9 February 2011 on the ground that he was a threat to public security.

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<sup>8</sup> The complainants submit: articles from The Star, dated 3 February 2010, and from SikhSiyasat.net, dated 2 February 2010, describing the immediate arrest and incarceration without trial of Mr. P.S., a Sikh, who participate in the 1984 hijacking after his deportation to India; a letter describing the harsh conditions in which the arrested individual was held in the Tihar jail, dated 5 February 2010, signed by a lawyer, Mr. N.S., who visited him in that jail; a report on Mr. P.S.'s arrest and conditions of detention by the SikhSiyasat.net, dated 29 January 2010.



## Issues and proceedings before the Committee

### *Admissibility considerations*

10.1 Before considering a claim contained in a communication, the Committee 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) and (b), that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted.

10.2 The Committee takes note that the State party does not contest the admissibility of the communication and decides that it is admissible in respect of the alleged violation of article 3 of the Convention based on the return of the complainants to India.

### *Consideration of the merits*

11.1 The Committee takes note of the fact that, on 25 November 2010, Dalip Singh Khalsa, received a regular residence permit from the State party. Therefore, the Committee decides to discontinue the part of the communication relating to Dalip Singh Khalsa.

11.2 The issue before the Committee is whether the forced return of the three remaining complainants to India would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture. In order to determine whether, at the time of removal, there were substantial reasons for believing that the complainants would be in danger of being subjected to torture if they were returned to India, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individuals concerned would be personally at risk of being subjected to torture in the country to which they were returned.

11.3 The Committee notes the State party's submission that, as of 1993, the situation in Punjab has become more stable, a government had been elected following free elections, which announced that it shall take measures against police officers; the Terrorist and Other Disruptive Activities Act has been abolished; and the Central Bureau of Investigation has started more than 1000 procedures against police officers accused of inappropriate conduct. The Committee, however, observes that according to the available information, such as recent reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions, ill-treatment<sup>9</sup> and torture<sup>10</sup> of individuals held in detention, as well as deaths in custody<sup>11</sup> or following detention<sup>12</sup> continue to be a problem in India. Special Rapporteurs also expressed their concerns relating to reports of alleged impunity for criminal acts committed by officials. In some cases relating to reports of death or ill-treatment while in

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<sup>9</sup> A/HRC/4/33/Add.1, paras. 78 and 80-82; E/CN.4/2006/6/Add.1, para. 87; E/CN.4/2005/62/Add.1, paras. 729, 730, 732, 734, 735, 744, 745, 761.

<sup>10</sup> E/CN.4/2005/62/Add.1, paras. 758, 759, 760.

<sup>11</sup> A/HRC/4/33/Add.1, paras. 76 and 83; E/CN.4/2005/62/Add.1, paras. 727, 733, 736, 762; E/CN.4/2005/7/Add.1, para. 298.

<sup>12</sup> E/CN.4/2006/6/Add.1, para. 84 and E/CN.4/2005/62/Add.1, paras. 724, 725, 726, 737, 756.

detention, it was alleged that the authorities had attempted to block the investigation,<sup>13</sup> to destroy evidence,<sup>14</sup> or had taken no steps to investigate the allegations.<sup>15</sup>

11.4 The Committee notes the State party's submission that the complainants do not allege that they had been tortured or maltreated in India, and that the current situation of Sikhs in India and in particular of other participants in airplanes' hijackings demonstrated that there is no risk of torture for the complainants if they are to return. The Committee, however, recalls that whether the complainant has been subjected to torture in the past, is but one of the factors that it finds pertinent in assessing the merits of a case.<sup>16</sup> It observes that the complainants have submitted information regarding cases, similar to theirs, where individuals who had participated in hijackings had been arrested, detained in inhuman conditions, tortured and/or killed. The Committee recalls its general comment on the implementation of article 3, in which it states that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".<sup>17</sup>

11.5 The Committee notes that the State party questions whether the criminal justice authorities in India are still looking for the complainants and argues that, even if they were, that in itself would not be sufficient to conclude that they would be subjected to treatment contrary to the Convention. The Committee, however, observes that the complainants are clearly known to the authorities as Sikh militants and that they have submitted to the Swiss authorities and to the Committee several statements from public officials in India indicating them by name, which demonstrate that the criminal justice authorities were looking for them as late as in 2005. The Committee also notes that the complainants are well known to the Indian authorities because of their political activities in Switzerland and their leadership roles in the Sikh community abroad. The Committee accordingly considers that the complainants have provided sufficient evidence that their profile is sufficiently high to put them at risk of torture if arrested.

11.6 The Committee notes the State party's submission that that numerous Sikh militants are back in India, that Sikhs live in great numbers in different states and therefore the complainants have the option to relocate to another Indian state from their state of origin. The Committee, however, observes that some Sikhs, alleged to have been involved in terrorist activities have been arrested by the authorities upon arrival at the airport and immediately taken to prisons and charged with various offences.<sup>18</sup> The Committee also takes note of the evidence submitted that the Indian police continued to look for the complainants and to question their families about their whereabouts long after they had fled to Switzerland. In light of these considerations, the Committee does not consider that they would be able to lead a life free of torture in other parts of India.

11.7 Moreover, the Committee considers that, in view of the fact that India is not a party to the Convention, the complainants would be in danger, in the event of expulsion to India,

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<sup>13</sup> E/CN.4/2005/62/Add.1, para. 726 and E/CN.4/2005/7/Add.1, para. 300.

<sup>14</sup> E/CN.4/2005/62/Add.1, para. 727.

<sup>15</sup> Ibid., paras. 724, 725, 729 and 730. See also E/CN.4/2006/6/Add.1, para. 85 and A/HRC/4/33/Add.1, para. 77.

<sup>16</sup> See, General Comment No 1: Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications), A/53/44, annex IX, paragraph 8.

<sup>17</sup> Ibid, paragraph 6.

<sup>18</sup> See also Communication No. 297/2006, *Bachan Singh Sogi v. Canada*, decision adopted on 16 November 2007.

not only of being subjected to torture but of no longer having the legal possibility of applying to the Committee for protection.<sup>19</sup>

11.8 In the light of the foregoing, the Committee concludes that the complainants have established a personal, present and foreseeable risk of being tortured if they were to be returned to India. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, therefore concludes that, under the circumstances, the complainants' removal to India would constitute a violation of article 3 of the Convention.

11.9 As the cases of the families of the first and second named complainants are dependent upon the cases of the latter, the Committee does not find it necessary to consider these cases separately.

12. In conformity with article 118, paragraph 5, of its Rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to these Views.

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

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<sup>19</sup> See also Communication No. 13/1993, *Mutombo v. Switzerland*, decision adopted on 27 April 2004, paragraph 9.6.