



**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. 319/2007

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| <i>Submitted by:</i> | Nirmal Singh, (represented by counsel Stewart Istvanffy) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Canada |
| <i>Date of complaint:</i> | 20 June 2007 (initial submission) |
| <i>Date of present decision:</i> | 30 May 2011 |
| <i>Subject matter:</i> | Deportation of complainant to India |
| <i>Substantive issue:</i> | prohibition of refoulement |
| <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. 319/2007

Submitted by: Nirmal Singh (represented by counsel Stewart Istvanffy)

Alleged victim: The complainant

State party: Canada

Date of complaint: 20 June 2007 (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 30 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. 319/2007, submitted to the Committee against Torture by Stewart Istvanffy on behalf of Nirmal Singh 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 complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant, Mr. Nirmal Singh, an Indian national born in 1963, was residing in Canada at the time of submission of the present complaint and subject to an order for his deportation to India. He claims that his return to India 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 alleges lack of judicial control required by the international human rights law on the administrative deportation decision and that he did not have an effective remedy to challenge the deportation decision. The complainant is represented by counsel, Mr. Stewart Istvanffy.

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 21 June 2007. At the same time, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to India while his case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's *Rules of*

procedure. The State party subsequently informed the Committee that the complainant had not been deported.

The facts as presented by the complainant

2.1 The complainant is a baptized Sikh and was a part-time Sikh priest in the Indian provinces of Punjab and Haryana. Because of his preaching activities, frequent travel in the region and well-built body, he was questioned and harassed by the Indian police on several occasions. The Indian police suspected him of being a terrorist or a sympathiser of the militant organization Khalistan Liberation Force (KLF) in India, as well as having helped militants by sheltering them. He was detained twice on false accusations, the first time for over three years from 1988 to 1991, and the second time in 1995.

2.2 On 10 April 1988, officers of the Shahbad police station (Haryana province) arrested the complainant, his brother and three other individuals without explaining the reasons for their arrest. At the police station the brothers were separated. The complainant was accused of involvement in a murder in the city of Shahbad and of being associated with one Daya Singh. The complainant denied the allegations. While in detention, the complainant was severely beaten and humiliated by the investigating officers and was forced to confess his guilt. After three years of detention, the complainant and his brother were bailed out on 14 March 1991 with a lawyer's help. On 19 February 1998, the complainant was acquitted of all charges related to the first accusation, but police officers continued to harass him under the pretext of visiting his home and place of religious services.

2.3 On 14 September 1995, an inspector of the Kotwali police station (Punjab province) accompanied by police officers, raided the complainant's house and arrested him. The complainant was handcuffed and his house was searched but no illegal items were discovered. The complainant was taken to the interrogation room at the police station and questioned by the inspector about one Paramjit Singh, who allegedly was involved in the assassination of the Punjab Chief Minister. The inspector alleged that the complainant had sheltered Paramjit Singh at his house before the Chief Minister's assassination. The inspector also stated that he had received secret information from the Haryana police that the complainant was associated with KLF and that another militant had reported to the police having sent Paramjit Singh to stay with the complainant. To make him confess his links with Paramjit Singh, the police subjected the complainant to the following forms of torture: a heavy wooden roller was rolled over his thighs with the legs spread apart; he was hung upside down and administered electric shocks; his soles were beaten with wooden rods, and he was not allowed to sleep. He was charged with harbouring a dangerous offender but released on bail on 30 September 1995, with a lawyer's help. The Patiala court acquitted him of the above charges on 19 March 1997.

2.4 After his acquittal in both cases, the complainant became a member of the Sarab Hind Shiromani Akali Dal (Akali Dal), the main Punjabi nationalist party, and on 4 July 1999, he was appointed as a Secretary-General of Akali Dal in Haryana province.

2.5 Although acquitted, the police still wanted the complainant to identify Paramjit Singh and two other individuals, who at that time were detained pending trial at the Burali jail. In 2000, he received three court summons, but the hearings were postponed each time. All this time the complainant was under police surveillance; he bribed the inspector to further avoid it and moved to Muzaffarnagar in Uttar Pradesh province. There, he applied for a passport, which was subsequently issued by the Ghaziabad Passport Office in September 2002.

2.6 On 13 January 2003, the complainant was arrested in Uttar Pradesh province and questioned about his domicile and activities. He admitted to having a residence in two places. Upon the request of Haryana police, he was transferred to Karnal on 15 January

2003, where he again suffered torture before being released on 20 January 2003, with the help of his parents and a prominent Akali Dal member.

2.7 On an unspecified date, after a Sikh function, the complainant was approached by an individual who was impressed by the service in the temple, in which the complainant was preaching at that time, and invited him to come to Canada. On the basis on an invitation of a Sikh temple in British Columbia, the complainant received a Canadian visa on 16 September 2003 and arrived in Vancouver, Canada on 24 September 2003. While the complainant was already in Canada, his father was arrested for three days, following the escape of killers of the Punjab's Chief Minister. Afterwards the complainant's family was constantly harassed by police, in attempts to establish his whereabouts.

2.8 After his arrival in Canada the complainant preached in two Sikh temples for a year and a half on voluntary basis. He was promised by the management of the Canada based Gurudwara society that they will arrange his immigration status, but they failed to do so.

2.9 The complainant travelled to Montreal where, on 28 March 2005, he filed an application for refugee status and protection. The complainant's refugee claim was heard by the Immigration and Refugee Board ("the Board") on 3 October 2005. On 16 November 2005, the Board determined that he was not a Convention refugee. The Board concluded that the applicant was not credible, that his behaviour was not remonstrative of a person fearing for his life and that his departure related to the invitation by the Sikh religious community to work in Canada.

2.10 The complainant applied to the Federal Court for leave to apply for judicial review of the Board's Decision, which was granted on 16 March 2006. The request for judicial review of this decision was heard on 7 June 2006 and it was denied by the Federal Court on 13 June 2006. The standard that the Federal Court applied to the credibility of the findings of the Board was that of "patent reasonableness". The Court concluded that the decision was not patently unreasonable, largely on grounds of the delay in claiming refugee status after arrival to the country and failure to provide credible or trustworthy evidence as to the complainant's background information in India.

2.11 After the refusal of refugee status and the decision from the Federal Court, on 27 December 2006, the complainant filed an application for stay for humanitarian reasons, (so called H&C application), submitting additional evidence under article 25(2) of the Immigration and Refugee Protection Act. The application was refused on 27 March 2007 by a Pre-Removal Risk Assessment (PRRA) Officer who concluded that the applicant did not establish that he would be at risk should he return to India. The complainant applied to the Federal Court for leave to apply for judicial review of the H&C decision, which was dismissed without reasons on 6 September 2007.

2.12 On 12 December 2006, the complainant submitted an application for protection from Canada under the PRRA programme. On 27 March 2007, the latter was rejected by the same PRRA Officer who refused the H&C application. The motivation was that the documentary evidence submitted by the complainant did not demonstrate that he might be listed or wanted by the Indian authorities; that the complainant had never claimed that he was a Sikh militant or a supporter of the militants; that he had not established that he held a high profile, nor that he was a person of interest for the Indian authorities. Therefore, the evidence submitted by the complainant did not corroborate that he might face a personal and objectively identifiable risk should he return to India.

2.13 After the PRRA application was refused, the complainant applied to the Federal Court for leave to apply for judicial review of the PRRA decision. The Federal Court dismissed his application without reasons on 14 August 2007.

2.14 On an unspecified date, the complainant applied to the Federal Court for a stay of execution of his removal order. A detailed affidavit about the present level of danger was submitted with a motion for stay of deportation that was heard on 18 June 2007 and refused on 20 June 2007. The deportation of the complainant was scheduled for 21 June 2007.

The complaint

3.1 The complainant contends that he has exhausted all available and effective domestic remedies.

3.2 The complainant claims a violation of article 3 of the Convention against Torture by Canada if he is to be deported to India in the light of the treatment suffered by him in police custody the past and continuing interest in him by the police in India.

3.3 The complainant submits that Sikhs in India who are suspected of militant activities are routinely arrested, tortured and murdered by police with impunity. He refers to the report on the situation of impunity published in the Harvard Human Rights Journal in 2002 "A Judicial Blackout:

Judicial Impunity for Disappearances in Punjab", which is claimed to be a leading authority on the current situation in Punjab. He further submits that as a result of being subjected to torture in the past, he suffers from post-traumatic stress disorder, the diagnosis which is corroborated by medical reports from India and from Montreal. At the time of the scheduled deportation there was an ongoing crisis in the Punjab and Haryana provinces. This crisis is said to have caused the central government to send large numbers of paramilitaries to these two provinces. There had been a general strike and widespread violence in May and June 2007 among Sikhs and another religious sect. The complainant claims that individuals such as himself are routinely targeted by the police at the slightest sign of political upheaval or disturbance.

3.4 The complainant also states that he did not have an effective remedy to challenge the deportation decision as guaranteed in article 2 of the International Covenant for Civil and Political Rights (ICCPR). He explains that the judicial review of the Immigration Board decision, denying him Convention refugee status, is not an appeal on the merits, but rather a very narrow review for gross errors of law. In the context of deportation these proceedings have no suspensive effect. The complainant also submits that the PRRA procedure of risk analysis is implemented by immigration agents who are not competent in matters of international human rights and are not independent, impartial and do not possess recognised competence in the matter. He claims that in the immigration department there is an extremely negative attitude towards refugee claimants and that its decisions do not undergo independent scrutiny as required by the international human rights law.

State party's observations on admissibility and the merits

4.1 On 18 January 2008, the State party submitted observations on the admissibility and the merits of the communication.

4.2 With regard to the allegation of violations of article 3 of the Convention, the State party maintains that the complaint is inadmissible pursuant to article 22, paragraph 2 of the Convention and pursuant to Rule 107 (1)(b) and (d) of the Committee's *Rules of procedure*, as it is manifestly unfounded and incompatible with the Convention. The State party submits that the complainant has failed to substantiate on a *prima facie* basis that there are substantial grounds to believe that he personally faces a risk of torture on return to India.

The State party refers to the Committee's General Comment No.1, which states that it is the complainant's responsibility to establish a *prima facie* case for the purpose of admissibility of his or her communication.

4.3 The State party maintains that the communication is based on the same facts and evidence as presented to the competent and impartial domestic tribunals and decision makers and emphasizes that it is not the role of the Committee to weigh evidence or reassess findings of fact and credibility made by competent domestic decision-makers. The State party submits that the complainant's refugee claim was heard by the Immigration and Refugee Board, which is an independent, quasi-judicial, specialized tribunal that hears refugee applications. The Board determined whether the person is a refugee based on an oral hearing and consideration of documentary evidence. The Board members are specialists in refugee law, who receive comprehensive, ongoing training and develop expertise on the human rights conditions in countries of alleged persecution. The State party submits that the Board's decision was subject to judicial review by the Federal Court.

4.4 The State party also submits that the complainant's case was reviewed under the PRRA programme, which is founded in Canada's domestic and international commitments to the principle of *non-refoulement*. Under this procedure an applicant whose claim to refugee protection has been rejected by the Board may present for consideration only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected to have presented, at the time of the rejection. PRRA applications are considered by officers specially trained to assess risk and to consider the Canadian Charter of Rights and Freedoms as well as Canada's international obligations, including those under the Convention against Torture. The State party also makes reference to the complainant's unsuccessful H&C application. The State party makes reference to previous decisions of the Committee and other United Nation treaty bodies, which have considered the judicial review¹ and PRRA process² to be effective remedies.

4.5 The State party refers to the Committee's constant view that it can not review credibility findings unless it can be demonstrated that such findings are arbitrary or unreasonable; that the complainant has made no such allegations nor does the submitted material support a finding that the Board's decision suffered from such defects.

4.6 The State party refers to the complainant's claims that the Canadian refugee determination and post-determination process were insufficient and did not meet international human rights standards. The State party submits that these allegations fail to describe in sufficient detail how the above procedure violates article 3 or any other provision of the Convention or fail to provide for an effective remedy. It also notes that it is not within the scope of review of the Committee to consider the Canadian system in general, but only to examine whether, in the present case, the State party complied with its obligations under the Convention. The State Party maintains that the allegation of lack of effective remedy should be found inadmissible since it constitutes an allegation for violation of article 2 (3) of ICCPR and therefore it is not within the Committee's jurisdiction under article 22, paragraph 1 of the Convention.

¹ P.S.S v. Canada, Communication 66/1997, para 6.2, R.K. v. Canada, Communication 42/1996 para 7.2, L. O. v. Canada, Communication 95/1997, para 6.5, M.A. v. Canada, Communication 22/1995, paras 3-4, Adu v. Canada, Communication 603/1994, para 6.2, Nartey v. Canada, Communication 604/1994, para 6.2.

² The State party refers to T.A. v. Canada, Communication 273/2005, para 6.4, Nartey v. Canada, Communication 604/1994, para 6.2, Badu v. Canada, Communication 603/1994, para 6.2, Khan v. Canada, Communication 1302/2004, para 5.5.

4.7 The State party maintains that the complainant has failed to show that he is personally at substantial risk of torture if returned to India. The State party submits that the complainant's credibility is highly suspect, that his overall behaviour was not demonstrative of someone who fears persecution or serious harm; that there are no credible reasons to consider that he fits the personal profile of someone who would be of interest to the Indian authorities; that the general human rights situation in the country cannot by itself be sufficient to establish that the complainant would be personally at risk if returned; and that the current human rights situation in India does not support the complainant's allegations of risk.

4.8 Should the Committee be inclined to assess the complainant's credibility, the State party submits that a number of key issues clearly supports a finding that the complainant's story can not be believed: the complainant's one year and a half delay in making a refugee claim and the reasons cited for it significantly detract from his credibility; the complainant's allegation that he feared harm is not plausible since he waited many months after receiving a passport before leaving India; there were inconsistencies in the author's allegations of political involvement- namely he was unable to provide details of Akali Dal party's ideology and failed to explain how he could continue to act as General Secretary of the Haryana Unit after leaving the geographic area.

4.9 The State party also submits that objective evidence does not corroborate the complainant's allegations with regard to the human right situation in India. It states that the human rights situation for Sikhs in Punjab and India has improved to the extent that there is not a significant risk of torture or other ill-treatment on the part of the police, and that only those considered to be high-profile militants may still be at risk and refers to several reports in support of that view.

4.10 The State party maintains that the complainant has failed to show in his submissions that he would be unable to lead a life free of torture in another part of India and makes reference to the previous practice of the Committee that while the complainant may face hardship should he not be able to return to his home, such hardship would not amount to torture or ill-treatment.³

4.11 In the event the Committee determines that the complainant's communication is admissible, the State party requests that the communication be found without merit.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 The complainant submits in support of his communication a report prepared by the Punjab Human Rights Organization, regarding his case. He also notes that the State party does not seriously question that he had been targeted and subjected to torture in the past.

5.2 In a separate submission, the complainant underlines that the Federal Court of Canada is not effecting a real control over the immigration authorities when they look at stays of deportation, since the Court has established jurisprudence that if the Board decided a refugee claimant is not credible, than their story can not be a base for stopping their deportation, even when there is substantial evidence of an error in judgment. The complainant quotes cases where the Federal Court has consistently decided that the decisions of the Immigration Board are discretionary and that the Court should not intervene except if the immigration officer exercises his discretion pursuant to "improper

³ B.S.S v. Canada, Communication 183/ 2001 (2004), para11.5; S.S.S. v. Canada, Communication 245/2004 (2005), para 8.5.

purposes, irrelevant considerations, with bad faith, or in a patently unreasonable manner.”⁴ He maintains that when the judicial recourse is futile and in cases where there are substantial grounds to intervene the Court does not even hear the case and that this is not a recourse that is effective and efficient following the recognized principles of the international law. The complainant claims that no human rights organizations dealing with refugees have any confidence in the PRRA as an effective recourse to protect victims of violations and refers to several documents in support of his view.

5.3 The complainant maintains that the State party’s authorities are following a political line of refusing asylum to Sikh victims of torture from India. He states that the rate of acceptance of PRRA cases is 3% for Canada and only 1% in Quebec, where his case was reviewed. He further submits that most applicants are refused with identical motivation.

5.4 The complainant further submits that, even though Sikhs are not a targeted group, there are Sikhs who are targeted because of their political activities or their efforts to get justice for human rights abuses. He maintains that, according to Indian human rights groups, arbitrary arrests are happening all the time and individuals who were at risk in the past are still at risk. He maintains that there are no valid legal recourses for victims of human rights abuses in India and refers to the submitted article in the Harvard Human Rights Law Journal.

5.5 The complainant contests the suggestion that he could relocate and live in safety elsewhere in India, again refers to the article in the Harvard Human Rights Law Journal and states that individuals have been detained for not reporting to the police. He also contests the State party’s assertion that there would be no immediate danger for him upon arrival in India and states that there have been cases of individuals detained upon arrival at the airport and taken to prison, where they were tortured. Further, he contests that only high profile individuals are at risk of torture and refers to a 2003 Amnesty International report which demonstrates how deeply ingrained is the system of torture and abuse. He is also referring to pages 25-28 of the Danish Immigration Service *Report on Fact-finding Mission to Punjab, India, 21 March to 5 April 2000*, where widespread torture and deaths in police custody are described.

5.6 The complainant submits that he is personally at risk of torture if returned to India because: he had previously been accused of participation in militant activities in 1988 and in 1995; he was detained for three and a half years between 1988 and 1991 and subjected to torture while in detention and previous detainees for militant activities are one of the main risk groups according to human rights reports; he was a prominent Sikh priest at some of the most important Sikh temples in Punjab and Haryana and therefore is a high-profile figure, since prominent Sikh religious figures are among the most targeted figures by the security services; he was a prominent figure in the Akai Dal in Haryana; he has personal family links with well known militants, as confirmed by the submitted report of the Punjab Human Rights Organization.

5.7 The complainant contests the State party’s assertion that the torture with impunity in India has ended and in support describes several cases where human rights defenders or activists of Akali Dal have been detained and tortured by the police. He also maintains that after the 2008 Mumbai attacks there was a great wave of detentions, false accusations and torture taking place against large parts of the political class. The complainant also refers to the 2005 report of the Organization ENSAAF, entitled *Punjab Police: Fabricating Terrorism through Illegal Detention and Torture*, which talks about large quantity of

⁴ Case of Amir Shahin Sokhan, Imm-3067-96, 7 July 1997. Similar jurisprudence quoted from the case of Rahmatollah Khayambashi, Imm-1246-98, 7 January 1999.

arbitrary detentions in the period June-August 2005, including a leader of Akali Dal. He submits that his political activities would make him particularly vulnerable to detention and torture if he were to be returned.

6.1 By Note Verbale of 17 July 2009, the State party submits that the *Fact-Finding Report Regarding Nirmal Singh*, presented by the complainant, contains no new evidence demonstrating that there were substantial grounds to believe that the latter would personally be at risk of torture if returned to India.

6.2 Should it be determined that the report contains new evidence, the State party submits that the complainant should present it first to Canadian immigration authorities, that the complainant has not exhausted domestic remedies as required by article 22 (5)(b) of the Convention and therefore it is inadmissible. The State party notes that it remains open to the complainant to request a new PRRA or file a new H&C application for permanent residence based on the new report.

6.3 In conclusion, the State party continues to rely on their original submission of 17 January 2007 and asks the Committee to find the communication inadmissible and lacking in merits.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, 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), 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.

7.2 The Committee notes the State party's contention that the complaint of a violation of article 3 of the Convention, based on the return of the complainant to India is manifestly unfounded and therefore inadmissible. The Committee, however, considers that the complainant has provided sufficient substantiation to permit it to consider the case on the merits.

7.3 The Committee notes the State party's submission that the allegation of lack of effective remedy should be found inadmissible since it constitutes an allegation for violation of article 2 (3) of ICCPR and therefore it is not within the Committee's jurisdiction under article 22, paragraph 1 of the Convention. The Committee, however, recalls its jurisprudence that the prohibition on refoulement should be interpreted to encompass a remedy for its breach.⁵

⁵ See *Ahmed Hussein Mustafa*, complaint No. 233/2003, Views of 20 of May 2005, para. 13.6 and 13.7.

7.4 Accordingly, the Committee decides that the complaint is admissible as pleaded in respect of the alleged violations of article 3 of the Convention.

Consideration of the merits

8.1 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to India.

8.2 The Committee notes the State party's argument that the human rights situation in the Punjab and in India has improved and stabilized in recent years. It observes, however, that reports submitted both by the complainant and the State party, confirm *inter alia* that numerous incidents of torture in police custody continue to take place, and that there is widespread impunity for perpetrators. The Committee observes that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person was in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned was personally at risk.⁶

8.3 The Committee notes that State party's submission that it is not the role of the Committee to weigh evidence or reassess findings of fact and credibility made by competent domestic decision-makers. According to the General Comment No. 1, paragraph 9, the Committee gives "considerable weight (...) to findings of fact that are made by organs of the State party concerned (...) but the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case". The Committee notes that in the case under analysis, most of the facts are undisputed by the parties, however the assessment of the legal consequences of the relevant facts are challenged. In this situation, the Committee should assess the facts in light of the State party's obligations under the Convention.

8.4 The Committee observes that the complainant submitted evidence in support of his claims that he was tortured during detention on at least three occasions, in 1988, 1995 and 2003, including medical reports, as well as written testimony corroborating these allegations. It also notes the medical reports from clinics in India and Canada, which conclude that there is sufficient objective physical and psychological evidence corroborating his subjective account of torture and that the State party has not contested the complainant's allegations that he had been subjected to torture in the past.

8.5 The Committee notes the State party's submission that the complainant has failed to demonstrate that he is a "high profile" person and therefore that he would be of interest for the Indian authorities. However, the Committee notes that the complainant contends he was detained and tortured because he was accused of being a militant, that despite his formal acquittal by the courts, the police continued to harass him, that he is well known to the authorities because of his activities as a Sikh priest, his political involvement with Akali Dal party and his leadership role in the local structures of the party. The Committee observes that the complainant has provided documentary evidence that he has a history of being investigated and prosecuted as an alleged Sikh militant, that he was appointed as Secretary General of the Haryana unit of the Akali Dal party and that he served as a Sikh priest. The Committee accordingly considers that the complainant has provided sufficient evidence that his profile is sufficiently high to put him at risk of torture if arrested.

⁶ See *A.M. v. France*, complaint No. 302/2006, Views of 5 May 2010, para 13.2; *S.P.A. v. Canada*, complaint No. 282/2005, Views of 7 November 2006, para 7.1.

8.6 The Committee notes the State party's submission that the complainant has failed to show in his submissions that he would be unable to lead a life free of torture in another part of India. The Committee, however, observes that the complainant has submitted evidence that he had been arrested in three different provinces - Haryana, Punjab and Uttar Pradesh. The Committee also takes note of the evidence submitted that the Indian police continued to look for the complainant and to question his family about his whereabouts long after he had fled to Canada. In light of these considerations, the Committee does not consider that he would be able to lead a life free of torture in other parts of India.

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

8.8 The complaint states that he did not have an effective remedy to challenge the decision on deportation and that the judicial review of the Immigration Board decision, denying him Convention refugee status, was not an appeal on the merits, but rather a very narrow review for gross errors of law. The State party in response submits that the Board's decision was subject to judicial review by the Federal Court. The Committee notes that according to Section 18.1(4) of the Canadian *Federal Courts Act*, the Federal Court may quash a decision of the Immigration Refugee Board if satisfied that: the tribunal acted without jurisdiction; failed to observe a principle of natural justice or procedural fairness; erred in law in making a decision; based its decision on an erroneous finding of fact; acted, or failed to act, by reason of fraud or perjured evidence; or acted in any other way that was contrary to law. The Committee observes that none of the grounds above include a review on the merits of the complainant's claim that he would be tortured if returned to India.

8.9 With regard to the PRPA procedure of risk analysis, to which the complainant also subjected his claim, the Committee notes that according to the State party's submission, PRRA submissions may only include new evidence that arose after the rejection of the refugee protection claim; further, the PRRA decisions are subject to a discretionary leave to appeal, which was denied in the case of the complainant. The Committee refers to its Concluding observations (CAT/C/CR/34/CAN of 7 July 2005, para 5 (c)), that the State party should provide for judicial review of the merits, rather than merely of the reasonableness, of decisions to expel an individual where there are substantial grounds for believing that the person faces a risk of torture⁷. The Committee accordingly concludes that in the instant case the complainant did not have access to an effective remedy against his deportation to India, in violation of article 22 of the Convention against Torture.

9. 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, if implemented would constitute a breach of article 3 of the Convention. The Committee also considers that in the instant case the lack of an effective remedy against the deportation decision constitutes a breach of article 22 of the Convention.

10. In conformity with article 112, 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, Russian and Chinese as part of the Committee's annual report to the General Assembly.]

⁷ See T.I. v. Canada, complaint No. 333/2004, Views of 15 November 2010, para. 6.3.

