



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

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Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 583/2014*, ****

<i>Communication submitted by:</i>	A (represented by counsel, Raj S. Bhambi)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	16 December 2014 (initial submission)
<i>Date of present decision:</i>	9 May 2016
<i>Subject matter:</i>	Deportation of the complainant to India
<i>Procedural issues:</i>	Admissibility — exhaustion of domestic remedies; admissibility — manifestly unfounded
<i>Substantive issues:</i>	Non-refoulement; refugee status; torture
<i>Articles of the Convention:</i>	3 and 22 (5) (b)

1.1 The complainant is A, a national of India born on 5 January 1988, who at the time of submission of the present communication was subject to removal to India. He claims that his removal to India would constitute a violation by Canada of article 3 of the Convention.

1.2 Under rule 114 (1) of its rules of procedure, on 17 January 2014, the Committee requested the State party to refrain from removing the complainant to India while his complaint was under consideration by the Committee. On 12 August 2014, the Committee granted the State party's request to lift interim measures. On 23 April 2015, the State party informed the Committee that the complainant had been removed to New Delhi on 23 March 2015.

* Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.

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Facts as presented by the complainant

2.1 The complainant is of the Sikh faith and was born in Jalandhar, Punjab, India. He worked in his family's pharmacy in Phagwara. He was targeted by local authorities because his cousin M. was accused of assisting militants.

2.2 On 3 November 2008, the police raided and searched the complainant's home, where M. was staying and arrested them both. The police accused the complainant of assisting militants and detained him for four days. During this period, the complainant was stripped naked. Police officers beat his buttocks and the soles of his feet with leather belts and wooden sticks. His legs were pulled apart and a police officer kicked his genitals. He fainted as a result of this ill-treatment. On 7 November 2008, he was released after his family paid a substantial bribe and secured the intervention of local officials. The complainant sought treatment in a hospital for his injuries.¹

2.3 In July 2009, the police came to the complainant's house to arrest him again, but he was not present. Fearing for his life, he left his village and went to stay with relatives, first in the village of Nadha Sahib, in the Ambala District, then in Chandigarh.

2.4 On 8 December 2009, the complainant was arrested in Chandigarh and beaten by police officers. He was then taken to Phagwara, where he was tortured by police officers. The officers accused him of helping militants and planning with M. to kill unspecified leaders.² The complainant was again released on 10 December 2009, after his family paid another substantial bribe and obtained the intervention of influential individuals. He was instructed to provide more information about M. and was told not to leave Phagwara without notifying the police. Specifically, the police threatened him and instructed him to produce his cousin within two months and provide information about unspecified militants. If he did not comply, he would be killed. He again had to seek treatment in a hospital, and realized that the police had been able to find him in Chandigarh by wiretapping his family's home phone. Out of fear for his life, he fled India and arrived in Canada on a student visa on 18 January 2010.

2.5 The complainant claims that he has exhausted domestic remedies. On 20 December 2011, he filed a refugee claim in Canada. In June 2013, the Immigration and Refugee Board, a division of the Refugee Protection Division (RPD), rejected his claim. Thereafter, he applied to the Federal Court of Canada for leave to file for judicial review of the Board's decision; this application was rejected on 18 October 2013. The complainant alleges that he is unable to submit an application for a pre-removal risk assessment (PRRA), as individuals whose refugee claims have been denied must wait at least one year before filing such an application. The complainant became subject to a removal order and, on 13 January 2014, he was detained in an immigration facility in Montreal. He was released on bail on 15 January 2014.

¹ The complainant provides a statement from a doctor in Phagwara, Punjab, dated 28 February 2013, which states that he was treated at a hospital (from 7 to 15 November 2008 and from 10 to 24 December 2009) and received further outpatient care for "multiple injuries, bruises, swelling and pain all over his body due to police beatings".

² The complainant provides an affidavit from S., dated 28 February 2013. S. identifies himself as a member of the Municipal Committee of Phagwara. In the affidavit, S. states that the complainant is a member of his constituency who encountered problems with the police owing to his cousin. After his cousin went into hiding, the complainant was targeted by the police. He also went into hiding, but the police found and arrested him in Chandigarh, because they suspected him of helping his cousin and other militants. The police illegally detained and tortured the complainant. Fearing further problems with the police, the complainant left India and went to Canada. His father and mother were beaten by the police owing to his departure. The rest of his family members live in hiding. The complainant will not be able to live in peace if he returns to India because the police believe he has joined militants and sends funds to them from abroad.

2.6 The complainant has been repeatedly advised by family members and others in his village in India that, for his own protection, he should not return to India. The Indian police and security forces are actively searching for him and have been harassing and threatening his parents since he left India. Police agents have gone to his family's home and have mentally and physically tortured his family members in order to obtain information on his whereabouts. The police took his family members to the police station on numerous occasions and also interrogated his parents for this purpose. His parents were able to escape because an influential and respectable person paid a substantial bribe.

The complaint

3. The complainant asserts that the State party would violate his rights under article 3 of the Convention by forcibly removing him to India, where he would risk being subjected to torture and cruel treatment due to his imputed affiliation with Sikh terrorism in Punjab. The complainant was twice arrested and subjected to brutal torture by agents of the Indian police force, which continues to actively search for him and harass and torture his family members. The State party's domestic authorities erred in their assessment of the risk faced by the complainant in India. The complainant maintains that according to credible reports, India faces serious human rights problems, including abuse by police, extrajudicial killings and torture.³

State party's observations on admissibility and the merits

4.1 In its submissions dated 5 June 2014, 11 July 2014 and 8 July 2015, the State party highlights that the complainant arrived in Canada on a student visa and did not file a refugee claim in Canada until after he had completed a diploma in Management and Health Care Technology, over two years after his arrival. This indicates a lack of subjective fear of returning to India.

4.2 The State party indicates that the complainant's application for a pre-removal risk assessment was denied and that his application for leave and for judicial review of the negative risk assessment decision was also denied. Nevertheless, the State party considers that the complainant had not exhausted all domestic remedies because he did not file an application for permanent residence on humanitarian and compassionate (H&C) grounds.

4.3 The State party further considers that the communication is inadmissible as manifestly ill-founded. The complainant did not provide any evidence to the Committee or to the Canadian decision makers indicating that he was perceived as being a high-profile militant or a terrorist suspect and therefore failed to establish any prospect of irreparable harm if returned to India. The determinations of the Refugee Protection Division and the pre-removal risk assessment officer were based on a full and impartial consideration of both the complainant's allegations and the situation in India, as described in objective reports. The Refugee Protection Division rejected the complainant's claims on the basis that they were not credible. The Division found that the complainant did not provide a reasonable explanation as to why he did not leave Phagwara soon after being tortured by the police for four days and narrowly escaping death. When asked why he waited until June 2009 to leave, the complainant responded that his parents felt that the situation had become more serious in 2009. The Division referred to a judgment of the Federal Court of Canada, in which it is stated that the Division may draw negative inferences about subjective fear in cases where a person alleging fear of persecution by local agents remains in the same location.⁴ The Division also found the complainant's claims with respect to the alleged arrest and torture

³ The complainant cites United States, Department of State, *Country Reports on Human Rights Practices for 2012, India*; and *International Religious Freedom Report for 2012: India*.

⁴ The State party cites *Singh Mathon v. Canada (Citizenship and Immigration)*, 2012 FC 230.

in 2009 not credible. The Division reasoned that if the police had, as alleged, sent 12 police officers hundreds of kilometres away to arrest the complainant in Chandigarh, brought him back to Punjab under police escort and accused him of conspiring to murder an important leader, it was neither logical nor plausible that he would be released two days later and permitted to keep his passport. Nor was it logical that 12 police officers would have located the complainant, given that he was regularly moved by his agent (who did not provide his real name to landlords), that the complainant lived in hiding and did not go out and that he did not know the addresses of the places to which he was taken. The Division found the complainant's only explanation — that his parent's telephone may have been wiretapped — to be unsatisfactory, as there is no credible evidence that the police in Punjab have the means or resources to do this.

4.4 The Division also noted that the complainant had no difficulty leaving India on a valid passport and with a Canadian student visa, despite being allegedly suspected by police of conspiring to assassinate a leader. The Division referred to a decision of the Federal Court of Canada, in which it is stated that the fact that a refugee protection claimant is able to leave his country using a legal passport, without any evidence that officials were bribed to permit his departure, is a factor indicating that the claimant is not being sought by the authorities.⁵ During his hearing before the Division, the complainant was represented by counsel, had access to the assistance of an accredited interpreter, was able to provide oral testimony and respond to questions asked. The complainant's actions demonstrate a complete lack of subjective fear and, rather, as noted by the Division, the preparations he made over a three-year period are evidence of his intention to study abroad as he had been doing in Canada. The complainant took English courses in 2009 and applied for a Canadian student visa after enrolling in the Management and Health Care Technology programme in a Canadian university.

4.5 The complainant has not substantiated his allegations of past torture. He has not provided contemporaneous documents or official documents of any kind to corroborate his account that he was detained by the local police. Nor has he provided credible contemporaneous evidence to support his allegations of torture. He relies on an affidavit from S. that does not suggest that S. has any personal knowledge of the alleged torture. The statements in the affidavit are also vague. S. does not indicate how he learned of the information provided in his statement, he does not refer to any dates when asserting that the complainant was tortured, he is vague as to the number of occasions he believes the torture occurred and he does not provide any specific details regarding the events. Moreover, the affidavit is not contemporaneous — it is dated 28 February 2013, more than three years after the complainant's alleged encounter with the police. As such, the affidavit has little probative value. The letter that the complainant submitted from a medical doctor was prepared more than a year and a half after the complainant alleges that the last event involving the police occurred. It is neither a contemporaneously prepared medical record nor a notarized affidavit. The description of the complainant's injuries is very general and no reason is given for the conclusion that common injuries such as these would be attributable to police beatings. Furthermore, the letter does not state — nor is there any reason to conclude — that the complainant was subjected to torture. This document is also of little probative value.

4.6 Even if the complainant's allegations that he was tortured in the past are accepted as proven, the complainant has not provided sufficient evidence to substantiate that he would be at a personal risk of torture in the future upon return to India. The complainant left Punjab several years ago; he has not claimed to be a high-profile Sikh militant, nor does he even claim to have any association with or knowledge of Sikh militants. In fact, at no time

⁵ The State party cites *Ma v. Canada (Citizenship and Immigration)*, 2011 FC 417.

has he claimed that the Indian police believe that he personally actually engaged in militant activities. On the basis of these facts, it is highly unlikely that any risk that might have once existed for him in northern India would still exist upon his return.

4.7 Moreover, based on objective reports regarding the current situation of Sikhs in India, the complainant has a viable internal relocation alternative.⁶ These reports indicate that there is no general risk of ill-treatment if the complainant is returned to India solely on the basis of his real or perceived political opinion. Given his personal profile, as understood from his own allegations in the present communication regarding his difficulties with the local Punjab police, he is unlikely to be sought by authorities outside of the Punjab region upon return to India. India is a secular republic in which citizens are not required to register their faith. Sikhs are able to practice their religion without restriction in every state in India. While the majority of Sikhs live in Punjab, there are also sizeable Sikh minorities in other states. Sikh communities, which are present throughout the country, are thriving, and many persons of the Sikh faith hold prominent official positions. From 2004 to 2014, India had a Sikh prime minister. The head of the Indian army is a Sikh. Country reports make it clear that only the highest-profile Sikh militants are at risk of arrest or of being pursued outside of Punjab. These include individuals who, unlike the complainant, are either perceived as leaders of a militant group or suspects in a terrorist attack. An individual would not normally be considered to be a high-profile militant simply because he or she has strong political views, is politically active or has a family member who is believed to be a high-profile militant. Country reports indicate that the actions of the local police in Punjab are most often not politically or religiously motivated toward a particular group or cause. The reports confirm, rather, that police in Punjab fabricate charges under the guise of suppressing threats, political or otherwise, in order to extract bribes. Based on country reports, it is reasonable to conclude that where an individual's fear is based on treatment at the hands of the local police and the individual does not have any profile of interest to the central Indian authorities, internal relocation to other areas of India is a feasible option for managing alleged risk of future harm. Furthermore, there is no general risk of ill-treatment for Sikhs in India. Sikhs are free to move to any state in the country and do not face legal or procedural difficulties in relocating. Sikhs outside of Punjab are able to practise their religion and have access to education, employment, health care and housing; they are not viewed with heightened suspicion nor harassed by the local police simply because of their religion or the region from which they come. Nothing suggests that the complainant could not live without difficulty outside of Punjab in India. The State party notes that the Committee has considered in certain cases that an individual with a high profile as a Sikh militant may be unable to relocate to another state within India; however, the State party considers that it is clear, in the light of current conditions in India and upon a careful reading of the present communication and the decisions of the Canadian authorities, that nothing suggests that the central authorities in India would have any interest in the complainant.

⁶ To support its allegations in this paragraph, the State party cites several authorities on internal relocation possibilities for Sikhs in India, including United Kingdom: Home Office, *Operational Guidance Note: India* (May 2013), section 3.9.13; also *Operational Guidance Note: India* (20 February 2007), sections 3.6.10-3.6.17; Canada, Immigration and Refugee Board of Canada, "India: Situation of Sikhs outside the state of Punjab, including treatment by authorities; ability of Sikhs to relocate within India, including challenges they may encounter (2009-April 2013)" (13 May 2013), IND104369.E and "India: Freedom of movement, in particular, the ability to relocate freely from Punjab to other parts of India" (12 January 1999), IND30757.E; United States Department of State, *International Religious Freedom Report for 2012: India*; and United States Bureau of Citizenship and Immigration Services, "India: Information on relocation of Sikhs from Punjab to other parts of India" (16 May 2013), IND03003.ZSF.

Complainant's comments on the State party's observations

5.1 In his submissions dated 30 August 2014 and 16 December 2014, the complainant reiterates his claims concerning a risk of harm. He argues that he has established a strong prima facie case that he was subjected to torture in the past and faces a substantial risk of torture if he returns to India. The decision to deny his asylum application is arbitrary and unfair because it disregards the evidence he submitted.

5.2 The complainant maintains that he would not be safe in India because the Prime Minister was involved in the premeditated killing of thousands of Muslims in Gujarat in 2002, and because the head of the ruling Bharatiya Janata Party is facing prosecution for killing many innocent Muslims in India. There is a "systematic pattern of surveillance and control" over persons arriving in India, especially if they speak Punjabi or are Sikh or Punjabi. He cites a United States Department of State report,⁷ in which it is stated that, "there were reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents". The complainant asserts that Sikhs in India are forced to live under a constant threat of being tortured by State agents. It is therefore extremely difficult, if not impossible for the complainant and his family to find a safe haven in India. Concerning domestic remedies, the complainant asserts that there is no other effective recourse available to him.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of said remedies has been unreasonably prolonged or is unlikely to bring effective relief.⁸ The Committee notes the State party's observation that the complainant did not file an application for permanent residence on humanitarian and compassionate grounds. The Committee recalls its jurisprudence concerning the discretionary and non-judicial nature of this remedy⁹ and considers that the complainant's failure to exhaust it does not constitute an obstacle to the admissibility of the complaint.

6.3 The Committee further recalls that for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.¹⁰ The Committee notes the State party's argument that the communication is manifestly ill-founded owing to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention, and that the merits

⁷ See United States Department of State, *Country Reports on Human Rights Practices for 2013: India*.

⁸ See, inter alia, communication No. 307/2006, *E.Y. v. Canada*, decision adopted on 4 November 2009, para. 9.2.

⁹ See, inter alia, communication No. 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, para. 7.4.

¹⁰ See, inter alia, communication No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015, para. 6.3.

of those arguments should be addressed. Accordingly, the Committee declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties.

7.2 With regard to the complainant's claim under article 3 of the Convention, the Committee must determine whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture, should he be returned to India. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.¹¹ It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (refoulement and communications), according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable, the Committee notes that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.¹² The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,¹³ while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's contention that there is a foreseeable, real and personal risk that he will be tortured and possibly killed if returned to India because the authorities in Punjab suspect him of helping militants and planning with his cousin M. to assassinate leaders. The Committee notes that the complainant has not provided sufficient detailed information to substantiate these claims. For instance, he has not indicated the specific activities in which the police suspected that he was involved nor the persons with whom he was suspected of collaborating in carrying out these activities. The Committee also notes the State party's observation that its domestic authorities found that the complainant lacked credibility because, inter alia, he prepared for three years to leave India and his actions evinced an intention to pursue studies in Canada: he obtained a passport in 2008; he took various English courses in 2009; he applied for a Canadian student visa after enrolling in a

¹¹ See, inter alia, communication No. 470/2011, *X. v. Switzerland*, decision adopted on 24 November 2014, para. 7.2.

¹² See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003 and No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

¹³ See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

management and health-care technology programme; he never alleged that he had been affiliated with any political or militant activities; and he had no difficulty leaving India on a valid passport and with a Canadian student visa, despite allegedly being suspected by police of conspiring to assassinate a leader.

7.5 The Committee takes note of the documentation provided by the complainant to substantiate that he was subjected to torture. However, the Committee notes that the State party's competent authorities thoroughly evaluated the evidence presented by the complainant and found it to be of limited probative value due to its content and timing.¹⁴ In addition, the Committee observes that the complainant did not present any documentary evidence that there are any criminal proceedings pending against him or that the Indian authorities have issued a warrant for his arrest.¹⁵ The Committee considers that the State party's authorities adequately explored the fundamental aspects of the complainant's claims before drawing an adverse conclusion as to his credibility. The Committee therefore does not attribute material weight to the complainant's assertion that, although he left India in January 2010, the authorities in Punjab continue to harass and interrogate his family members in order to ascertain his whereabouts. The Committee recalls paragraph 5 of its general comment No. 1, according to which the burden of presenting an arguable case is on the author of a communication; it considers that the complainant has not fulfilled this burden of proof.

8. In the light of the considerations above, and on the basis of all the information submitted by the parties, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to India would expose him to a foreseeable, real and personal risk of torture within the meaning of article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the complainant's removal to India would not constitute a breach of article 3 of the Convention.

¹⁴ See para. 4.5 above.

¹⁵ See communication No. 555/2013, *Z. v. Denmark*, decision adopted on 10 August 2015, para. 7.7.