



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

Distr.: General
27 January 2017

Original: English

Committee against Torture

**Decision adopted by the Committee under article 22 of the
Convention, concerning communication No. 582/2014*, ****

<i>Communication submitted by:</i>	N.S. (represented by counsel, Rajwinder Singh Bhambi)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	11 January 2014 (initial submission)
<i>Date of present decision:</i>	1 December 2016
<i>Subject matter:</i>	Deportation to India
<i>Procedural issues:</i>	Exhaustion of domestic remedies: insufficient substantiation of complaint
<i>Substantive issue:</i>	Risk of torture
<i>Articles of the Convention:</i>	3

1.1 The complainant is N.S., a national of India born in 1988 and subject to a deportation order from Canada to India. He claims that his deportation would constitute a violation by Canada of his rights under articles 1 and 3 of the Convention. The complainant is represented by counsel.

1.2 On 14 January 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant to India while his complaint was being considered by the Committee.

1.3 On 18 September 2014, the Committee decided to deny the State party's request to lift interim measures.

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

GE.17-01271(E)



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The facts as presented by the complainant

2.1 The complainant is a Sikh from Jaura village in the Punjab region of India. He claims to have been closely associated with Sikhism during his childhood, and in particular with a cousin whom he helped on the latter's farm. The cousin, who preached the Sikh religion and had assisted militant Sikh families who had lost family members, was allegedly tortured on several occasions and had left his home in June 2008.

2.2 On 13 December 2008, the police arrested the complainant at his aunt's house and accused him of supporting Sikh militants who were planning to create disturbances on New Year's Eve. During his detention, the complainant was stripped naked and beaten with leather belts and wooden sticks. He was slapped, punched, kicked, burned on his foot, suspended upside-down and beaten until he lost consciousness. The police questioned him about the names, whereabouts and weapons of Sikh militants and about his cousin's activities.

2.3 The complainant was released the following day with the assistance of influential people in the region and after his family paid a bribe. Since his detention, the complainant and his family have been harassed by the police. In order to stop the harassment, the complainant's father had bribed the police, through the intermediary of a retired police officer.

2.4 On 23 March 2011, the complainant's cousin briefly visited the complainant's house. On 24 March 2011, the complainant was again arrested and accused of sheltering terrorists and maintaining ties with Sikh and Muslim militants. While in custody, he was again tortured, his fingerprints and photograph were taken and he was forced to sign blank documents. On 27 March 2011, the complainant was released with the assistance of influential people in the region and after his family paid a bribe. Upon his release, he was ordered to report to the police once a month, beginning on 1 May 2011, and to provide information about his cousin and Sikh militants.

2.5 The complainant was hospitalized after his two detentions in December 2008 and March 2011 at the Gulati Surgical Hospital, and received treatment for the injuries sustained as a result of the torture, including stitches and treatment for burns.¹

2.6 On 19 April 2011, the complainant consulted a lawyer to discuss filing a complaint against the police.² On an unspecified date, the police discovered his intention to take legal action and raided his home to arrest him. Fearing for his life, the complainant left his home and village and sought refuge at his relatives' house in Chandigarh, the capital of Punjab. While he was there, he learned that the police had been looking for him and that he was accused of joining his cousin and other alleged Sikh terrorists.

2.7 The complainant left India, with the assistance of a travel agent, and entered Toronto, Canada, on a work visa on 3 July 2011. He later moved to Montreal, where he applied for asylum on 10 October 2011, claiming a threat to his life in India. On 15 April 2013, the Refugee Protection Division of the Canadian Immigration and Refugee Board rejected his application. The Board determined that the complainant was not a refugee in the meaning

¹ The complainant submits two letters from the Gulati Surgical Hospital, one of them dated 25 October 2012 and the other without a date, stating that the complainant was treated from 13 to 29 December 2008 for "pain, swelling, bruises and multiple injuries and burn injuries on right foot" and that he was hospitalized for a day and then treated at home. He was again treated from 27 March to 5 April 2011 for the same type of injuries, except that there were no burn injuries.

² The complainant submits two identical letters from two lawyers, dated 28 October 2012 and 5 November 2012, certifying that a meeting was held on 19 April 2011 with the complainant and his father and that the complainant expressed the intention of filing a complaint against the police for the alleged arrest and torture.

of the term defined in the Convention relating to the Status of Refugees, because he did not have a well-founded fear of persecution in India on one of the Convention grounds, and that he was not a person in need of protection because his removal to India would not subject him personally to a risk to his life or to ill-treatment. The Board considered that the complainant lacked credibility on certain issues, including his visit to a lawyer in order to file a complaint against the police, his travel route and the alleged persecution of his family members back in India. It further considered that the complainant's profile was not of such a nature that he would be wanted by the Indian national authorities, given his lack of political or partisan engagement, the lack of criminal charges or an arrest warrant pending against him and the fact that he used his own passport to leave India. The Board concluded that an internal flight alternative existed and that the complainant could be relocated to Delhi.

2.8 On 28 August 2013, the Federal Court of Canada rejected the complainant's application for leave to appeal.

2.9 The complainant claims that, since his departure, his parents have been harassed by the police on numerous occasions, including on 16 December 2013, when their house was raided and they were arrested, tortured and interrogated about the complainant's whereabouts. They were subsequently released with the assistance of influential persons and after paying a bribe. The police threatened to kill them if they did not disclose the complainant's whereabouts. The police also threatened to kill the complainant if he returned to India.³

The complaint

3.1 The complainant claims that, by deporting him to India, the State party would violate articles 1 and 3 of the Convention, because he would be at personal risk of being subjected to torture and cruel, inhuman and degrading treatment. Since the Indian police and security agencies were searching for him for allegedly supporting Sikh terrorists in Punjab, he would be arrested if returned and, potentially, killed. The complainant claims that he has been in regular contact with his family and friends in his village in India, who have advised him not to return there because his life would be at risk.

3.2 The complainant notes the general human rights situation in India, including torture and extrajudicial killings by the police, as confirmed by several reports,⁴ which is worse for minorities such as the Sikh religious minority.

State party's observations on admissibility and the merits

4.1 In its observations dated 5 June 2014 and 15 July 2014, the State party submits that domestic remedies had not been exhausted because the complainant had not applied for a pre-removal risk assessment or for permanent residence on humanitarian and compassionate grounds at the time of submitting his complaint to the Committee.⁵

4.2 The State party noted that the complainant had raised before the Committee claims that were not brought before domestic instances, namely the fact that Punjabi police and

³ The complainant submits an affidavit, dated 7 November 2012, from the head of his village, confirming that there is a serious threat to the complainant's life if he returns to India.

⁴ The complainant cites United States of America, Department of State, *Country Reports on Human Rights Practices for 2012, India*; Amnesty International, *Amnesty International Report 2013*, "India", 2013.

⁵ Amendments to the Canadian Immigration and Refugee Protection Act, which came into effect on 28 June 2012, established a one-year period of ineligibility to apply for a pre-removal risk assessment for persons whose allegations of risk of serious harm have already been decided upon by the Immigration and Refugee Board or in a previous pre-removal risk assessment.

security agencies were searching for him, alleging that he was a supporter of Sikh terrorists in Punjab, and the fact that his parents had been arrested on 16 December 2013, threatened and tortured. The complainant could have presented any new evidence of personal risk to the domestic decision makers. Therefore, domestic remedies had not been exhausted.

4.3 The State party explains that the Immigration and Refugee Board rejected the complainant's claim for protection on the basis that his allegations were non-credible and that he had an internal flight alternative. The complainant provided contradictory and vague explanations when asked about the documents on the basis of which he intended to file a complaint against the police for their brutal behaviour in 2011, leading the panel to conclude that the complainant had not, in fact, consulted a lawyer and that the police were not looking for him in connection with any such consultation. The panel also found contradictions in the complainant's explanations of the means by which he obtained a visa for Canada, and considered that he was unable to explain his intentions in coming to Canada and his reasons for claiming refugee protection in October 2011. The complainant testified that his family had frequently relocated since January 2012 because of police harassment. However, although he said he spoke to them regularly, he did not know where they were currently located. The Board found it notable that the complainant had been released by local police on two occasions after paying a bribe, that there were no outstanding criminal charges against him and that he had never engaged in political or partisan activities that could link him to a militant or terrorist group. His profile was, therefore, not that of a person who would be sought nationally. Had the complainant in fact been associated with the Ranjit Singh Neeta group, whether on his own account or through his cousin, he would not have been released from detention, because terrorist groups are a priority of the Government of India. In the light of the strict border controls in place in India and the fact that the author left the country using his own passport, the Board did not believe that the author's name was in the database of suspected criminals that is checked prior to the departure of any traveller. The Board concluded, on the balance of probabilities, that the author was not wanted by the central authorities in India.

4.4 The State party claims that the communication is manifestly unfounded. First, the complainant has not provided sufficient evidence to substantiate his claim that he was detained and tortured in December 2008 and March 2011. To support his claim, he relies on an affidavit dated 7 November 2012 from the head of his village, which states that he and another person, Manpreet Singh, were arrested and tortured on different occasions. No specific dates or details are given, and the contents are generally vague. The complainant also submitted letters from doctors at two different hospitals, dated 25 October 2012 and 2 November 2012. Both contained identical text and described the complainant's injuries but not their apparent cause. The fact that the text was duplicated called into question their veracity and, in any case, they were drafted more than a year and a half after the complainant was allegedly treated, and there was no claim that they were based on any medical records. Additionally, the complainant submitted two almost identical letters from lawyers in India, indicating that he and his father had visited them on 19 April 2011 to discuss filing a claim against the police. According to the State party, these letters should not be given any probative value, as they are almost identical, did not provide any dates for the events described and did not claim to be based on any personal knowledge of the complainant's alleged detention or torture.

4.5 Even if the complainant's allegations that he was tortured in the past were accepted as proven, he has not provided any evidence to substantiate a personal risk of torture in the future. He left Punjab three years ago. He has not claimed to be a high-profile Sikh militant or to have any association with, or knowledge of, Sikh militants. At no time has he claimed that the police believed that he, personally, had engaged in militant activities. It is therefore highly unlikely that any risk that might once have existed for him in Punjab would still exist upon his return. No warrant or record of any court appearance by the complainant in

respect of his past detentions was provided. His claims were based only on allegations, found baseless by domestic decision makers, that his cousin had attracted the interest of local police because he had assisted individuals who had lost family members during the previous period of violence between police and militants in Punjab.

4.6 The State party submits that the complainant's behaviour after his departure from India is inconsistent with his alleged fear of torture. He entered Canada on a work visa and waited three months before making a claim for protection. His decision not to claim protection at the first available opportunity, but to wait for a prolonged period of time and travel from Toronto to Montreal, having made a strategic choice to claim protection there, indicates that he did not have a subjective sense of fear necessitating protection.

4.7 The State party notes the marked improvement in the human rights situation of Sikhs in India, which means that it can no longer be argued that there is a general risk of ill-treatment solely because of one's real or perceived political opinion. Only those high-profile militants actively engaged in, or perceived to be engaged in or supporting, militant activity are likely to be of interest to the Indian central authorities.⁶ India is a secular country where religious freedom is respected by the Government, and its citizens are not required to register their faith. Sikhs are able to practise their religion without restriction in every state, and Sikhs have achieved prominent official positions, including that of Prime Minister. Since the end of the political conflict in India which lasted until the mid-1990s, many country reports have supported the conclusion that only the highest-profile Sikh militants continue to be at risk of arrest or pursued outside the Punjab region. These militants are either leaders of a militant group or suspects in a terrorist attack. An individual would not be considered to be a high-profile militant simply as a result of having strong political views, being politically active or having a family member who is perceived as a high-profile militant.⁷ Country reports indicate that acts of harassment, arbitrary detention and torture by local police in the Punjab are most often not politically or religiously motivated toward a particular group or cause, but rather designed to extract bribes. The State party submits that, where an individual lacks any profile of interest to the central Indian authorities, internal relocation to other areas of India is a feasible option. Additionally, there is no general risk of ill-treatment for Sikh returnees, even where they express their ideological support for the establishment of an independent Sikh state of Khalistan.⁸

4.8 The State party argues that the complainant's personal characteristics, including his lack of militancy or a high profile with the authorities, do not justify the conclusion that he would be unable to live safely in various other parts of India, or that his return would place him at a real risk of irreparable harm. After full consideration of both the complainant's allegations — where serious credibility issues were identified — and the general situation in India as described in several reports, together with the existence of an internal flight alternative, the Immigration and Refugee Board concluded that he would not face any risk of ill-treatment if he were to be returned to India.

Complainant's comments on the State party's observations

5.1 In comments dated 29 August 2014, the complainant argued that it is the responsibility of the Canadian border services to invite him to apply for a pre-removal risk

⁶ The State party cites United Kingdom of Great Britain and Northern Ireland, Home Office, *Operational Guidance Note: India* (May 2013).

⁷ The State party cites United States, Bureau of Citizenship and Immigration Services, *India: Information on Relocation of Sikhs from Punjab to Other Parts of India* (16 May 2003).

⁸ The State party cites United Kingdom, Immigration and Nationality Directorate, Home Office, *Operational Guidance Note: India* (September 2005).

assessment, and that a humanitarian and compassionate application has a long processing time and would not stay his removal.

5.2 On the merits, the complainant reaffirmed that he is a victim of torture, as confirmed by the medical reports submitted, primarily because he tried to obtain justice against the police. He noted that the allegations by the police that he had links to Sikh militants were merely false allegations to justify his detention and torture.

5.3 With regard to the general human rights situation in India, the complainant noted that Sikhs are still victims of State brutality, torture and genocide throughout the country. Detention and torture of political activists and those who denounced human rights abuses are still ongoing not only in Punjab, but all over India.

5.4 Regarding the existence of an internal flight alternative, the complainant noted the existence of a systematic pattern of surveillance and control over new arrivals in other parts of India, particularly for Punjabi Sikhs. Therefore, it would be extremely difficult for him to find a safe haven in India.

Additional submissions by the parties

6.1 In a submission dated 12 March 2015, the State party noted that the complainant had by then applied for a pre-removal risk assessment, and that judicial review of a negative decision relating to the assessment would also be available. As to the humanitarian and compassionate application, the State party noted that the duration of a remedy is insufficient grounds for determining that the exhaustion of such a remedy should not be required. A negative humanitarian and compassionate decision could also be appealed to the Federal Court.

6.2 Regarding the human rights situation in India, the State party noted that extrajudicial killings do occur, especially in areas of conflict such as Jammu and Kashmir, the north-eastern states and areas associated with the Naxalite movement, but not in Punjab.⁹ Punjabi Sikhs are able to relocate to other parts of India and there are Sikh communities all over India. Only those engaged in militant activity are likely to be the object of unwelcome interest from the authorities and subjected to arrest or detention on return to India.¹⁰

7.1 In a submission dated 31 August 2015, the complainant asserted that the State party is wrong to pretend that, because the situation in India is not as bad as during the insurgency period, there is no longer a risk. Sikhs still live under a constant threat of State torture throughout India. Recent large-scale arrests in India indicate an escalation of human rights violations. Since June 2005, over 100 Punjabi police officers have been convicted on fake terrorism-related encounter killings. The information provided by the State party refers to the situation of Sikhs in general, but not that of those suspected of being militants or those who have suffered human rights abuses. The complainant insisted that he would be at risk for having sought justice in his case. He noted that those who file complaints against Indian police are arrested or killed, or disappear. The Immigration and Refugee Board and the Federal Court erred by relying on erroneous findings of fact and law, even though they had before them proper evidence of police intimidation and violence against those who complain against the police.

7.2 On the existence of an internal flight alternative, the complainant argued that, as noted by the Office of the United Nations High Commissioner for Refugees, there is no internal flight alternative when the persecutors are State agents.

⁹ United States, Department of State, *Country Reports on Human Rights Practices for 2013, India*.

¹⁰ The State party cites United Kingdom: Home Office, *Operational Guidance Note: India* (May 2013).

7.3 On 23 September 2016, the complainant informed the Committee that his pre-removal risk assessment application had been rejected on 30 November 2015.¹¹ On the same date, his application for permanent residence on humanitarian and compassionate grounds had also been rejected.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any complaint submitted 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 (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.

8.2 The Committee takes note of the State party's argument that domestic remedies have not been exhausted in the present case because the complainant was eligible to file a pre-removal risk assessment application, which was subject to judicial review, and an application for permanent residence based on humanitarian and compassionate grounds. The Committee notes that the complainant has since applied for a pre-removal risk assessment and that his application has been rejected. His humanitarian and compassionate application has also been rejected and does not, in any case, constitute an effective remedy for the purposes of admissibility, given its non-legal nature and the fact that it does not stay the removal of a complainant.¹² The Committee takes note of the State party's argument that a negative pre-removal risk assessment can be subject to judicial review. It notes, however, that such judicial review is a narrow review for gross errors of law, does not involve a review of the merits of the case and does not have suspensive effect. Given that the complainant has submitted applications to the Immigration and Refugee Board and the Federal Court, as well as applications under the pre-removal risk assessment and the humanitarian and compassionate procedures, the Committee considers that it would be unreasonable to require that the complainant also apply for judicial review of the pre-removal risk assessment decision.¹³ Accordingly, the Committee considers that it is not precluded by the requirements of article 22 (5) (b) of the Convention from considering the communication on the merits.

8.3 The Committee takes note of the State party's argument that the communication is manifestly ill founded. However, the Committee is of the view that, for the purposes of admissibility, the complainant has provided sufficient information in support of his claim under article 3 of the Convention. Accordingly, the Committee declares the claim admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 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.

¹¹ In his submission dated 31 August 2015, the complainant stated that it was possible to seek judicial review of a negative pre-removal risk assessment decision with stay of removal, but that the process was very expensive and ineffective, with very slim chances of success.

¹² See, inter alia, communication No. 343/2008, *Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 8.3.

¹³ See, inter alia, communications No. 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, paras. 7.2 and 7.3, and No. 319/2007, *Singh v. Canada*, decision adopted on 13 May 2011, para. 8.8.

9.2 The issue before the Committee is whether the removal of the complainant to India would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.3 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. 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 return; additional grounds must be adduced to show that the individual concerned would be personally at risk. 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.¹⁴

9.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, 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,¹⁵ the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he faces a foreseeable, real and personal risk.¹⁶ 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 the organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, under article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.¹⁷

9.5 The Committee takes note of the complainant's claim that Indian police and security agencies are searching for him for allegedly supporting Sikh terrorists in Punjab and for trying to obtain justice against the local police. The Committee observes that the Immigration and Refugee Board examined the risks alleged by the complainant but concluded that he lacked credibility on certain key issues and that his profile was not of such a nature that he would be wanted by the national Indian authorities in the light of his lack of political or partisan engagement that could link him to a militant or terrorist group, the fact that he was released twice after paying a bribe to the police, the lack of criminal charges or an arrest warrant against him and the fact that he used his own passport to leave the country despite the strict border controls in place. The Committee notes that the allegations made by the complainant do not show that the Immigration and Refugee Board acted arbitrarily in examining his claims.

9.6 With regard to the existence of an internal flight alternative, the Committee considers that the deportation of a person or a victim of torture to an area of a State where

¹⁴ See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

¹⁵ The State party cites United Kingdom, Home Office, *Operational Guidance Note: India* (May 2013).

¹⁶ *Ibid.* See also communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

¹⁷ See, *inter alia*, communication No. 466/2011, *Alp v. Denmark* decision adopted on 14 May 2014, para. 8.3.

he or she would not be exposed to torture, as he or she might be in other areas of the same State, is not an admissible option unless the Committee has received reliable information before the deportation that the State of return has taken effective measures able to guarantee full and sustainable protection of the rights of the person concerned. In the present case, no such information has been received by the Committee.

9.7 The Committee notes that, even if it were to accept the claim that the complainant was subjected to torture by local police in the past, it does not necessarily follow that, several years after the alleged events occurred, he would still currently be at risk of being subjected to torture if returned to India, in particular in the light of the lack of evidence that he is being sought by the national authorities in India. Additionally, the Committee considers that the complainant has not provided sufficient evidence to support his allegation that his family has been subjected to harassment after he left the country or that he would otherwise be wanted by local police. The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the Committee's opinion, the complainant has not discharged this burden of proof.¹⁸ Further, the complainant has failed to demonstrate that the authorities of the State party, which considered the case, have failed to conduct a proper investigation.

9.8 In the light of the foregoing, the Committee concludes that the complainant has not adduced sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to India.

10. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to India by the State party would not constitute a violation of article 3 of the Convention.

¹⁸ See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.