



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. 898/2018*, **

<i>Communication submitted by:</i>	A. R. and A. A. (represented by counsel, Zoheir Snasni)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Canada
<i>Date of complaint:</i>	16 November 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 20 November 2018
<i>Date of present decision:</i>	3 December 2021
<i>Subject matter:</i>	Deportation to India
<i>Procedural issues:</i>	Non-exhaustion of domestic remedies; failure to substantiate claims
<i>Substantive issues:</i>	Risk of torture and cruel, inhuman or degrading treatment or punishment in the event of deportation (non-refoulement)
<i>Article(s) of the Convention :</i>	3

1.1 The complainants are A. R. and his wife, A. A., both of Indian nationality and born in 1984 and 1983 respectively. At the time the complaint was filed, they were residing in Canada with their two minor daughters and were facing deportation to India following the rejection of their asylum application. They claim that, by sending them back to India, the State party would be violating article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 13 November 1989. The complainants are represented by counsel, Zoheir Snasni.

1.2 On 20 November 2018, in application of rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures of protection, requested the State party to refrain from expelling the complainants to India while their complaint was considered by the Committee.

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



The facts as submitted by the complainants

2.1 A. R. purchased a property at Pehowa in the state of Haryana, India, in 2010, and started renting it out in 2011.¹ On 1 February 2013, the complainants leased their property to two Sikh bus drivers. On 15 May 2013, the police searched the complainants' farmhouse in the village of Koer after receiving reports that the two tenants were terrorists.

2.2 A. R. was held incommunicado for seven days, with no contact with his family or a lawyer. He was put in a small cell with no light, bed or toilet facilities. While in custody, he was questioned by police officers about his alleged support for Sikh militants. He was tortured, including by being beaten on the soles of his feet and hit with sticks and belts, resulting in injuries to his body and bruising to his back. He was released after his family paid a bribe through his village chief. Before his release, the police took his fingerprints and photo and forced him to sign blank documents. A. R. was hospitalized from 18 to 21 May 2013.²

2.3 A few days after this initial incident, A. R. was arrested again, questioned about the activities of Sikh militants and tortured, and then released after payment of a bribe. He received medical treatment between 30 June and 2 July 2013.³

2.4 The complainants travelled to several towns seeking refuge. However, they did not inform the police of their movements and did not report to the police as agreed. They maintain that the police are "looking for them to arrest them". They left India with the help of an agent who provided them with a visa dated 16 December 2013.

2.5 The complainants arrived in Canada on 17 January 2014, settling in Montreal. On 4 March 2014, they filed an asylum application with the Refugee Protection Division of the Immigration and Refugee Board of Canada. On 15 May 2014, their application was rejected for lacking credibility.⁴ The complainants lodged an appeal against this decision with the Refugee Appeal Division, but it was dismissed on 26 November 2014.

2.6 The complainants applied to the Federal Court for leave and judicial review, which was denied on 20 April 2015.

2.7 On 28 October 2015, an arrest warrant was issued by the Canada Border Services Agency after the complainants failed to appear for their removal appointment.

2.8 On 29 June 2016, the complainants applied for a pre-removal risk assessment, which was denied on 13 June 2018.

2.9 On 13 June 2017, the complainants submitted an application for permanent residence on humanitarian grounds, which was refused on 12 June 2018. Lastly, they filed an application for leave and judicial review of this decision by the Federal Court, which is still pending. Nevertheless, they point out that this application is not an appeal on the merits but rather a very limited review for the purpose of identifying any serious errors of law.

The complaint

3. The complainants maintain that, by deporting them to India, the State party would be in violation of article 3 of the Convention because they would be personally at risk of being subjected to torture and cruel, inhuman or degrading treatment, given that A. R. has been ill-treated by the police in the past, that they are still wanted by the Indian police on suspicion of supporting Sikh terrorists, and that India is a country where torture is still widely practised, in particular against the Sikh ethnic group.

¹ The residence was on land that A. R. rented from the local mosque.

² A medical report from Radha Krishan Hospital attesting to his hospitalization during the period indicated and the treatment received is attached to the file.

³ A second medical report certifying his treatment is attached to the file.

⁴ In particular, the Division noted that the medical certificate provided described A. R.'s injuries and the treatment he received but did not indicate the circumstances in which the injuries had occurred.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits by note verbale dated 1 August 2019, requesting the Committee to consider withdrawing the request for interim measures. It argues that the application is inadmissible for the following reasons: (a) the complainants have not exhausted all available domestic remedies and have not filed an application for leave and judicial review of the decision rejecting their application for a pre-removal risk assessment; (b) they have not completed their application for leave and judicial review of the decision rejecting their application for permanent residence on humanitarian and compassionate grounds; (c) they have not filed an application for an administrative stay of removal; and (d) they have failed to substantiate their claims of a violation of articles 3 and 22 of the Convention.

4.2 The State party submits that the complainants' claims were considered and rejected as their account was found not to be credible. The complainants had several opportunities to submit evidence to the competent Canadian authorities with a view to having their situation reviewed by the courts. However, they were unable to demonstrate that they would face a risk of torture or ill-treatment in India. The State party also submits that the complaint is unfounded.

4.3 The State party recalls the facts of the case and explains how the competent Canadian authorities assessed the complainants' asylum application. The complainants arrived in Canada on 17 January 2014 on visitors' visas. They filed an asylum application on 4 March 2014, which was rejected by the Refugee Protection Division on 15 May 2014 as their credibility was in doubt and they had not established that they were personally at risk of persecution or, on the balance of probabilities, torture or other cruel, inhuman or degrading treatment or punishment. The complainants appealed this decision before the Refugee Appeal Division, but the Refugee Protection Division's decision was upheld. The Refugee Appeal Division's decision was then confirmed by the Federal Court, which dismissed the complainants' request for leave and judicial review. Their application for a pre-removal risk assessment was denied due to a complete lack of evidence to support their claims of risk. Thus, the complainants are not at risk of being threatened, tortured or subjected to other cruel or unusual treatment and punishment if they return to India.

4.4 The State party argues that, although A. R. claims to have been hospitalized from 18 to 21 May 2013 and to have received treatment for his injuries, the dates provided by the complainants do not fit with this claim. If A. R. had been detained by the police for a period of seven days beginning on 15 May 2013, he would have been released on 22 May, and therefore could not possibly have been in hospital from 18 to 21 May, as stated in the communication and on the medical certificate. In addition, a few days after his recovery – though no date is given – A. R. was allegedly arrested, detained, interrogated, humiliated, ill-treated and tortured again to make him provide information on the activities of Sikh militants. He was again apparently released, thanks to the payment of a bribe, and again required medical treatment and hospitalization from 30 June to 2 July 2013.

4.5 The State party reports that, on 25 April 2014, a hearing was held before a Commissioner of the Refugee Protection Division to consider the complainants' asylum application. The complainants were accompanied by their lawyer and an interpreter. The State party emphasizes that the complainants were given the opportunity to explain any ambiguity or contradiction, to provide all relevant information, and to answer the Commissioner's questions regarding their asylum application. On 15 May 2014, following a thorough scrutiny of the documentary evidence and A. R.'s testimony, the Commissioner concluded that the complainants were not persons in need of protection under section 97 of the Immigration and Refugee Protection Act or refugees under the Convention relating to the Status of Refugees. After hearing the complainants and considering all the documentary evidence submitted, the Refugee Protection Division questioned their credibility, noting a major, decisive contradiction between their testimony and the documentary evidence provided regarding the leasing of their residence. As previously noted, A. R. claims that the Indian police tortured him for having harboured two tenants suspected of being terrorists. According to the Refugee Protection Division, the lease for the land belonging to the local mosque clearly stated that the house situated on this land could not be rented out. Furthermore, the complainants provided no evidence that they had actually rented the house to the

aforementioned tenants since the police had apparently seized all their papers. The Refugee Protection Division found that the explanations provided were not sufficient to explain the gaps. In reviewing the complainants' identification papers, which consisted of car registrations and their passports, it noted that the dates and addresses on the documents also did not fit with the claims made by the complainants in their testimony. They said they had moved to the village of Koer – although they could not say exactly when – yet their identification papers still gave their addresses as Pehowa. This gap in their explanations also detracted from their credibility. Lastly, the State party notes that the complainants produced false documents in order to obtain Canadian visas, which further diminished their credibility in the eyes of the Refugee Protection Division.

4.6 The State party further states that, on 26 November 2014, the Refugee Appeal Division rejected the appeal lodged by the complainants on 30 May 2014 and upheld the Refugee Protection Division's decision to deny their asylum application. The Refugee Appeal Division considered the fresh evidence submitted by the complainants, which consisted of a copy of the house rental agreement with the tenants and a letter from the author's father stating that he had paid a bribe to obtain the documents. The Refugee Appeal Division ultimately rejected this new evidence as not credible. The Refugee Appeal Division found that the Refugee Protection Division had not erred or wrongly interpreted the lease, which stated "not to be sublet or transferred". The Refugee Appeal Division raised questions about some of the documentary evidence submitted by the complainants regarding Sikh terrorism, as the articles were either undated, too old, or made no reference to a problem of terrorism in the Pehowa region, where the complainants' rental residence is located. The complainants claimed to be at risk because the police associated them with Sikh terrorists, even though they are "well-educated, relatively prosperous Hindus (and) living in a small region". The State party points out that Sikh terrorists are normally associated with the Punjab Liberation/Independence Movement, and that the Refugee Appeal Division questions the allegations that the complainants are wanted or in danger and that the police apparently believes they could assist them in their investigation of Sikh terrorist activities.

4.7 The State party indicates that A. R. raised the fact that the police simply wanted to extort money from him, but if this were the case, the complainants would be able to find refuge inside the country: if the police were involved in criminal activities they would be less inclined to look for them outside a known circle; and if the local police units had agreed to work together to seek the applicants, then there would be no more talk of potential extortion by the local police. The State party also points up the fact that the state of Haryana has set up a police complaints mechanism and that it would be very surprising for a local police unit to use so many of its resources to extort money from a family. Moreover, acts of terrorism perpetrated by Sikhs have declined in number in India and the complainants have not been able to provide any recent evidence showing that such acts occur in their region. As the fresh evidence was not admitted, there was no reason to hold an oral hearing. The Refugee Appeal Division therefore proceeded in its usual manner, by reviewing the written submissions. In addition, it listened to the recording of the oral hearing before the Refugee Protection Division.

4.8 The State party confirms that, on 29 December 2014, the complainants filed an application for leave and judicial review of the adverse ruling of the Refugee Appeal Division. As the complainants had not shown that there was an "arguable case" or "a substantive issue to be ruled on" in relation to this decision, the Federal Court rejected their application on 1 April 2015 and the removal order became enforceable again. The complainants failed to appear for removal and a warrant for their arrest was issued on 28 October 2015. Nine months later, on 29 June 2016, they turned up at an office of the Canada Border Services Agency, where they were informed that they could file an application for a pre-removal risk assessment or an application for permanent residence on humanitarian and compassionate grounds, as the period in which new applications may not be filed had by this time lapsed.

4.9 The State Party recounts that, on 8 July 2016, the complainants filed an application for a pre-removal risk assessment, which was denied on 13 June 2018. This application essentially reiterated the account and arguments concerning the risks faced by the applicants in India that were submitted in the previous proceedings. The officer in charge of the pre-removal risk assessment considered the question of credibility, recalling that the assessment

only looks at new elements of risk that might arise if the complainants were returned to India and cannot look back at earlier determinations. The complainants then provided written submissions containing a list of Internet links to reports, newspaper articles and a variety of documents on India. The State party adds that, at the time of the decision on the pre-removal risk assessment, that is, almost two years later, the complainants failed to provide any further information or updates on their situation, did not demonstrate how the Internet links, articles and other documentation were relevant to their personal situation, and failed to establish any link between their situation and the documentation submitted. As the complainants thus failed to restore their credibility and did not present any fresh evidence of personal risk in the event of return to India, the pre-removal risk assessment officer concluded that the application was groundless.

4.10 The State party notes that adverse administrative decisions by the Canadian authorities may, given leave, be subject to judicial review by the Federal Court. The complainants did not avail themselves of this right, and did not file an application for leave and judicial review of the adverse decision resulting from the pre-removal risk assessment.

4.11 The State party notes that, on 13 June 2017, the complainants filed an application for permanent residence on humanitarian grounds, which was rejected on 12 June 2018. The officer considering the application found that there was nothing to indicate that the complainants' profile was that of persons likely to be at risk in India, that no evidence of their integration had been provided, and that they had failed to comply with Canadian immigration laws by not presenting themselves for removal in 2015 and not reporting to the Canada Border Services Agency until the filing bar on applications for a pre-removal risk assessment or for residence on humanitarian and compassionate grounds had lapsed. The officer considered the best interests of the complainants' two daughters, of whom the elder had remained in India and the younger had been born in Canada. He noted that the complainants had not provided any explanation as to why it would be best for their elder daughter if her parents remained in Canada. He ruled that it was best for the younger child to stay with her parents and, since she was only three years old, moving was unlikely to be an insurmountable hardship for her.

4.12 The State party reports that, on 2 August 2018, the complainants filed an application before the Federal Court for leave and judicial review of the rejection of their application for residence on humanitarian grounds, but that, on 11 October 2018, the Federal Court rejected their application.

4.13 The State party points out that the communication is inadmissible also because the complainants have not exhausted all the effective domestic remedies available to them in that: (a) they did not file an application with the Federal Court for leave and judicial review of the decision to reject their application for a pre-removal risk assessment; (b) they failed to provide the Federal Court with information to complete the file on their application for leave and judicial review of the rejection of their application for residence on humanitarian grounds; and (c) they did not file an application for administrative stay of removal.

4.14 The State party argues that the complainants have not explained why they failed to avail themselves of the remedies mentioned in the preceding paragraph. They have not disputed the effectiveness of these remedies, limiting themselves instead to making general claims about there being "no effective remedy for challenging the decision to reject their asylum application" and the remedies available before the Federal Court being only "a very narrow review to identify any serious errors of law". Furthermore, they have neither argued nor demonstrated that the exhaustion of these remedies would have entailed an unreasonable delay.

4.15 The State party recalls that the Committee has previously stated in several communications concerning Canada that these remedies are not mere formalities and that the Federal Court may, when appropriate, "look at the substance of a case".⁵

⁵ *Thu Aung v. Canada* (CAT/C/36/D/273/2005/Rev.1), para. 6.3; *L. Z. B. and J. F. Z. v. Canada* (CAT/C/39/D/304/2006), para. 6.6; *J.S. v. Canada* (CAT/C/62/D/695/2015), para. 6.5; *S.S. and P.S. v. Canada* (CAT/C/62/D/702/2015), para. 6.5; and *S.S. v. Canada*, (CAT/C/62/D/715/2015), para 6.4.

4.16 The State party explains that the complainants could have applied for leave and judicial review of the decision to reject their application for a pre-removal risk assessment and could have completed their application for leave and judicial review of the decision to reject their application for residence on humanitarian grounds. Contrary to their claim that they are awaiting the Federal Court's decision on judicial review of the decision on their application for residence on humanitarian grounds, the complainants failed to file information to support their application for leave, and the Federal Court therefore rejected it.

4.17 The State party also affirms that the application for residence on humanitarian grounds is an effective domestic remedy that must be exhausted for the purposes of admissibility by any person who has been denied refugee status. If an unfavourable decision is handed down on such an application, the applicant may ask the Federal Court for leave to apply for judicial review and may also make an application for a judicial stay of removal pending the outcome of the application for leave and judicial review. Accordingly, the State party argues that the application for leave and judicial review of a decision rejecting such an application is an effective remedy that must be exhausted in order for a communication to be admissible. The State party recalls that, in the cases of *P.S.S. v. Canada* and *L.O. v. Canada*, the Committee was of the view that the possibility of making such an application was part of the available domestic procedures enabling each of the complainants to obtain an effective remedy.⁶ The complainants did not raise any objections to the procedure for considering such applications or for the judicial review of such a decision, nor did they provide any evidence to show that such procedures would be ineffective or unfair in their particular case. In fact, they submitted an application for leave and judicial review of the decision to reject their application for residence on humanitarian grounds, but, since they failed to provide further information to support their filing with the Federal Court, the Court dismissed their application.

4.18 The State party further argues that the complainants failed to apply to the Canada Border Services Agency for an administrative stay of removal, an alternative domestic remedy that could offer them a reasonable prospect of redress. They did not take any steps to exercise this available and effective domestic remedy prior to submitting their complaint to the Committee, despite the fact that this remedy would have resulted in any new evidence of risk being considered. If their application had been successful, it would have prevented their removal. They have not explained why they did not avail themselves of this remedy.

4.19 The State party also maintains that the complaint is inadmissible as the complainants have not sufficiently substantiated their claim that they face a foreseeable, personal and real risk of torture in India. The State party argues that there was no arbitrariness or denial of justice in the complainants' case in the context of the domestic proceedings, as the findings and conclusions were made by competent and impartial national authorities on the basis of an assessment of the risks alleged by the complainants, which were not considered credible.

4.20 The State party notes that the complainants' allegations were deemed not credible by the Canadian authorities, based on several elements of their story, and notably the facts that: (a) they used false documents and statements in order to obtain Canadian visas; (b) A. R.'s testimony regarding the rental was not credible, as there were significant inconsistencies between his testimony and the lease agreement for the land, which explicitly prohibits the rental of the residence; (c) all their identification documents show that they lived at the Pehowa residence they claim to have rented out; (d) they have produced no other satisfactory evidence corroborating the fact that they rented out their residence, still less that it was rented to two alleged terrorists; (e) the medical certificate produced as evidence that A. R. had been tortured in India does not describe the circumstances in which he suffered the injuries, still less that they were due to torture; (f) the rental agreement with the two tenants, submitted to the Refugee Appeal Division because their testimony to the Refugee Protection Division lacked credibility, is not credible evidence since it was produced after the fact and was obtained on payment of a bribe, and, moreover, the applicants have already demonstrated that they are capable of providing false documents, notably as they did for their visa application; (g) they could not explain why the Indian authorities believed that they were associated with Sikh terrorists seeking independence for the Punjab or that they might be able

⁶ *P.S.S. v. Canada*, (CAT/C/21/D/66/1997), para. 6.2; and *L.O. v. Canada*, (CAT/C/24/D/95/1997), para 6.5.

to assist the police in their investigation of Sikh terrorist activities; (h) they could not explain their assertion that the police were trying to extort money from them; and (i) the documentary evidence regarding Sikh terrorism was either undated, too old, or made no reference to a problem of terrorism in the Pehowa region, where the rental residence was located. These inconsistencies and lack of clarity, combined with the absence of sufficient evidence to corroborate the complainants' written and oral claims, led the Refugee Protection Division and the Refugee Appeal Division to conclude that their story was neither credible nor plausible.

4.21 Accordingly, the State party submits that there are no substantial grounds to believe that the complainants would face a foreseeable, real and personal risk of torture in India. The arguments they presented to the Committee to support their claims of risk are insufficient and riddled with contradictions and inconsistencies. They are based solely on the decisions of the Canadian authorities on their asylum application and their applications for a pre-removal risk assessment and for residence on humanitarian grounds, and on the documents reviewed, specifically:

(a) The complainants' accounts and affidavits, in which they repeat the story told to the Canadian authorities, all of which concluded that the story and the allegations were not credible;

(b) A medical certificate drawn up by an Indian doctor on 12 March 2014, that is, almost a year after A. R. claims to have been treated in hospital in India (May and June 2013), which states that A. R. had injuries but does not specify the cause of these injuries, still less that the cause was torture;

(c) A letter dated 15 March 2014 from a lawyer in India, regarding the instigation of legal proceedings against the police;

(d) A letter from a *sarpanch* (elder) of the village of Koer, which reiterates the complainants' story and states that, in his personal opinion, their lives will be in danger until the police find their so-called terrorist tenants – an undated letter in which the name of the *sarpanch* is not legible and which, in the State party's view, is not sufficiently trustworthy to independently corroborate the complainants' allegations;

(e) The lease agreement for the land of the local mosque, which clearly states that the residence situated on the land could not be rented out, and thus contradicts any claim by the complainants with respect to the rental of their residence.

4.22 The State party finds it difficult to see how, more than five years after renting out their residence, A. R. would still be at risk of being targeted and tortured because some police officers allegedly detained and questioned him in 2013 for harbouring terrorists. The complainants have not submitted any evidence or provided any explanation as to why they would still be at risk in India after all these years. For example, they submitted no evidence that A. R. was still involved in supporting Sikh militants in India. Furthermore, there is no warrant out for the arrest of A. R. despite his claim that he had been accused of harbouring suspected terrorists and had been detained by the police.

4.23 On the merits, the State party submits that this complaint is groundless because the complainants have not presented sufficient credible evidence that they face a foreseeable, real and personal risk of being subjected to torture if they were returned to India.

Complainants' comments on the State party's observations

5.1 On 9 April 2021 the complainants submitted their comments, reiterating that they would face a substantial risk of torture if they were returned to India. They consider that they have exhausted all available domestic remedies and that their complaint is well founded in law and in fact.

5.2 The complainants challenge the fact that this case is based on general evidence that does not establish a foreseeable, personal, current and real risk. They consider that the various Canadian quasi-judicial and judicial bodies have given no weight to their arguments, even though they are relevant. The fact that there are some inconsistencies does not mean there is a major credibility issue. The complainants point out that they were unable to provide

documentary evidence to corroborate their claims. According to them, the Canadian quasi-judicial bodies concluded that their testimony was not probative not on the basis of what they said but because of what they did not say, even though it is settled case law that testimony must be considered on the basis of what is said.

5.3 The complainants state that they cannot return to India because their physical integrity would be under threat and their safety and lives in danger, not only because of the threats of torture and cruel punishment weighing against them on account of their membership, as Sikhs, of a particular social group but above all because of the proven indifference of the security services in India, whose police officers are supposed to protect the civilian population but are themselves implicated in the lack of security, persecution, torture and violence that exist throughout the country.

5.4 The complainants state that an application for residence on humanitarian grounds is an exceptional procedure, has no suspensive effect and may take 32 months to be adjudicated, which would cause undue delay because it has no immediate effect on the enforcement of their removal. Thus, the only application still under consideration in Canada, namely, the application to remain on humanitarian grounds, does not protect the complainants from deportation.

5.5. Furthermore, the complainants consider that the pre-removal risk assessment was conducted by immigration officials who have no competence in matters relating to human rights as set forth in international instruments, and that these officials are neither independent nor impartial. In addition, the assessment can only be based on new evidence that has come to light since the asylum application was rejected and on a simple review of the reasonableness of the decision to return a person where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

5.6 The complainants claim that there is an extremely negative attitude in the immigration services towards persons seeking refugee status and that there is no independent review of the decisions taken.

5.7 The complainants point out that they did not have an effective remedy to challenge the deportation decision, and that judicial review of the Immigration and Refugee Board's decision after the rejection of an asylum claim is not an appeal on the merits, but rather a limited review for the purpose of identifying clear errors of law. The Federal Court has consistently held that decisions of the Board are entirely at its discretion, and that the Court should not intervene unless the immigration officer exercises discretion "for improper purposes, based on irrelevant criteria, in bad faith or in a patently unreasonable manner". The Federal Court can overturn a Board decision if it is satisfied that the Board: (a) acted without jurisdiction; (b) failed to observe a principle of natural justice or procedural fairness; (c) erred in law in making a decision; (d) based its decision on an erroneous finding of fact; (e) acted, or failed to act, by reason of fraud or perjured evidence; or (f) acted in any other way that was contrary to law.⁷ None of the above grounds allows for a review of the merits of the complaint.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply where it

⁷ Canada, Federal Courts Act, *Revised Statutes of Canada* (1985), chapter F-7, subsection 18.1 (4).

has been established that the application of the remedies has been unreasonably prolonged or is unlikely to bring effective relief to the complainant.⁸

6.3 In this regard, the Committee notes the State party's argument that the complainants may file an application for leave and judicial review of the decision denying their application for a pre-removal risk assessment, as well as an application for an administrative stay of removal. The State party further argues that the complainants did not complete their application for leave and judicial review of the decision rejecting their application for permanent residence on humanitarian grounds, among other things because they did not file documentation in support of their application for leave, and the Federal Court therefore rejected it. It also notes that the complainants assert that an application on humanitarian grounds cannot be considered an effective remedy. In this connection, the Committee recalls its jurisprudence stipulating that applications for residence on humanitarian and compassionate grounds are not an effective remedy for the purposes of admissibility pursuant to article 22 (5) (b) of the Convention, given their discretionary and non-judicial nature and the fact that they have no suspensive effect on the removal of a complainant.⁹ Accordingly, the Committee does not consider it necessary for the complainant to exhaust the judicial review of the humanitarian and compassionate proceedings for the purpose of admissibility.

6.4 As to the complainants' failure to seek leave and judicial review of the decision on the pre-removal risk assessment, the Committee notes the State party's argument that, given leave, such decisions are subject to judicial review by the Federal Court and that a judicial stay of deportation pending final determination may also be granted. From the information on file, the Committee observes that, according to subsection 18.1 (4) of the Federal Courts Act, a judicial review of a pre-removal risk assessment decision by the Federal Court is not limited to errors of law and mere procedural flaws and that the Court may look at the substance of a case. The Committee also observes that the complainants have not put forward relevant arguments to support their assertion that a judicial review of the pre-removal risk assessment decision is not an effective remedy. They merely assert that this procedure does not allow for a review of the merits of the complaint. In this connection, the Committee recalls that the mere fact of doubting the effectiveness of a remedy does not absolve the complainant from the obligation to exhaust it and that the Federal Court may, in appropriate cases, examine the merits of a case.¹⁰ Accordingly, the Committee considers that, in the circumstances of the present case, the complainants have not exhausted all available domestic remedies since they have not applied to the Federal Court for leave and judicial review of the pre-removal risk assessment decision.

6.5 In the light of the foregoing, the Committee considers that, in the present case, the complainants had an available and effective remedy that they failed to exhaust.

6.6 In the light of this finding, the Committee does not deem it necessary to examine any other grounds of inadmissibility.

7. Accordingly, the Committee decides:

- (a) That the communication is inadmissible under article 22 (5) (b) of the Convention.
- (b) That the present decision shall be communicated to the complainants and to the State party.

⁸ See, for example, *E.Y. v. Canada*, (CAT/C/43/D/307/2006/Rev.1), para. 9.2; see also the Committee against Torture's general comment No. 4 (2017), para. 34.

⁹ *W. G. D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4; *A v. Canada* (CAT/C/57/D/583/2014), para. 6.2; *J.M. v. Canada* (CAT/C/60/D/699/2015), para. 6.2; *J.S. v. Canada*, para. 7.3; and *S.S. v. Canada*, para. 6.3.

¹⁰ *Thu Aung v. Canada*, para. 6.3; *S.S. and P.S. v. Canada* para. 6.5; and *S.S. v. Canada*, para. 6.4.