



# 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. 680/2015\*, \*\*

<i>Communication submitted by:</i>	G.A. (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	15 May 2015 (initial submission)
<i>Date of present decision:</i>	9 August 2018
<i>Subject matters:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Procedural issue:</i>	Admissibility — manifestly unfounded
<i>Substantive issue:</i>	Deportation of the complainant from Australia to Pakistan
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is G.A., a national of Pakistan born in 1977. The complainant, whose application for refugee status has been rejected by Australia, claims that if Australia proceeds with his deportation to Pakistan it would violate its obligations under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 19 May 2015, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author while the complaint was being considered. On 31 March 2016, the State party requested the Committee to lift its request for interim measures. On 29 December 2016, the Committee, acting through the same Rapporteur, decided to lift the interim measures.

#### The facts as presented by the complainant

2.1 G.A., a Sunni Muslim, was born on 12 February 1977 in Koza Bandai village in the Swat District of Pakistan. He is married with five children. In 1997, the complainant opened a music store in the village of Derai, in the Swat Valley. In 1999, he started working for a sea shipping company. He would work on a ship for periods of up to one year and then come back to his village for a few months. In his absence, his brothers helped him

\* Adopted by the Committee at its sixty-fourth session (23 July–10 August 2018).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



to run his business. In March 2008, he received threats from the Taliban telling him to close the music store, after which he decided to move it into his house. In May 2008, he was attacked at home by a group of Taliban members who punched and kicked him, and destroyed all of his compact discs, compact disc players and televisions. Following the attack, the complainant fled to Karachi and then worked on a ship until March 2009, when he returned to Pakistan.

2.2 The complainant alleges that, in June 2009, he assisted the Pakistan Army in identifying a number of Taliban militants active in his village and that the militants were arrested and subsequently executed. In November 2009, he received a telephone call from the Taliban threatening to kill him and his family for having assisted the Army in identifying the militants. The complainant claims that the Taliban followed through on the threat in December 2009, when his house was attacked by gunfire at night. After the attack, the complainant went to Karachi, where he stayed for approximately one month. While he was in Karachi, he was hired by a shipping company and was on board a ship for about one year. The complainant returned to Pakistan in January 2011 to see his family. He claims that in April 2011 he received another call from the Taliban threatening him for having assisted the Army in the identification of some Taliban members who were subsequently executed. Following this incident, he fled Pakistan once again and boarded a ship heading to Australia.

2.3 The complainant arrived in Australia on 15 December 2011, as the holder of a seafarer's visa. He applied for a protection visa on 6 February 2012, which was refused on 15 May 2012 by the delegate of the Minister for Immigration and Citizenship under section 65 of the Migration Act. He appealed this decision on 29 May 2012. On 12 March 2013, the Refugee Review Tribunal confirmed the delegate's decision. The Tribunal considered that the complainant was not a person in respect of whom Australia had protection obligations under the Convention relating to the Status of Refugees or its national legislation, because he had not been able to demonstrate that he would be subject to serious harm if returned to Pakistan. The Tribunal considered his fear of being persecuted by the Taliban in Pakistan was not well founded. The Tribunal took this decision on the basis of its assessment that some of the complainant's declarations were vague and contradictory. However, the Tribunal accepted as credible some facts presented by the complainant, for instance that he had a music store, that he had been obliged by the Taliban to close the store as he had been physically attacked by some members of the Taliban in May 2008 and that his house had been attacked by gunfire in December 2009. The Tribunal did not, however, accept as a fact that the complainant was threatened by the Taliban because he had assisted the Pakistan Army to identify some Taliban members. Nor did the Tribunal consider that the complainant would be at risk if returned to Pakistan because of religious or political reasons. The Tribunal suggested that the complainant could relocate to another location in Pakistan where he would feel safer, for example, Karachi. It considered that the complainant's fear of persecution by the Taliban was merely subjective.

2.4 On 2 May 2013, the complainant applied for a ministerial intervention under the Migration Act, requesting that the Minister for Immigration and Border Protection grant him a protection visa. On 18 December 2013, the complainant received a letter informing him that his application had been rejected, as the Minister considered that it would not be in the public interest to intervene in his case.

2.5 The complainant applied for judicial review of the Refugee Review Tribunal decision before the Federal Circuit Court of Australia on 10 February 2014. On 12 March 2015, the Court dismissed the application. The Court rejected the complainant's request for an extension of the deadline to present a case before it, as it considered that such an extension was not necessary in the interests of the administration of justice.<sup>1</sup> The complainant alleged that the delay in presenting the application to the Court had been due to the fact that his former lawyers had decided to apply for a ministerial intervention, instead of presenting the case to the Court. The complainant claimed that he had relied on

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<sup>1</sup> The complainant's application to the Federal Circuit Court was submitted 335 days from the date of the decision sought to be reviewed. The law requires that an application must be made within 35 days of the date of the migration decision.

the expertise of his former lawyers and that he had not understood the implications of applying for a ministerial intervention, instead of applying to the Court. The Court considered that it was well established that the complainant chose to pursue the ministerial intervention, which was indicative of a decision to abandon the course that would seek judicial review of the Refugee Review Tribunal decision. The Court also considered that the complainant's application for judicial review of the Tribunal's decision had no prospect of success, as the Tribunal was aware of the matters it was required to take into account when assessing whether the complainant would be at a real risk if returned to Pakistan.

### **The complaint**

3.1 The complainant submits that if he is returned to Pakistan he faces a real risk of severe pain or torture from members of the Pakistani Taliban, based on the threats and attacks he has suffered from them in the past. In addition, the authorities would not be in position to protect him against the Taliban, as the Government's inability to prevent or stop gross human rights violations committed by the Taliban is public knowledge.

3.2 Furthermore, the complainant claims that there are substantial grounds to believe that he would be at real risk if he is returned to Pakistan because, in addition to the Taliban's attacks referred to above, he is affiliated with the Awami National Party as a peace committee member, which would make him an obvious target for the Taliban. The complainant indicates that members of the Awami National Party have been targeted throughout Pakistan, including his friend and fellow committee member, Naimat Ali Khan, who was killed in an attack with assault weapons by unidentified militants on 12 June 2014.

3.3 The complainant indicates that he has exhausted all available domestic remedies. He further submits that he should not be required to appeal to the Federal Court because this remedy is not effective, as his lawyers consider that it has no prospect of success. No new events have occurred since the decision of the Federal Circuit Court to reject his appeal of the Refugee Review Tribunal decision. Therefore, it was very likely that an appeal to the Federal Court would have been dismissed as well. The complainant observes that, in any case, this remedy is no longer available as the deadline to present such an appeal has already passed.

### **Additional information from the complainant**

4. On 28 April 2015, the complainant submitted copies of his membership cards of the Village Defence Committee of Koza Bandai and the Awami National Party. He also presented copies of two letters confirming his participation in the Awami National Party, one from the President of the Metrovil Ward in Karachi and one from the Chair of the District Development Advisory Committee, Rahmat Ali Khan.

### **State party's request to suspend**

5. In a note verbale of 31 August 2015, the State party informed the secretariat that, on 17 July 2015, the complainant had filed an application with the High Court of Australia and, in the light of the ongoing domestic litigation related to the complainant's communication, the State party requested that the communication be suspended.

### **Complainant's comments on the State party's request**

6. On 3 November 2015, the complainant submitted comments on the State party's request to suspend. He confirmed that he had submitted an application to the High Court of Australia, asking the court to issue a ruling that Australia was bound by its international treaty obligations, specifically article 22 of the Convention, in the context of his current interim measure requests. He noted that the application, which had been submitted by his counsel, included two other cases submitted to the Committee against Torture, and that all three were subject to interim measure requests to the State party. However, in all three cases the State party had begun removal processes. He had been granted a bridging visa for three months, but in the two other cases the complainants were being detained pending removal. Since the Department of Immigration was threatening them with removal, on the advice of counsel, he and the other complainants thought that some sort of domestic

litigation would be the only protection they could have against their immediate removal. On 29 October 2015, a single judge of the High Court dismissed the application, and the complainant planned to appeal the dismissal to a Full Court. He further asserted that suspending the communication might open a window for the Department of Immigration to remove him, in an attempt to avoid a clear abrogation of the interim measures request. Therefore, he asked the Committee not to suspend the communication, unless the State party was willing to offer assurances that the interim measures would be respected.<sup>2</sup>

### **State party's observations on admissibility and the merits**

7.1 In a note verbale of 20 November 2015, the State party submitted that the complainant's allegations were inadmissible on the ground that his claims were manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure, due to the failure of the complainant to establish a prima facie case for the purpose of admissibility of his complaint. If the Committee considers the complainant's claims to be admissible, the State party submits that they are also without merit.

7.2 The State party notes that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including during the Refugee Status Assessment and by the Refugee Review Tribunal, and have been subject to judicial review by the Federal Circuit Court of Australia. The claims were considered through robust domestic processes and determined not to be credible and not to engage the Government's non-refoulement obligations. In particular, the claims have been assessed under the complementary protection provisions contained in subparagraph 36 (2) (aa) of the Migration Act 1958 (Cth), which reflects the Government's non-refoulement obligations under the Convention.

7.3 The State party submits that, with the exception of the new claim that he is associated with the Awami National Party as a peace committee member, the complainant has not provided any relevant new evidence in his complaint to the Committee that has not been considered through the robust and comprehensive domestic administrative and judicial processes mentioned. The State party refers to the Committee's statement in general comment No. 1 (1997) on the implementation of article 3 in the context of article 22 that, as it is not an appellate or judicial body, it gives considerable weight to findings of fact that are made by organs of a State party. The State party requests that the Committee accept that the Government of Australia has thoroughly assessed the complainant's claims through its domestic processes and found that it does not owe the complainant protection obligations under the Convention. The State party acknowledges that complete accuracy is seldom to be expected by victims of torture. For example, in reviewing the merits of the decision not to grant the complainant a protection visa, the Refugee Review Tribunal adopted a reasonable approach in the finding of credibility in relation to flaws and inconsistencies in the complainant's testimony.

7.4 The State party notes that the complainant's claims have been considered during the following domestic processes: (a) a protection visa application; (b) an independent merits review by the Refugee Review Tribunal; (c) a judicial review by the Federal Circuit Court; and (d) a request for ministerial intervention. During the protection visa application process it was established that the complainant had been working for a shipping company since 1999, spending 10 to 11 months of each year at sea, and was not involved in the day-to-day running of his music business during this time. He is therefore unlikely to be at risk of harm on account of the profile associated with that business. Since he spent long periods at sea, it was also implausible that the complainant's information about local Taliban members would have been of a sufficient or reliable level, or that the army would have used that information in pursuing members of the Taliban. As such, the decision maker did not accept that this, or the related threats and attack on the complainant's house, had occurred. Furthermore, it was implausible that the complainant had been unable to find a way to disembark the ship on which he was employed and claim asylum in a safe country to which the ship had travelled subsequent to 2009 and before 15 December 2011. This delay in

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<sup>2</sup> On 29 December 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to suspend consideration of the complaint.

claiming protection suggested that the complainant did not possess a well-founded fear of persecution as claimed.

7.5 The Refugee Review Tribunal accepted that the complainant might have owned a music shop in Derai, and as a result had attracted the attention of the Taliban. The Tribunal also accepted that the complainant had been severely assaulted by the Taliban in May 2008 and had fled to Karachi to join a ship through his employment with the shipping company. However, the Tribunal noted that there were multiple inconsistencies in the complainant's evidence regarding his movements when he returned to Pakistan, sometime in 2009, and it did not accept that he had been requested to join the Taliban, or that he had attracted the Taliban's attention because of a loan to singers or musicians.<sup>3</sup> The Tribunal did not accept that the complainant had received subsequent threats from the Taliban and that his house had been attacked in December 2009 and he himself had been shot in the stomach. In particular, the Tribunal noted that the medical evidence that had been adduced stated that the complainant had lower back pain and a history of physical assault, but did not identify a physical ailment otherwise consistent with a shooting.

7.6 The Refugee Review Tribunal rejected the complainant's claim that he had been or would be targeted due to being "open-minded", drinking alcohol<sup>4</sup> or having mental health issues that required ongoing treatment.<sup>5</sup> The Tribunal identified inconsistencies in the complainant's evidence regarding his movements when he returned to Pakistan, sometime in 2011. Due to these inconsistencies and a lack of credible evidence, the Tribunal did not accept that the complainant had been subject to a kidnapping attempt or that the complainant's brother-in-law had been killed because of him.<sup>6</sup> Rather, the Tribunal found that the complainant had returned to the Swat Valley a number of times since 2008, between contracts to work for the shipping company, and had not been targeted by the Taliban for any reason. The Tribunal noted that that was consistent with the country information available, which indicated that the situation in Swat had changed since 2008, and the authorities appeared to control the valley. The Tribunal found that it would be practicable for the complainant to relocate to another part of Pakistan if he continued to have a subjective fear of returning to the Swat Valley, noting that he had shown himself to be flexible and capable. As such, the Tribunal concluded that the complainant was not owed protection in connection with its obligations under the Convention relating to the Status of Refugees. The Tribunal also ruled that the complainant was not owed protection under the State's complementary protection obligations.

7.7 On 2 May 2013, the complainant made a request for ministerial intervention under sections 417 and 48B of the Migration Act 1958 (Cth). Under these powers, the Minister for Immigration and Border Protection can intervene in individual cases if the Minister thinks it is in the public interest to do so. The decision maker assessed that the complainant's request contained no information indicating that the complainant had an enhanced chance of making a successful protection visa application. On 13 June 2013, the decision maker determined that the complainant's claims did not meet the criteria for ministerial intervention.

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<sup>3</sup> The complainant told the Tribunal that, after the Taliban had destroyed his music store, he had lent 45,000 Pakistan rupees to some singers in Karachi to buy instruments, and after this the Taliban had contacted him and told him that he had not learned his lesson.

<sup>4</sup> The complainant told the Tribunal that one of the reasons he was targeted by the Taliban was because he drank alcohol and did "other stuff" that the Taliban considered to be against the rules of Islam.

<sup>5</sup> The complainant provided a letter from a psychologist that stated that he appeared to be suffering from post-traumatic stress disorder and depressive disorder. However, since the letter did not contain any information about the complainant's diagnosis or the necessity of any further sessions with the psychologist, and no other medical evidence was provided with regard to his mental health, the Tribunal did not accept this claim of mental health issues or that the complainant's life would be endangered as a result of not receiving adequate treatment if he returned to Pakistan.

<sup>6</sup> During his interview with the Tribunal, the complainant said that on 14 April 2011 the Taliban had shot and killed his brother-in-law because he had always supported the complainant and was helping the Government, and that in June 2011 the Taliban had tried to kidnap the complainant but that he had been able to escape. No documents supporting these events were submitted to the Tribunal.

7.8 On 31 March 2015, the Federal Circuit Court dismissed the complainant's application for judicial review of the Refugee Review Tribunal decision because it had been filed 300 days after the 35-day time limit provided in Australian law. In accordance with the law, the Court considered whether an extension should be provided, referencing the length of the delay, the presence or absence of prejudice to the complainant and the merits of the proposed appeal. The Court concluded that the complainant did not have a satisfactory explanation for the significant delay in lodging an appeal. Furthermore, the Court found that the complainant's case lacked merit, stating that the applicant had failed to satisfy the Court that his application had any prospects of success such that it would be in the interests of justice to extend the time limit. In the light of this, the Court found that any prejudice suffered by the complainant in not allowing the appeal would be minimal.

7.9 The State party submits that the complainant's claim that internal relocation in Pakistan is not an option for him, since the Government of Pakistan has demonstrated an inability to prevent gross human rights violations by the Taliban, was considered by the Tribunal and was not accepted. The State party acknowledges that article 3 (2) of the Convention requires all relevant considerations to be taken into account when determining whether article 3 (1) is engaged, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return, and the complainant has not established the existence of additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Pakistan.

7.10 The State party notes that the complainant included a new claim in his submissions to the Committee, namely that he was associated with the Awami National Party as a peace committee member. The late inclusion of this claim, the fact that the complainant has previously provided contradictory evidence and that it is inconsistent with country information, and the lack of personal evidence provided by the complainant, cumulatively raise doubts as to the veracity of this claim. During the Refugee Review Tribunal hearings, the complainant stated that he did not have any connection with any political party, and that the only interest he had was his shop, which he had run until 2008. Furthermore, this claim is inconsistent with country information, because the Awami National Party and the peace committee are two separate entities. Even if it is assumed that a typographical error has been made and that the complainant is claiming that he has an association with the Awami National Party, in addition to being a peace committee member, it is implausible that the complainant would not have raised this claim earlier if he feared harm for this reason. Peace committee members are at the forefront of clashes with the Taliban in rural areas and have been reported to be the targets of terrorist attacks throughout 2012 in the complainant's home region, while the complainant was having his protection claims assessed in Australia. Therefore, it is reasonable to expect that the complainant would have raised these claims on departure from Pakistan if he feared harm because of his association with the Awami National Party or as a peace committee member. Even if it were to be assumed that the complainant did have a plausible reason for not raising this claim earlier, the State party submits that the evidence the complainant has provided to date is not sufficient to substantiate his claim that he is a member of the Awami National Party or of the peace committee.

7.11 Lastly, the State party notes that the complainant submitted a letter from the New South Wales Refugee Health Service in support of his claim that he had been attacked by the Taliban in May 2008. This claim has already been accepted by the Refugee Review Tribunal, which concluded that this attack did not give rise to a real risk of the author being tortured if returned to Pakistan. The letter does not give rise to any further claims or enhanced risk of harm as a result of the attack in 2008, and only substantiates the injuries that had been inflicted, which have already been accepted and considered in the Australian refugee status determination and complementary protection processes. Therefore, this information does not provide sufficient evidence that the complainant would be personally at risk of torture or treatment that would be considered torture under article 1 of the Convention.

**State party's additional observations**

8. In a note verbale of 31 March 2016, the State party reiterated its observations on the merits of the complaint and requested the Committee to review the decision to grant interim measures or to fast-track the consideration of the complaint on the basis that the complaint was not complex, the documentation was complete and that all domestic procedures had been finalized.

**Complainant's comments on the State party's additional observations**

9.1 On 1 December 2016, the complainant submitted his comments on the State party's observations. The complainant rejects the State party's assertion that his claims have been evaluated through robust and comprehensive domestic administrative and judicial processes. He notes that the Federal Circuit Court has no jurisdiction to review the fairness of adverse credibility findings made by the Refugee Review Tribunal. This limitation means that unreasonable decisions made by the Tribunal of this nature cannot be reviewed. The procedure for appeal to the Minister is also not robust: the Minister is not required by law to deal with those requests according to procedural fairness and hence there is no transparency or accountability, and no reasons are offered for negative decisions.

9.2 The complainant notes that the Refugee Review Tribunal, while observing that the authorities gained control of the Swat Valley in 2008, recognized that the security situation in the area was unpredictable, and that there were still a number of Taliban-related terrorist groups operating in Pakistan. He refers to reports from the Pakistan Institute of Peace Studies and the Department of State of the United States of America, which indicate that more than half of the reported terrorist attacks in 2015 were carried out by the Pakistani Taliban, mainly the Tehrik-e Taliban Pakistan and affiliated local Taliban groups. The goals of the Tehrik-e Taliban Pakistan include waging a terrorist campaign against the military and State of Pakistan, against North Atlantic Treaty Organization forces in Afghanistan and overthrowing the Government of Pakistan. The Government began talks with the Tehrik-e Taliban Pakistan, but they broke down after the attack on Karachi Airport on 8 June 2014 and the Pakistan military began armed operations against the group.

9.3 With regard to the State party's assertion that it was implausible that the complainant was unable to find a way to disembark the ship on which he was employed and claim asylum in a safe country to which the ship travelled subsequent to 2009 and before 15 December 2011, the complainant notes that he and others were frequently denied short leave at such ports, mostly by local immigration authorities. This happened in Brazil, Uruguay and Australia, the latter in 2007, 2008, 2009 and 2010. Other countries in which he was allowed shore leave were not safe.

9.4 With regard to the State party's assertion that the complainant has no evidence of being shot in the stomach, the complainant submits that there was a misunderstanding during the translation. What he attempted to claim was that he had been stabbed in the armpit by a bayonet attached to an AK-47. He is currently seeking medical evidence to support this claim.

9.5 Furthermore, the complainant notes that he is attempting to secure an up-to-date psychological report as to the state of his mental health, noting that he has been diagnosed with depression and has been referred to a specialist trauma counselling service. He attributes his inconsistent behaviour with regard to admitting his membership in the Awami National Party to his poor mental condition. He had renounced the Party and attempted to block them out of his mind because they had done nothing to help him when he was facing difficulties in Pakistan prior to his departure.

**Additional submissions by the complainant**

10. On 9 February 2017, the complainant submitted a copy of a doctor's report confirming that he had a scar on his upper left arm consistent with having been stabbed there, and a copy of a psychologist's report from the New South Wales Service for the Treatment and Rehabilitation of Torture and Trauma Survivors that identified that he was suffering from post-traumatic stress disorder, anxiety and depression.

**Additional observations by the State party**

11.1 In a note verbale of 8 March 2017, the State party submitted its observations with regard to the additional medical documents provided by the complainant. The State party notes that there is no new and credible information in these documents that engages its non-refoulement obligations, including under article 3 of the Convention. The State party submits that the complainant's claim of his injury in the armpit by a bayonet is inconsistent with his claim at the Refugee Review Tribunal regarding how he acquired the injury. Before the Tribunal, the complainant had claimed that he had been shot by the Taliban at his house and he had been hit in the stomach by one of the bullets.<sup>7</sup> He also claimed that, as it was winter, he was wearing jackets and had only noticed the injury some time later. It is not clear how the complainant could have acquired this injury to his armpit when his claim did not indicate that any Taliban members had entered his house or been involved in an altercation with him.

11.2 With regard to the report by the New South Wales Service for the Treatment and Rehabilitation of Torture and Trauma Survivors, the State party notes that, although it reveals that the complainant is symptomatic of trauma, anxiety, depression and hallucinations, it does not indicate that any of these issues have affected the complainant's memory or ability to recount significant events in his personal history. Furthermore, the reported cause of his trauma is said to be a Taliban attack in which the complainant was hit with the heel of their guns, which is yet another unexplained discrepancy in the complainant's claims regarding his injury.

**Additional observations by the complainant**

12.1 On 22 March 2017, the complainant submitted his comments to the State party's observations of 8 March 2017. The complainant states that he suffered two injuries, not one, which were inflicted in different incidents. The scar on his axilla was caused by a bayonet in the incident he reported to the Refugee Review Tribunal. The Tribunal did not record this incident clearly, and he has therefore submitted a new statement in an attempt to clarify what happened.<sup>8</sup> The second injury concerns his psychological state, namely, that he is suffering from trauma and depression. The trauma was caused by the violent confrontation and humiliation inflicted on him by the Taliban, and resulted in difficulties in talking coherently about that humiliation. The Tribunal's decision record shows that he was beaten by the Taliban in front of his neighbours and family members. In this context, the garbled account reflected in the Tribunal's decision record is a result of his difficulties remembering and talking about the incident. He refers to the guidelines on the assessment of credibility used by the Tribunal during his interview, and notes that according to the guidelines traumatic experiences may cause a person to forget dates, locations, events and personal experiences due to the lapse of time or other reasons.

12.2 Furthermore, the complainant notes that the New South Wales Service for the Treatment and Rehabilitation of Torture and Trauma Survivors has provided another report that highlights that he has been suffering from problems with his memory, especially where traumatic events are concerned. He also suffers from chronic lower back pain that stems from his mistreatment at the hands of the Taliban, hence it was difficult for him to concentrate during his interview with the Tribunal due to this continual pain.<sup>9</sup>

**Additional observations by the State party**

13.1 In a note verbale of 20 October 2017, the State party submitted its comments to the complainant's submission of 22 March 2017. The State party notes that the complainant's

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<sup>7</sup> The Tribunal's decision record provided by the complainant shows that, when the Tribunal asked him about the events of December 2009, the complainant had explained that the Taliban had fired Kalashnikovs at his house and that one of the bullets had gone through the wall and hit him near the stomach.

<sup>8</sup> The complainant provides a copy of the written statement with clarification in the form of a statutory declaration.

<sup>9</sup> The complainant provides copies of medical certificates, one of which was issued on the day before his interview with the Tribunal.

claim, that he suffered two injuries that were inflicted in two different incidents, demonstrates another inconsistency in the complainant's account of events, as he did not previously make claims about two incidents. The State party submits that the complainant's statutory declaration, in which he describes how he was allegedly injured by the Taliban with a bayonet in May 2008, is not sufficient to substantiate his claim that he is at risk of torture upon return to Pakistan. The State party further reiterates its previous submissions on admissibility and the merits in regard to the complainant's health. It notes that the claims made and pieces of evidence provided by the complainant in respect of his health have been contradictory, relate to injuries allegedly sustained more than nine years ago and do not substantiate the complainant's claim that he is at a personal risk of torture upon return to Pakistan.

13.2 With regard to the documents provided by the complainant attesting to his membership of the Awami National Party, the State party notes that the letter from the Chair of the District Development Advisory Committee is signed by Rahmat Ali Khan. The State party submits that an online search shows that a person with a similar name, Rehmat Ali, was appointed Chair of the District Development Advisory Committee for the Swat District in 2010. However, the letter provided by the complainant was written in 2015, and it appears that the current Chair for the Swat District, Fazal Hakeem, has been in the position since 2014. The State party submits that this indicates that the letter may not be genuine.

13.3 The State party further notes that, if it were to accept that the complainant was a member of the Awami National Party, the complainant has failed to substantiate that he would be at a personal risk of torture for this reason upon return to Pakistan. There are reports of district-level and provincial politicians and leaders from the Awami National Party having been killed in Pakistan. However, the Australian Department of Foreign Affairs and Trade assesses that Party members face a low risk of violence from political or militant groups based on their political affiliations. As such, given that the complainant was not a politician within the Awami National Party, there is no evidence to suggest that he would be at risk of torture on the basis of any alleged past membership.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

14.1 Before considering any complaint submitted 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.

14.2 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. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

14.3 The Committee notes the State party's submission that the communication is inadmissible as the complainant's claims are manifestly ill-founded. The Committee, however, considers that the communication has been adequately substantiated for the purposes of admissibility and declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

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

15.2 In the present case, the issue before the Committee is whether the forced removal of the complainant to Pakistan 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. This includes torture or other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter.<sup>10</sup>

15.3 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 Pakistan. In assessing that 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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

15.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of the complainant’s deportation (para. 45).

15.5 The Committee notes the complainant’s claim that he had been attacked and beaten at his home by the Taliban for running a music store, and that later his house was attacked by gunfire by the Taliban because he assisted the Pakistan Army to identify a number of Taliban militants from his village, who were arrested and executed. He also claimed that, if returned to Pakistan, he would face a real risk of severe pain and torture from the Taliban, based on the threats and attacks he suffered from them in the past and his affiliation with the Awami National Party as a peace committee member. The Committee also notes the State party’s submission that the complainant’s claims have been thoroughly considered by a series of domestic decision makers, including courts, and determined to be not credible, and did not engage the Government’s non-refoulement obligations. In particular, the Committee takes into account the State party’s allegations of inconsistency in the complainant’s statements about the injuries he suffered as a consequence of the attack on his house by the Taliban, and the overall lack of credibility of the complainant’s story. The Committee also notes the State party’s submission that the complainant’s claim of his political affiliation with the Awami National Party was not brought up during the domestic asylum procedure, and the State party’s doubt with regard to the genuine nature of the letter submitted in support of the complainant’s membership of the Party.

15.6 The Committee observes that, even assuming that the complainant had been attacked by the Taliban, the alleged instances happened more than nine years ago and the question is whether he currently runs a risk of torture if returned to Pakistan. It does not necessarily follow that, so many years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to his country of origin. The Committee also observes that the complainant has not adduced any evidence that the Taliban had been looking for him in the recent past.

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<sup>10</sup> Committee’s general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 30.

<sup>11</sup> *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

15.7 The Committee refers to its general comment No. 4, according to which the burden of proof is upon the author of the communication, who has to present an arguable case (para. 38). In the Committee's opinion, in the present case, the complainant has not discharged this burden of proof. Furthermore, the complainant has not demonstrated that the authorities of the State party, in this case, Australia, failed to conduct a proper investigation into his allegations.

16. The Committee therefore concludes that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon return to Pakistan.

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

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