



# 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. 791/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	X (represented by counsel, Sergei Voronov)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of complaint:</i>	8 December 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 12 December 2016 (not issued in document form)
<i>Date of present decision:</i>	5 August 2019
<i>Subject matter:</i>	Deportation to India
<i>Procedural issues:</i>	Failure to substantiate claims; non-exhaustion of domestic remedies
<i>Substantive issue:</i>	Risk to life and risk of torture or ill-treatment in the event of deportation to country of origin
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is X, an Indian national born on 2 March 1987 in India. Following the rejection of his application for asylum in Canada, a decision was taken for his removal to India. He claims that his removal would constitute a violation by the State party of article 3 of the Convention. The complainant is represented by counsel, Sergei Voronov.

1.2 On 12 December 2016, in application of rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant to India while his complaint was under consideration. On 9 June 2017, the State party requested the Committee to lift the interim measures. On 6 March 2018, the Committee, acting through its Rapporteur on new complaints and interim measures, denied the State party's request.

\* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

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

\*\*\* Individual opinions (dissenting) by Committee members Felice Gaer and Abdelwahab Hani are annexed to the present document.



**The facts as submitted by the complainant**

2.1 The complainant was born in Jagraon, India. On 13 January 2013, eight police officers came to the complainant's family farm in search of a farm worker.<sup>1</sup> When the farm worker fled, the police officers became angry and questioned the complainant. Returning the same evening, they arrested him, with excessive use of force. Without producing an arrest warrant or specifying the reasons for the arrest, the officers took the complainant to the police station.

2.2 Held for more than 72 hours in deplorable conditions, the complainant was confined to a tiny, squalid cell with no windows and no mattress. He had to sleep on the floor and use a plastic container for a toilet. The food, which was given to him once a day, was rotten.

2.3 During his detention, he was interrogated several times by police officers, who tortured him using various means. They burned him with cigarettes, placed a sack over his head, punched him and beat him with a rubber truncheon. At night, two police officers woke him up by dousing him with cold water.

2.4 On 16 January 2013, the complainant was released, following intervention by certain influential individuals from his village, who had paid a bribe of approximately 25,000 rupees (about €320). The same day, the complainant was admitted to hospital, where he stayed until the following day.

2.5 On 27 January 2013, five police officers came to the complainant's home and again arrested him. They tortured him, including by tying his hands to a piece of wood and by beating him with blows to the back. They asked him questions about the farm worker. After one week, after his family paid a bribe of approximately 35,000 rupees (nearly €450), the complainant was released.

2.6 Fearing for his life, the complainant decided to leave India. On 16 May 2013, with a forged passport, he took a plane to Canada, with a stopover in Qatar. On the day of his arrival in Canada, 17 May 2013, he filed an application for asylum. On 18 July 2013 he was heard by the Refugee Protection Division of the Immigration and Refugee Board of Canada, which on 12 September 2013 rejected his application. On 17 December 2013, the Refugee Appeal Division overturned the decision of the Refugee Protection Division and ordered that the case be reviewed by a differently constituted court. On 23 April 2014 the Refugee Protection Division again rejected his application for asylum.

2.7 On 2 December 2014, the Refugee Appeal Division rejected the applicant's appeal. On 14 April 2015, the Federal Court dismissed his appeal for judicial review of the decision.

2.8 In his initial letter, the complainant stated that he had filed an application for a pre-removal risk assessment, which was rejected on 2 November 2016. The complainant states that he has exhausted all available remedies. Furthermore, he submits that in India, his father was beaten in order to obtain information on his whereabouts, which indicates that the authorities in India are still looking for him.

**The complaint**

3. The complainant contends that Canada would breach its obligations under article 3 of the Convention by deporting him to India, where he would again be subjected to torture by the police. He states that he was subjected to abuse and other ill-treatment by the police in 2013 and that the police held him in inhuman and degrading conditions at a police station for more than 72 hours without presenting an arrest warrant or allowing him to appear before a judge. The complainant provides numerous reports and articles to support his argument that the human rights situation in India is cause for concern, especially with regard to the treatment of detainees and prisoners by law enforcement agencies.

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<sup>1</sup> In his comments of 2 October 2017, the complainant explains that the farm worker was accused of being an arms trafficker.

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

4.1 In its observations of 9 June 2017, the State party provides detailed information on the asylum procedures in Canada and considers that the communication is inadmissible because two domestic remedies have not been exhausted. On 8 December 2016, the complainant applied for permanent residence in Canada on humanitarian grounds; the case is still being processed. The State party disagrees with the position of the Committee, which considers that, for the purposes of admissibility, the application is an ineffective remedy. On the contrary, it is an administrative procedure that is fair and equitable, subject to judicial oversight. In the event of a positive decision, it would allow the complainant to remain in Canada. Applicants whose cases are dismissed may also submit an application for leave and for judicial review with the Federal Court of Canada. Applications for permanent residence filed on humanitarian grounds thus constitute an effective domestic remedy.

4.2 Furthermore, contrary to what he states in his complaint, the complainant has not applied for a pre-removal risk assessment. In fact, the Canada Border Services Agency began the procedure on 5 February 2016 so that the complainant would be able to file his application, but as it had not received the application within the stipulated time frame, it closed the case without a decision on 7 March 2016. In addition, the period in which a new application for a pre-removal risk assessment may not be filed (a 12 month bar) has also lapsed; to date, however, the complainant has not submitted any application.

4.3 A person who is subject to a deportation order in force may, with some exceptions, submit an application for a pre-removal risk assessment. The purpose of the application's assessment is to determine whether the person would be in danger of being persecuted, tortured or killed or if the person would run the risk of being subjected to cruel treatment or punishment if returned to the country of origin. The assessment is neither a judicial review nor an appeal against decisions of the Immigration and Refugee Board. Applicants are informed of the possibility of submitting the claim and of their right to submit written comments and evidence in support of it. The submission of an application for a pre-removal risk assessment within 15 days of notification suspends the execution of the removal order. Applicants also have 15 additional days to submit documents in support of their requests.<sup>2</sup> Those who, like the complainant, have already had their applications for asylum rejected by a decision of the Commission are allowed to present only new developments and new evidence that has come to light since the decision was taken by the Commission.

4.4 The application for a pre-removal risk assessment constitutes an available and effective remedy. The review is carried out by officers of Immigration, Refugees and Citizenship Canada, who exercise powers delegated by the Minister. They are immigration officers specially trained in the field of human rights and administrative law, who carry out their duties with complete independence and impartiality. They also receive training on the importance of maintaining independence and impartiality in fact and in appearance when making their decisions. The Federal Court of Canada has recognized that their degree of independence is sufficient. In addition, the officers are extensively trained and have considerable experience in the field of human rights. They have updated information on the human rights situation in various countries, including India. They have considerable expertise in assessing the risks involved in removal and receive the necessary training on the relevant international conventions. If the complainant had submitted his pre-removal risk assessment application within the prescribed time frame, his action would have suspended the removal order issued against him until a decision was handed down on the application. The fact that the complainant has falsely claimed in his complaint that he submitted that request calls his credibility into question.

4.5 Furthermore, the complaint is inadmissible because it is incompatible with the provisions of the Convention. It in fact raises no credible allegation that may constitute torture for the purposes of the application of article 3 of the Convention. On the contrary, the Refugee Protection Division, after carrying out an independent, impartial and thorough assessment of the evidence submitted to it and the complainant's claims, determined that the evidence did not demonstrate that the complainant was at risk of being subjected to

<sup>2</sup> Canada, Immigration and Refugee Protection Act, S.C. 2001, c. 27 and article 112 (2) (c).

torture. In his complaint, the complainant provided no new evidence that would contradict the conclusions of the Refugee Protection Division. In such circumstances, insofar as he alleges that he would be in danger of being subjected to cruel punishment or treatment, the non-refoulement obligation cannot be applicable.

4.6 The communication is also inadmissible because it is manifestly groundless. The complainant's allegations were not considered credible by the Canadian authorities, and the complainant has not established that there was any irregularity in their decisions that would warrant the Committee's intervention in their findings on the facts and about his credibility. However, should the Committee decide to consider the credibility of the complainant's allegations, several elements of his statements lead to the conclusion that he is not credible and that his allegations are not sufficiently substantiated. When he filled in a first draft of the asylum application forms, on 20 May 2013, the complainant did not report the arrests to which he had supposedly been subjected. On the other hand, in a version of the same forms amended on 31 May 2013, when he was represented by counsel, he raised those allegations. When confronted with these discrepancies at the hearing before the Refugee Protection Division in April 2014, the complainant stated that at first he had been very afraid and had not wanted to raise such grievances, as he believed that the Canadian authorities would pose the same questions that the police had in his village. The Refugee Protection Division concluded that his explanations of the initial omission were not reasonable, particularly in view of the fact that the allegations were central to his application for asylum. Similarly, in his application for a work visa submitted in 2008, the complainant, who has completed 12 years of schooling, claimed that he was a carpenter, while in his asylum application, submitted in 2013, he stated that he had been working on the family farm since 2005. In an amended version of the same application, he stated that he had been a farmer since 2009 and that he had been a carpenter prior to that. In addition, during the hearing before the Refugee Protection Division in April 2014, the complainant was unable to respond to simple questions on how he had arrived in Canada and left India. For example, he was unsure of the city in which he was supposedly in hiding between his last release and his departure, and of the city from which he had left India. Moreover, the court was of the view that the documentary evidence provided by the complainant further undermined his credibility, since it indicated that, while the Indian authorities supposedly had the power to detain him for a very long period without bringing charges, he was supposedly released after the payment of bribes. The remainder of his explanations regarding his arrests, interrogations and association with potential militants were vague and evasive, and the court thus came to a negative conclusion.

4.7 Even if it is assumed that the complainant's account is credible, which the State party denies, his personal situation does not justify the conclusion that he would face a foreseeable and real risk of torture upon his return to India. Furthermore, he has not proven that he cannot establish himself elsewhere in India. Alternatively, and for the reasons listed above, the complaint should be rejected on its merits.

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

5.1 In his comments dated 2 October 2017, the complainant cites many reports from non-governmental organizations, according to which there are systematic and gross violations of human rights in India, which constitutes substantial grounds for not expelling him to that country. According to these reports, the prison conditions in India are a form of torture and may even lead to death, and the police commit abuses with impunity.

5.2 Contrary to what the State party affirms in its observations, the abuse inflicted by the police officers constituted acts of torture in the meaning of the Convention. The police subjected the complainant to severe physical and mental suffering in 2013, as he described in the complaint. The complainant was beaten with such force by police officers that in March 2014 he was still in pain, as reflected in the medical report attached to the file. Moreover, according to the same report, the complainant has symptoms of anxio-depressive disorder that are apparently attributable to the torture he underwent in India.

5.3 After the complainant's departure from India, the police came several times to his family farm in search of him. In March 2017, the complainant's father was arrested by the police, who tried to obtain information on his whereabouts. In order to assist his father, the

complainant sent the police evidence showing that he had applied for asylum in Canada and that he was residing there. Since the Indian authorities are now aware that the complainant has applied for asylum abroad, the risk he would run if returned to India is even greater. There is no possibility for the complainant to relocate elsewhere in India, since he would be obliged to notify the local authorities of his presence; he would thus be in danger of being persecuted and tortured anywhere in the country. A friend of the complainant, after being returned by Canada to India, was arrested by the Indian police for allegedly using a falsified passport to leave India.<sup>3</sup>

5.4 In response to the State party's observations on his credibility, the complainant affirms that his allegations of torture in India are true and corroborated by evidence. The inaccuracies in the account he gave to the Canadian authorities were attributable to the fact that he was frightened and distressed after his arrival in Canada and that he suffered from psychological problems and from the consequences of the stress resulting from his escape from India and arrival in an unknown country.

5.5 With regard to the non-exhaustion of domestic remedies, the complainant reiterates that his application for permanent residence in Canada on humanitarian grounds is still under consideration. However, such requests are seldom granted in practice, do not have suspensive effect on the removal of the applicants and are not subject to appeal if the application is denied.

5.6 The complainant claims that he had no intention of misleading the Committee on the application for pre-removal risk assessment, and that owing to a misunderstanding, his former counsel had incorrectly stated that the complainant had submitted such an application. The complainant received the form for the application on 5 February 2016 and had just 15 days to file it. Moreover, he was being held in an immigration centre, could not receive legal counsel and did not realize the urgency and importance of sending the application within the specified time frame. In addition, following the acts of torture to which he had been subjected, he suffered from memory and concentration disorders and was not in a position to make informed decisions relating to his asylum application. The complainant provided an undated medical report stating that he had come to a clinic on 15 March 2016 suffering from memory loss and problems of concentration. For these reasons, the complainant did not submit a request for pre-removal risk assessment in 2016. Moreover, he is not now in a position to file such a request because he has not received prior authorization from the Canadian authorities. In any event, such authorization would not be granted, because the complainant is the subject of a removal order.

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

### *Consideration of admissibility*

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

6.2 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 has been established that the application of those remedies has been unreasonably prolonged or is unlikely to bring effective relief.<sup>4</sup>

6.3 The Committee notes the State party's observation that the complainant has not exhausted the available domestic remedies, as his application for permanent residence in Canada on humanitarian grounds is still being processed. The Committee recalls its jurisprudence according to which a request for permanent residence in Canada on

<sup>3</sup> "Hoshiarpur man booked for fraud", *The Tribune*, 1 November 2016.

<sup>4</sup> *E.Y. v. Canada* (CAT/C/43/D/307/2006/Rev.1), para. 9.2. See also the Committee's general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, para. 34.

humanitarian grounds cannot be considered an effective remedy for purposes of admissibility, in view of its discretionary and non-judicial nature, and in consideration of the fact that it does not have a suspensive effect on the expulsion of the applicant.<sup>5</sup> Consequently, the Committee considers that the complainant is not required, for the purposes of article 22 (5) (b) of the Convention, to exhaust that remedy.

6.4 The Committee also notes the State party's argument that the complainant did not exhaust domestic remedies because neither in 2016, nor after the barring period (of 12 months) against submission of a new application had lapsed, did he apply for a pre-removal risk assessment. The Committee observes that, according to the State party, the complainant now has a further opportunity to submit an application for a pre-removal risk assessment. However, the Committee notes that, according to the procedure described by the State party, the applicant is informed of the possibility of filing such an application. The Committee observes that, according to the complainant, it is now impossible for him to submit such an application, as he has not been invited to do so. Furthermore, according to the available information, submission of an application for a pre-removal risk assessment after the bar does not make allowance for a statutory stay of removal. Consequently, the Committee concludes that the information it has at its disposal does not permit it to conclude that this remedy is currently accessible to the complainant and that it would be effective.

6.5 Concerning the State party's argument that the complainant was informed about the possibility of filing an application for a pre-removal risk assessment in 2016, the Committee notes the complainant's reply indicating that he was not in a position to do so, for the following reasons: (a) the deadline of 15 days was unreasonable; (b) he did not have access to counsel; (c) he did not realize the urgency and importance of filing the request; and (d) he suffered from memory and concentration disorders as a result of the injuries he had sustained.

6.6 The Committee notes that, pursuant to the Immigration and Refugee Protection Act regulations, persons who have filed a first application for a pre-removal risk assessment within the established time frame are not at risk of deportation as long as the procedure is under way, because their removal orders are stayed. The Committee notes that, procedurally, there is no requirement for the claimant to resort to the services of counsel in order to make such a request. However, the Committee takes note of the undated medical report on the psychological state of the complainant, presented to certify that he suffered from memory and concentration disorders in March 2016. In this regard, the Committee observes that the complainant has privately engaged lawyers for his asylum application and the present complaint, but that he did not specify whether in 2016 he had undertaken to find counsel willing to help him fill in the application, or whether he had informed the State party of his health problems in order to extend the deadline. The Committee also notes that the complainant does not claim to have been in a difficult financial situation that would have deprived him of the opportunity to submit a request for a pre-removal risk assessment or to retain the services of counsel to that end. As for the fact that the petitioner did not realize the importance of the request, the Committee recalls its consistent jurisprudence, according to which mere doubts about the effectiveness of domestic remedies do not absolve complainants from pursuing them, in particular if the remedy in question is reasonably available to them and has a suspensive effect.<sup>6</sup> In this connection, the Committee considers that the deadline of 15 days to submit the request was not unreasonable. In the light of the information before it, the Committee considers that, in the present case, in 2016 the complainant had an available and effective remedy that was not exhausted.

6.7 The Committee further notes the position of the State party, which maintains that the complaint is inadmissible because it is unfounded. The Committee recalls the arguments of the complainant, who claims that he currently runs the risk of being subjected to torture if returned to India. The Committee notes that the complainant, who reportedly travelled to Canada to seek protection, did not report the arrests and torture to which he was allegedly

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<sup>5</sup> *F.K.A. v. Canada* (CAT/C/62/D/784/2016), para. 6.4; and *Nakawunde v. Canada* (CAT/C/64/D/615/2014), para. 6.4.

<sup>6</sup> *F.K.A. v. Canada*, para 6.6; and *Shodeinde v. Canada* (CAT/C/63/D/621/2014), para. 6.7.

subjected in India in the first version of his asylum request; it further notes that the allegation that the Indian police consider the complainant to be an accomplice of a suspected offender is not supported by any evidence. The Committee also notes that the medical certificate of 29 March 2014 produced by the complainant is based only on his own account of past events and was prepared at his request for the purpose of his hearing before the Refugee Protection Division, held three days later. Furthermore, the Committee notes the vague character of the medical certificates dated 2013, which did not establish a diagnosis and did not specify the types of injuries or trauma to which the complainant had reportedly been subjected. Consequently, these certificates do not seem to corroborate the allegations made by the complainant about the torture reportedly inflicted on him. Furthermore, the Committee recalls that the existence of human rights violations in the complainant's country of origin is not, in itself, sufficient for it to conclude that a complainant runs a personal risk of being tortured. On the basis of the information before it, the Committee concludes that the complainant has not sufficiently substantiated his allegations that he risks being persecuted by the police in India or being subjected to torture if he is returned.

6.8. The Committee therefore decides:

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

## Annex I

### Individual opinion (dissenting) of Abdelwahab Hani

1. The Committee should have limited itself to concluding that the complaint was inadmissible because of the complainant's failure to sufficiently substantiate his claims that he risked being subjected to torture or ill-treatment if returned to India.
2. Moreover, the Committee should have concluded that the complainant had exhausted all domestic remedies in the asylum procedure, which includes an assessment of the risk of torture and ill-treatment.
3. As for the application procedure for a pre-removal risk assessment, the Committee should have found that this remedy is neither effective nor available.<sup>1</sup>
4. The State party submits that the complainant has met the conditions required to apply for a pre-removal risk assessment since the application form was sent on 5 February 2016 (see para. 4.2), assuming that a binding expulsion ruling was notified, but that he did not make use of that remedy.
5. However, the State party does not respond to the complainant's arguments that he had just 15 days to submit his application, that he was detained in an immigration centre and that he was unable to receive the assistance of counsel (see para. 5.6). A deadline such as that is extremely tight in the circumstances, where he was detained and in the absence of counsel.
6. As for the possibility of filing a further application for a pre-removal risk assessment, the complainant states that he did not receive the required prior authorization (see para. 5.6). In these particular circumstances, the State party has not demonstrated that a pre-removal risk assessment was actually available.
7. The State party acknowledges that the complainant is only able to request a new pre-removal risk assessment after a barring period of 12 months lapses since the first request, during which time rejected asylum seekers may not lodge any appeals. These time frames are excessively long, in view of the vulnerable situation of the complainant, who had begun his asylum request procedure three years earlier.
8. The pre-removal risk assessment is not an independent review mechanism, but a discretionary examination of the case carried out by officers of the Department, who make removal decisions. Furthermore, rejected asylum seekers may base their pre-removal risk assessment applications exclusively on new evidence.
9. The Committee should have noted the low rate of completion of pre-removal risk assessments, as confirmed by the State party itself, which indicated during the consideration of its seventh periodic report that the rate of acceptance of pre-removal risk assessment applications submitted in the past five years stood at 5.2 per cent.<sup>2</sup> Official statistics<sup>3</sup> show that the acceptance rate for pre-removal risk assessment applications has remained quite low, at 1.4 per cent in 2010 and 3.1 per cent in 2014,<sup>4</sup> with a yearly average of just 2 per cent.
10. The quite low acceptance rates for the pre-removal risk assessment are more attributable to a probability of rare events and random variables, in a Poisson distribution, than they are to the probability of an effective remedy showing a reasonable probability of reparation.

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<sup>1</sup> See *F.K.A. v. Canada*, annex.

<sup>2</sup> CAT/C/SR.1695, para. 34; CAT/C/SR.1698, paras. 32, 33, 42 and 52.

<sup>3</sup> Canada, Immigration, Refugees and Citizenship Canada, "Evaluation of the Pre-Removal Risk Assessment Program", April 2016, p. 15.

<sup>4</sup> *Ibid.*, p. 16, figure 4.6.



11. Furthermore, between 2007 and 2014, a high proportion – 26 per cent – of the people who could have requested a pre-removal risk assessment were removed before the prohibited barring period of one year lapsed, and the trend during this period was to facilitate removal,<sup>5</sup> so as to reduce the number of appeals, thus negating any potential suspensive effect.

12. In order to avoid any lack of protection, both the suspensive effect and reasonable time frames should be taken into consideration for the entire internal procedure, meaning the barring period for pre-removal risk assessment, combined with additional time for notification.

13. Despite the Committee's questions and criticism with regard to the pre-removal risk assessment, the State party has maintained its position that it should not revisit the procedure to bring it into line with the provisions of the Convention and the Committee's jurisprudence.<sup>6</sup>

14. In these circumstances, the pre-removal risk assessment is not an effective remedy for the purposes of admissibility, within the meaning of article 22 (5) (b) of the Convention, for the following reasons: (a) it was not in practice made available to the complainant; (b) it is discretionary in character, and not judicial;<sup>7</sup> (c) it has no suspensive effect on the expulsion;<sup>8</sup> (d) its procedures, including the waiting period before an appeal can be lodged, are unreasonably long; and (e) the complainant is unlikely to obtain an effective remedy through these means.<sup>9</sup> In short, it is not consistent with the criteria for an effective remedy defined by the Committee in paragraph 34 of its general comment No. 4 (2017) on the implementation of article 3 in the context of article 22.

15. In the alternative, the Committee should have rejected the argument that the claim was incompatible with the provisions of the Convention, advanced by the State party (see para. 4.5). The Committee has shifted its jurisprudence in relation to article 3 of the Convention, extending the absolute principle of non-refoulement to ill-treatment, as defined in article 16.<sup>10</sup>

16. Consequently, in these specific circumstances, the complainant has exhausted effective domestic remedies for the purposes of admissibility as set out in article 22 (5) (b) of the Convention, but he did not substantiate his claims.

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<sup>5</sup> *Ibid.*, pp. 17.

<sup>6</sup> CAT/C/SR.1698, para. 33.

<sup>7</sup> *Falcon Ríos v. Canada* (CAT/C/33/D/133/1999), para. 7.3.

<sup>8</sup> *J.S. v. Canada* (CAT/C/62/D/695/2015), para. 6.3; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 7.4.

<sup>9</sup> *E.Y. v. Canada*, para 9.2.

<sup>10</sup> *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 7.3; and *Harun v. Switzerland* (CAT/C/64/D/742/2016), para. 8.6.

## **Annex II**

[Original: English]

### **Individual opinion of Committee member Felice Gaer (dissenting)**

In my view, communication No. 791/2016 is inadmissible due to a lack of substantiation. The Committee was not in a position to conclude that the complainant had failed to exhaust domestic remedies, because of the very significant doubts the Committee members and others have raised about the effectiveness of Canada's pre-removal risk assessment procedure. This issue is explored by Mr. Hani in his dissenting opinion (see annex I). I would note that the pre-removal risk assessment procedure has been under revision in Canada to address some of the concerns raised about its effectiveness, including claims about its scope and arbitrariness, the alleged lack of independence of the officials who carry it out, their lack of training and a number of recurrent due process issues.

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