



# 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. 935/2019\*, \*\*

<i>Communication submitted by:</i>	S.S.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	17 June 2019 (initial submission)
<i>Date of adoption of decision:</i>	23 July 2022
<i>Subject matter:</i>	Risk of torture in case of deportation to India (non-refoulement)
<i>Procedural issues:</i>	Admissibility – <i>ratione materiae</i> ; admissibility – manifestly ill-founded
<i>Substantive issue:</i>	Torture or other cruel, inhuman or degrading treatment or punishment
<i>Articles of the Convention:</i>	2, 3, 16

1.1 The author of the communication is S.S. (“the complainant”), a national of India born on 2 August 1966.<sup>1</sup> The complainant claims the State party has violated his rights under articles 2, 3 and 16<sup>2</sup> of the Convention in returning him to India, where he claims he will face treatment contrary to article 3 and therefore in violation of the State party’s non-refoulement obligations under the Convention. He therefore requested interim measures to avoid irreparable harm, pending consideration by the Committee of his complaints. The Convention was ratified by the State party on 8 August 1989.

1.2 The complainant’s communication was registered on 17 June 2019 and the Committee, acting through its Rapporteur on new communications, decided to issue a request to the State party to refrain from deporting him to India while his communication was pending, in order to avoid irreparable harm.

#### Facts as presented by the complainant

2.1 The complainant was born in Taraori, a city in Karnal District in the State of Haryana, India. He belongs to the scheduled caste Chamar, also known as Dalits or “untouchables”. The complainant submits that he and his son were always discriminated against by the Jats,

\* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan İşcan, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

<sup>1</sup> The initial complaint included the author’s son, who later voluntarily returned to India and is therefore not included as a complainant in the present communication.

<sup>2</sup> The complainant does not indicate how articles 2 and 16 were or would be violated.



who belong to the Shudra caste. He claims that he was attacked by Jats<sup>3</sup> with a machete and batons and sustained a lacerated wound near his left eye. He had a defence wound on his left hand, and his nose and his left leg were fractured. He claims to have scarring and a steel rod in his left leg as a result of the attack.

2.2 The complainant claims that he was a follower of Baba Gurmeet Ram Rahim Singh and a member of the Dera Sacha Sauda association through which he took part in humanitarian work. The complainant submits that he has been suffering from post-traumatic stress disorder as a result of events that took place before he left India and that he is emotionally disturbed about his forcible return to India where he fears he will once again face persecution and severe discrimination.<sup>4</sup>

2.3 The complainant claims that he was elected president of his local truck union and held the position from 2005 until 2010, when he lost his campaign for re-election. Afterwards he faced harassment and was investigated by the Ministry of Finance, which carried out an audit of his financial records. He was accused of embezzling union funds. He states that he had to pay a large bribe to have the charges against him dropped.

2.4 The complainant claims that, in March 2011, he was accused of murdering one of his truck drivers and that, in June 2011, he was attacked by people from the Haryana Urban Development Authority group and was badly injured and hospitalized. The complainant also claims that he received death threats because of his links to Bab Gurmeet Ram Rahim Singh from the Jat Sikh community, which he alleges turned against him and his family in June 2012, when Mr. Singh, a highly controversial figure among the Jat Sikh community, visited him at his house. He claims that the visit was reported in several local newspapers.

2.5 The complainant claims that, in March 2013, police raided his office in Karnal and took all the physical files he held there. He further claims that the police then went to his home on 21 March 2013 to arrest him, but he was not at home.

2.6 The complainant submits that, on 24 March 2013, as a result of this harassment, he decided to leave the country. He therefore proceeded to obtain a visitor visa and booked tickets for himself, his wife and his son to travel to Australia. The complainant, his wife and his son arrived in Australia on 27 March 2013, while his daughter and younger son stayed in India. On 8 April 2013, his wife returned to India to be with the children and has remained with their two younger children in Pehowa, India. His older son has also since returned to India.

2.7 The complainant lodged an application for a protection visa on 10 April 2013. He provided written submissions on 10 May 2013. His substantive interview was conducted on 17 December 2013. In a letter dated 6 January 2014, the complainant was informed that his application for a protection visa (class XA) had been refused. In the refusal decision, it was noted that there had been a number of differences between the written submissions and the answers he had given during his interview. For example, in his written submission, the complainant had claimed that he had been extorted by members of the Indian National Congress party and that false criminal charges had been brought against a number of supporters of the Indian National Lok Dal party, including the complainant, for purposes of harassment and retaliation. At the interview, however, the complainant had submitted that the Indian National Congress party member with whom he had been embroiled in conflict was his neighbour and that that individual had threatened to kidnap the complainant's children to pressure him to stop supporting Baba Gurmeet Ram Rahim Singh. The decision maker noted that, when asked about the discrepancy between his written and oral accounts, the complainant responded that, because he could not type in English and could not afford a professional to assist him, he had provided only the "headline" issues in his written submissions. In the decision records, it was also noted that the complainant's written and oral accounts of the attack carried out by members of the Jat community contained significant differences, such as the injuries suffered, the timing of the attack and the added claim of

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<sup>3</sup> Stated to be Jats in the decision on the complainant's protection visa.

<sup>4</sup> In the decision on the complainant's protection visa, it is stated that the complainant also claimed to belong to the India National Lok Dal, headed by Om Prakash Chautala. In February 2013, Chautala and his two sons were arrested for corruption and remain incarcerated.

having been hospitalized as a result of the attack. In the decision records, it was also noted that, despite the complainant's claim that he had begun to experience problems in India in 2005, he had nonetheless remained there until 2012, when he had first obtained a passport in order to travel abroad on holiday, and he had not actually decided to leave India for good until 2013. It was further noted that, at the end of the interview, despite the complainant having stated that he could provide evidence in support of his claims, for which he had been given an extension of time, no such evidence had ever been submitted, and no reason had been given for the failure to do so.

2.8 Due to the inconsistencies in the complainant's evidence, the decision maker was not satisfied that the complainant had in fact experienced any problems with the Indian National Congress party member related to his political affiliation or his caste. Neither did the decision maker accept that the complainant's family had been attacked by Jat Sikhs or any other group in either 2011 or 2012. The decision maker therefore concluded that the complainant's claims were not credible and consequently that he did not have a genuine fear of persecution in India and accordingly did not trigger the protection obligations of Australia. The protection visa application was denied.

2.9 The complainant submits that, on 31 January 2014, he appealed the decision maker's decision on his protection claim to the Refugee Review Tribunal. At the hearing, on 2 September 2014, the complainant gave oral testimony and responded to questions by the Tribunal regarding the inconsistencies noted by the decision maker in the initial proceedings. On 3 October 2014, the Tribunal affirmed the decision not to grant the protection visa. It held that, in the responses provided, the complainant had failed to rectify the inconsistencies raised in the original decision and had therefore not satisfactorily removed prevailing doubts as to the veracity and credibility of his claims. The Tribunal therefore determined that the complainant's claims had been fabricated for the purpose of obtaining a visa and it concluded that the complainant was not in need of international protection.

2.10 On 6 November 2014, the complainant appealed to the Federal Circuit Court of Australia. The Federal Circuit Court's appellate jurisdiction in relation to Tribunal decisions is limited to claims on grounds of jurisdictional error. It dismissed the complainant's appeal on 31 October 2016 on the basis that it found the complainant's claims to be unsubstantiated or that he had been seeking an unauthorized merits review.

2.11 On 21 November 2016, the complainant filed an application seeking permission to appeal the Federal Circuit Court's decision before the Federal Court of Australia. The Federal Court reviewed the grounds of appeal advanced by the complainant and concluded that none had a reasonable likelihood of success. Therefore, on 19 May 2017, permission to appeal was denied.

2.12 On 6 November 2017, the complainant submitted an application for ministerial intervention requesting that he be granted a visa on compassionate or humanitarian grounds under section 417 of the Migration Act 1958 or for permission to lodge a further protection claim under section 48B of the Migration Act 1958. The request was found not to meet the guidelines for referral in a decision dated 16 November 2017.

2.13 On 22 August 2018, the complainant applied to the High Court of Australia for a judicial review of the refusal of the decision maker to make a referral to the Minister for Home Affairs (previously the Minister for Immigration and Border Protection), which was also denied.

### **Complaint**

3. The complainant claims a violation of his rights under articles 2, 3 and 16 of the Convention if returned to India. He argues that there are substantial grounds for believing that he faces a foreseeable, real and personal risk of treatment contrary to the non-refoulement obligations under article 3 of the Convention if returned to India. He claims that he previously faced persecution and is therefore at heightened risk upon return because of his caste and controversies related to his past involvement in political and trade union affairs. He also argues that there is no safe place for him to relocate to in India.

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

4.1 On 7 April 2020, the State party provided its submissions on the admissibility and merits of the communication.

4.2 The State party submits that the complainant's claims are inadmissible *ratione materiae* and for being manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure.

4.3 The State party submits that, in his submissions, the complainant has not identified who he fears would cause him future harm or the type of harm he would be subjected to on return to India, nor has he provided information about the nature of the harm to which he would be subjected on return. The State party states that the complainant has merely made general claims of being subjected to "torture", "persecution" and "severe discrimination" on his return to India. It notes that the complainant claimed before the Committee that he had been attacked, but had not specified by whom, and that he had sustained a broken nose and left leg, as well as injuries to his face and left hand. It further notes that, although he has made general claims of past persecution based on belonging to the Dera Sacha Sauda, involvement in politics and trade unions, and as a follower of Baba Gurmeet Ram Rahim Singh, the claims regarding the harm he would be subjected to on return to India do not in any case amount to torture within the meaning of article 3 of the Convention.

4.4 The State party submits that the complainant's claims are inadmissible *ratione materiae*, as the obligation of non-refoulement under article 3 of the Convention is confined to circumstances in which there are substantial grounds for believing that the returnee would be in danger of being subjected to torture. It reiterates that, to constitute torture, the act must be inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. It recalls that the Committee has maintained a distinction between torture and treatment that does not meet that threshold, including cruel, inhuman or degrading treatment or punishment, for the purposes of determining whether article 3 of the Convention is engaged in each case. The State party submits that the conduct alleged, specifically the single alleged attack on the complainant, does not meet this threshold and therefore does not engage the non-refoulement obligations of Australia under article 3 of the Convention.

4.5 The State party further submits that the complainant has not made any submissions in support of his claims of breaches by it of articles 2 or 16 of the Convention. Rather, it notes that the complainant's submissions allege "torture", "persecution" and "severe discrimination", which he alleges will occur in India, without demonstrating that the feared harm meets the required threshold, for example, harm that would constitute other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, as defined in article 1. Both article 2 and article 16 of the Convention contain obligations on a State party to prevent acts in any territory under its jurisdiction. These obligations are territorially limited and would not apply to acts in India by other actors. Accordingly, the State party submits that the complainant's claims with respect to articles 2 and 16 are inadmissible *ratione materiae*.

4.6 The State party also submits that the complainant's claims are inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure on the grounds that the claims are manifestly unfounded. The State party notes that the Committee has previously found claims to be manifestly unfounded where they lack sufficient documentary or other pertinent evidence to support the allegations made, or where the allegations are "pure speculation" and fail to rise to the basic level of substantiation required for the purposes of admissibility. It notes that it is the responsibility of the complainant to provide exhaustive arguments supporting the alleged violation of article 3 in such a way that establishes a prima facie case for the purpose of admissibility of his complaint. The complainant has failed to discharge this responsibility.

4.7 The State party submits that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including the Refugee Review Tribunal and the Department of Immigration and Border Protection, in the context of the complainant's protection visa application. The complainant also sought judicial review by the Federal Circuit Court, the Federal Court and the High Court. The complainant's claims were also assessed during the ministerial intervention process. The State party therefore states

that the claims have been subjected to robust review at all available domestic instances and have been consistently determined not to be credible and therefore not to engage the non-refoulement obligations of Australia. In particular, the complainant's claims have been assessed under complementary protection provisions, contained in paragraph 36 (2) (aa) of the Migration Act 1958, which reflect the non-refoulement obligations of Australia under the Convention and the International Covenant on Civil and Political Rights.

4.8 The State party further submits that the complainant has not provided any relevant new evidence in his submissions to the Committee that had not already been considered by comprehensive domestic administrative and judicial processes. It refers to general comment No. 4 (2017), in which the Committee states that it gives considerable weight to findings of fact that are made by organs of a State party.<sup>5</sup> The State party submits that it has thoroughly assessed the complainant's claims through its domestic processes and found that they do not engage the obligations of Australia under article 3 of the Convention. Australia takes its obligations under the Convention seriously and has implemented those obligations in good faith through its domestic migration processes.

4.9 The State party acknowledges that complete accuracy is seldom to be expected by victims of torture.<sup>6</sup> However, it asserts that this was taken into consideration by domestic decision makers in forming views on the complainant's credibility. It notes, for example, that, in assessing the complainant's protection visa application, the delegate of the Minister for Immigration and Border Protection (the decision maker) noted that, when assessing credibility, a decision maker must be sensitive to the difficulties often faced by asylum-seekers and should give the benefit of the doubt to those who are generally credible but are unable to substantiate all of their claims.

4.10 If the Committee considers the complainant's claims to be admissible, the State party further submits that they are also without merit, as demonstrated by the findings made in the domestic decisions concerning the complainant's claims and consideration by the Government of Australia of other issues raised in the complainant's submission to the Committee. It notes that the complainant has not made any additional claims that had not already been considered by domestic decision makers, as the merits of the complainant's claims were thoroughly considered as part of the complainant's protection visa application and subsequently by the Refugee Review Tribunal's review of the decision by the Department of Immigration and Border Protection, as well as in the assessment of the subsequent request for ministerial intervention. The Tribunal's decision was subsequently upheld as lawfully made during the domestic judicial review processes by the Federal Circuit Court and the Federal Court.

4.11 The State party refers to significant inconsistencies concerning the complainant's claims identified by the first instance decision maker who, in identifying those inconsistencies, had emphasized that in assessing the complainant's claims he had been mindful of the fact that a person who applied for refugee status might have been traumatized in the past and that prior experiences could adversely influence the applicant's ability to present claims in a coherent and plausible manner. The decision maker was also aware that the procedure used in deciding a refugee application could be a stressful process that might further interfere with the applicant's ability to recall his or her evidence accurately and to express his or her claims consistently. The decision maker further noted that a liberal approach should generally be adopted when considering the credibility of refugee claims. During the interview for the protection visa, the complainant confirmed that his written application was true and correct and he was also given an opportunity to amend his written application, which he did not take.

4.12 In particular, the State party points to consideration of the complainant's claims in his written protection visa application in which he asserted that in March 2011 he had been accused of murdering a driver who had worked on his truck. He submitted that he was the president of the truck union until 2010. He claimed that, after his presidency, he had been accused of embezzlement of union funds and had to pay a substantial amount of money to

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<sup>5</sup> Para. 50.

<sup>6</sup> *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3.

engage an auditing team to clear his name. The complainant also claimed that, as a result of the murder accusation, his family had been harassed by the police and the complainant had been charged with murder and placed on pre-arrest bail for some time.

4.13 The decision maker observed that, at the subsequent protection visa interview, the complainant had given an account that had conflicted with his written submissions. At the interview, the complainant had claimed that an individual named Mohan Singh, who had opposed the complainant's membership in the truck union, had made death threats against the complainant. The complainant had stated that the police had arrested him at the request of Mr. Singh in relation to accusations regarding the death of one of the complainant's employees. The complainant had claimed in the interview that he had bribed the police in order to secure release, which had been affected on the same day. In addition, the complainant had claimed that the subsequent harassment had been carried out by Mr. Singh, rather than the police, contrary to his written claim. Owing to the inconsistencies in his claims at the interview in comparison to the claims in his written application, the decision maker did not accept that the complainant had been threatened by Mr. Singh or anyone else or that he had been involved in any murder case or been harassed or arrested by the police.

4.14 The decision maker further observed that, at the protection visa interview, the complainant had given accounts that conflicted with his written visa application. At the interview, the complainant had been unable to recall information relating to the embezzlement accusation. At that forum, the complainant had stated that he was not the president of the truck union but rather an ordinary member and that the terms "president" and "member" were interchangeable. After having his memory refreshed with his written application, he had maintained he was an ordinary member but clarified that he had managed five other members. When questioned, the complainant had not provided any information as to the action he had taken regarding the embezzlement accusation. However, when prompted with his written application, he had stated that he had initiated an audit team to clear his name. Owing to a lack of clear recall on those issues, the decision maker had concluded that he was not satisfied that the applicant had been the president of the truck union and therefore did not find that he would have been involved in embezzlement proceedings.

4.15 Furthermore, the State party notes that, in his written application for a protection visa, the complainant claimed that a member of the Indian National Congress party, B.S., had been asking the complainant for funds for the party. The complainant claimed that he had belonged to the Indian National Lok Dal party. The complainant also claimed that the Congress party had been harassing and initiating criminal cases against supporters of the Indian National Lok Dal party. The decision maker observed that, at the subsequent protection visa interview, the complainant had given accounts that conflicted with those in his written application for a protection visa. At the interview, the complainant had stated that his "problems" with B.S. had begun in 2005. The complainant had claimed that B.S. had threatened to kidnap his family due to the complainant's low caste and worship of Baba Gurmeet Ram Rahim Singh, verbally abused the complainant, and once stopped the complainant's car when he was attempting to go to work. The decision maker noted that, in the written application, B.S.'s motivations for harassing the complainant had been based on politics. However, at the interview the motivation for B.S.'s harassment had become based on caste and worship of Mr. Singh. The complainant had claimed that the written application contained only the "headlines", as he could not type everything himself and could not pay a professional to do so. Owing to the inconsistencies between the complainant's account in his written application for a protection visa and the protection visa interview, the decision maker concluded that he was not satisfied that the complainant had encountered any problems from B.S.

4.16 The State party submits that the complainant claimed in his written application for a protection visa that he had been attacked by Jat Sikhs in July 2012 and that he, his wife and his sons had been injured in the attack. It refers to the findings of the decision maker, noting that a similar incident had been described at the protection visa interview but with varying details. The attack described at the interview had taken place in June 2011, targeted the complainant's wife and one son (rather than his entire family), occurred at his home and was on the basis of his worship of Baba Gurmeet Ram Rahim Singh. The complainant had also made different claims at his interview and in his written application as to the injuries sustained in the two incidents. For example, in the written application, the complainant had

indicated that he had been hit with a machete and *dang* (baton). He had sustained a laceration near his left eye (not the eye socket), his left hand had been cut by the machete (not just bruised), his nose had been broken (not mentioned at the interview) and he had sustained a fracture to his left leg (not just hit in the leg). The decision maker also noted that, in the written application, there had been no mention of hospitalization as a result of the injuries; however, at the interview, the complainant had claimed he had been hospitalized for 15 days as a result of the attack in June 2011. The complainant had claimed he had lodged a police report and could obtain hospital records within seven days; however, they were never received.

4.17 The State party refers to the decision maker's reasoning that the complainant's claims and in particular the attack lacked any consistency with his written claim. The decision maker noted that, although the complainant had claimed that he had been hospitalized and had reported the attack to the police, he had no documentary records to support his claim. The decision maker concluded that the complainant had not been threatened or attacked by anyone because of any political affiliation, caste issues or religious issues of any type and therefore had no genuine fears of persecution in India, concluding that the complainant's claims as to the attack by Jat Sikhs were not credible.

4.18 In addition to the decision maker's conclusions as to the complainant's lack of credibility and evidence, the State party notes the decision maker's reference to the fact that the complainant's wife had returned to India (even though the complainant claims she had also been threatened). The decision maker noted that, if the complainant's claims were true, he would have left India much earlier, when the alleged harassment had begun. The decision maker considered it relevant that the complainant did not apply for a passport until 2012 and did not leave India until 2013. In addition, the decision maker noted that relocation and State protection had been available options for the complainant.

4.19 The State party refers to the fact that the decision maker also considered whether there were substantial grounds for believing that, as a necessary and foreseeable consequence of the complainant being removed to India, there was a real risk that he would be subjected to significant harm. After considering the complainant's claims, the decision maker was not satisfied that the complainant met the complementary protection criteria contained in paragraph 36 (2) (aa) of the Migration Act. The complainant claimed that his life had been threatened. The decision maker was satisfied that the significant harm claimed by the complainant met the definition of being arbitrarily deprived of his life. However, as with the complainant's claims in respect of the refugee assessment, the decision maker was not satisfied that the complainant's claims to be threatened or attacked due to his political affiliation, caste or religious issues were credible. The decision maker considered that there were inconsistencies between the applicant's written accounts and his interview statements, that his claims had not been substantiated with documentary evidence, that the complainant's wife had returned to India despite her claims of being threatened and that the complainant had failed to leave India when able to do so. Furthermore, the decision maker considered that relocation had been a safe and reasonable option for the applicant and State protection had been available to the complainant. Consequently, the decision maker considered that there were not substantial grounds for believing that, as a necessary and foreseeable consequence of the complainant being removed to India, there was a real risk that he would be subjected to significant harm. The decision maker concluded that he was not satisfied that the complainant was a person in respect of whom Australia had protection obligations under section 36 of the Migration Act and sub-clause 866.221 of schedule 2 of the Migration Regulations.

4.20 The State party submits that the Refugee Review Tribunal also found a number of instances where the complainant lacked credibility and it concluded that the complainant had fabricated all of his claims, including those related to his caste, his political and/or union associations, the death of one of those employees and his religion. The Tribunal found that fundamental details of the complainant's claims, such as where and when the attacks had occurred, could not be recalled by the complainant. The Tribunal considered the answers regarding how often the attacks occurred ("on more than one occasion") and when the attacks occurred ("in 2011 and 2012") vague. Although the complainant claimed that he had been hospitalized as a result of the attacks and that some attacks had been reported in the

newspapers and to the police, the complainant was unable to produce any documentary evidence of the attacks. The complainant claimed that he was unable to obtain evidence due to the relocation of his wife and because his brother, who lived in the relevant area, was uneducated, unable to speak and shy. The complainant then amended his evidence, stating that his brother had said he would obtain the reports but had not done so. The Tribunal concluded that the evidence was unconvincing and it could not accept that the applicant had ever been attacked. The Tribunal also found that the complainant's claims that the attacks were on the basis of his worship of Baba Gurmeet Ram Rahim Singh and that the evidence supporting the complainant's association with Mr. Singh were vague, contradictory and unconvincing. The complainant had stated that he continued to follow Mr. Singh in Australia and that he was in contact with other followers in Australia and would worship through singing. However, when asked for details, he had amended his evidence and finally conceded that he did not worship Mr. Singh in Australia. The State party recalls that the complainant had also claimed that he had been blamed for the death of one his employees in 2011 and that he had been charged and attended court for the matter. However, he could not produce any records of the court attendance.

4.21 The Refugee Review Tribunal also took into account that the complainant had not applied for protection in a third country even though he had had an opportunity to do so during travel to Malaysia in 2012 for a total of four to five days. When asked why he had not applied for protection from that country, he stated that he had hoped the issues would "calm down" during his time away. A member of the Tribunal found the evidence to be "fanciful and implausible" and that, if the complainant's claims of repeated harassment, attacks, false embezzlement and murder accusations were true, the complainant could not have believed that they would be resolved after four or five days away. The member also noted that the complainant had failed to claim protection for a period of more than two months on arrival in Australia, indicating that the complainant's concerns were not genuine.

4.22 When questioned why he would have left his family in India given the attacks, the complainant claimed that his remaining family in India (two children at the time of departure) were under the protection of his brother. The member of the Refugee Review Tribunal noted that that contradicted his previous statement that the brother lived far away and could not assist. The member also noted that, in the Refugee Review Tribunal interview, the complainant had raised his wish for his son to stay in Australia, indicating that that was the complainant's aim in claiming protection. The member could not accept that the applicant would have left his other two children in India if the events he had claimed were true. The Tribunal concluded that it was not satisfied that the complainant or his son were persons to whom Australia owed protection obligations.

4.23 With regard to the Federal Circuit Court's decision of 31 October 2016 in which it dismissed the complainant's application for judicial review of the Refugee Review Tribunal decision, the State party submits that the complainant was physically present at the Federal Circuit Court hearing and made oral submissions assisted by an interpreter. In particular, it notes that the Federal Circuit Court considered the complainant's grounds for appeal, namely (a) that he had not been given sufficient time to produce documentary evidence, (b) of jurisdictional error in finding that the complainant's aim of staying in Australia had been his son's education rather than other reasons claimed and (c) of jurisdictional error in finding that the complainant's claims had been fabricated. The State party notes the findings of the Federal Circuit Court that the Tribunal had given appropriate justifications for refusing to extend the time available to the complainant to produce documents. It also notes that the Federal Circuit Court found that the complainant's grounds for appeal were not based on jurisdictional error but were, rather, requests for the court to engage in an impermissible merits review.

4.24 On 19 May 2017, the Federal Court dismissed the complainant's application for leave to appeal the Federal Circuit Court decision. The complainant did not attend the hearing. The Federal Court concluded that the complainant's grounds of appeal had insufficient prospects of success or had been an attempt to bring an impermissible merits review. On 27 March 2019, the High Court dismissed the complainant's application to appeal the Federal Court decision.



4.25 On 6 November 2017, the complainant made a request for ministerial intervention under sections 417 and 48B of the Migration Act. Under those non-compellable powers, the Minister for Home Affairs can intervene in individual cases if he or she thinks it is in the public interest to do so. The claims made by the complainant were again assessed with consideration given to the decisions reached by the Refugee Review Tribunal and Federal Circuit Court. It was determined by the Minister's delegate that the claims and circumstances presented by the complainant were not unique or exceptional when assessed against the Minister's guidelines and did not meet the guidelines for referral to the Minister.

4.26 In the light of the foregoing, the State party submits that the complainant has not provided sufficient evidence indicating that there are substantial grounds for believing that he would be personally at risk of treatment amounting to torture under article 1 of the Convention.

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

5. The complainant, in response to the State party's observations, provided reports and media articles that relate to: an incident in 1984 where mobs carried out attacks on Sikh homes and businesses in India, resulting in the death of approximately 3,000 people, mostly Sikhs; a number of other incidents involving the attack against, detention of or discrimination against Sikh persons; the response of the Government of India to Sikhs who advocate for an independent Khalistan; and Hindu nationalists in India.

### **State party's further submissions**

6.1 In response to the complainant's submissions, the State party submits that there is no information provided in the complainant's comments that could alter the State party's original assessment of 7 April 2020 that the complainant's claims are inadmissible or, in the event that the Committee decided that the complainant's claims are admissible, that the complainant's claims should be dismissed for lack of merit.

6.2 The State party goes on to specify that the complainant's submissions include a number of media articles providing generalized country information containing both historic and contemporary commentary on the circumstances of Sikhs in India. The State party respectfully submits that, as the complainant did not supply any submissions to accompany those articles, or information or evidence as to how those articles relate to the complainant's personal circumstances, it does not consider that the articles support the claim that the complainant would be personally at risk of being subjected to torture if returned to India.

6.3 Furthermore, the State party recalls that the existence of a general risk of violence in a country does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return to that country and that additional grounds must exist to show the individual concerned would be personally at risk. The State party therefore reiterates that the complainant has not provided sufficient evidence indicating that there are substantial grounds for believing that he would be personally at risk of treatment amounting to torture under article 1 of the Convention.

6.4 While the complainant has not specified how that information relates to his particular claim, taken at its highest, the State party considers that the collection of media articles may amount to a submission that, as an adherent of Sikhism, the complainant fears the mistreatment described in those articles on his return to India.

6.5 The complainant did not make claims concerning fears of mistreatment on his return to India due to his Sikh faith in the domestic proceedings, which considered his protection claim, or in his original communication. Regarding media articles concerning the attack, detention or discrimination of Sikh persons in India, the State party notes the assessment in a country report of 2018 of the Department of Foreign Affairs and Trade of Australia that "since the late 1980s and early 1990s, Sikhs have lived peacefully in India and the majority of Sikhs do not experience societal discrimination or violence".<sup>7</sup>

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<sup>7</sup> *Country Information Report: India* (2018), para. 3.19.

6.6 With regard to the media articles concerning the response of the Government of India to the movement for an independent Khalistan, the State party notes country information provides that “Sikhs who advocate for an independent ‘Khalistan’ may be subject to attention by authorities”.<sup>8</sup> The State party notes that the Committee has maintained a distinction between torture and treatment that does not meet that threshold, including cruel, inhuman or degrading treatment or punishment, for the purposes of determining whether article 3 of the Convention is engaged. Notwithstanding that the complainant has not alleged or provided evidence supporting an assertion that he has been involved in the movement for an independent Khalistan, the State party submits that it is not clear how being “subject to attention by authorities” would meet the threshold of torture so as to engage the non-refoulement obligations of Australia under article 3 of the Convention.

6.7 The State party further notes that, with regard to the media articles concerning Hindu nationalists, in the annual report of 2017 of the United States Commission on International Religious Freedom it is stated that “Hindu nationalists often harass Sikhs and pressure them to reject religious practices and beliefs that are distinct to Sikhism”.<sup>9</sup> Notwithstanding that the complainant has not alleged or provided evidence supporting an assertion that he is personally at risk of harassment and pressure, the State party submits that harassment and pressure to reject religious practices and beliefs do not meet the threshold of torture and therefore do not engage the non-refoulement obligations of Australia under article 3 of the Convention.

6.8 For the foregoing reasons and those set out in the State party’s submissions on admissibility and merits dated 7 April 2020, the State party submits that the complainant’s claims are inadmissible *ratione materiae* and are manifestly unfounded within the meaning of rule 113 (b) of the Committee’s rules of procedure. Should the Committee find the allegations admissible, the State party submits that the complainant’s claim is without merit, as it is not supported by evidence of substantial grounds for believing that the complainant is in danger of torture as defined in article 1 of the Convention.

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

### *Consideration of admissibility*

7.1 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.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. This rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies, and the evidence before it indicates that the complainant has exhausted available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The Committee notes the State party’s submission that the complainant’s claims are inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee’s rules of procedure on the grounds that they are manifestly unfounded, as the complainant does not make specific arguments under articles 2 or 16, and that his claims under article 3 of the Convention do not meet the evidentiary threshold to constitute a prima facie case that the State party’s non-refoulement obligations under article 3 have been violated.

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<sup>8</sup> Ibid.

<sup>9</sup> *Annual Report of the U.S. Commission on International Religious Freedom* (Washington, D.C., 2017).

7.4 The Committee notes that the complainant does not make any specific claims in reference to alleged violations of articles 2 and 16 of the Convention. It also notes that the complainant has claimed that he faced discrimination and harassment due to his caste and political associations, in particular death threats to himself and his family, and fabricated criminal charges, and that the persecution culminated in a physical attack on him, his wife and their son, leaving him hospitalized with serious injuries. The Committee notes, however, that the complainant does not provide detailed information in relation to those events, whether the threats or the attack were reported to law enforcement authorities, or any indication of whether he attempted to secure, or was denied, the protection of local or State authorities in relation to these events. It notes the complainant's claims that police officers went to his home and office to seize articles in relation to criminal investigations, but also notes that he does not provide evidence that substantiates his claims that he was the subject of groundless or ongoing harassment by authorities, or that any charges were in fact brought against him or pursued with respect to any crime. The complainant states that the financial allegations were dropped after he made a payment but does not specify how much he paid or to whom. He states that he decided to leave India as a result of harassment but does not provide any evidence or explanation as to: (a) which harassment in particular was the trigger for the decision; (b) whether he sought police protection in relation to that harassment; (c) why he believed the harassment put him at serious risk; (d) whether he feared treatment from authorities, and on what grounds; and (e) why, if he were the target of persecution by the State, he would have been granted a passport or allowed to exit and enter the country on two occasions while he claimed that he was being investigated for serious crimes.

7.5 The Committee notes the State party's submission that the decision-making authorities heard and considered all of the complainant's claims and found his evidence to suffer significant inconsistencies, detailed both in the observations and in the reasoning provided with the decisions. It notes the State party's submissions that those inconsistencies, which led to a negative credibility finding, were presented to the complainant, who consistently failed to remedy them when given the opportunity, and that he further failed to provide evidence to support his claims, despite making a commitment before authorities to do so. The Committee notes that those flaws have not been satisfactorily addressed in the complainant's communication.

7.6 The Committee recalls its jurisprudence in which it has found claims to be manifestly unfounded where the author of the communication has failed to present an arguable case, that is, to submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.<sup>10</sup> It notes that it is the responsibility of the complainant to provide arguments supporting the alleged violation of article 3 in such a way that establishes a prima facie case for the purpose of admissibility of the complaint. It finds that the complainant has failed to provide evidence that would rise to the basic level of substantiation to support his claims that he is at serious risk of treatment contrary to article 3 if returned to India. The Committee therefore finds that the author's claims under articles 2, 3 and 16 are insufficiently substantiated for the purposes of admissibility.

8. The Committee therefore decides:

- (a) That the communication is inadmissible as manifestly unfounded insofar as it relates to all claims under articles 2, 3 and 16;
- (b) That the present decision shall be communicated to the complainant and to the State party.

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<sup>10</sup> Committee against Torture, general comment No. 4 (2017), para. 38.