



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

Distr.
RESTRICTED */

CAT/C/13/D/15/1994
18 November 1994

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirteenth session

VIEWS

Communication No. 15/1994

Submitted by: Tahir Hussain Khan
[represented by counsel]

Alleged victim: The author

State party: Canada

Date of communication: 4 July 1994

Documentation references: Prior decisions - none

Date of adoption of Views: 15 November 1994

[See Annex]

*/ Made public by decision of the Committee against Torture.
VWS15.13e cb

ANNEX

VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22, PARAGRAPH 7,
OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT
- THIRTEENTH SESSION -

concerning

Communication No. 15/1994

Submitted by: Tahir Hussain Khan
[represented by counsel]

Alleged victim: The author

State party concerned: Canada

Date of communication: 4 July 1994

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 15 November 1994,

Having concluded its consideration of communication No. 15/1994, submitted to the Committee against Torture by Mr. Tahir Hussain Khan under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication, dated 4 July 1994, is Mr. Tahir Hussain Khan, of Kashmiri origin, citizen of Pakistan, currently residing in Montreal, Canada. He claims to be a victim of a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Canada. He is represented by counsel.

The facts as submitted by the author:

2.1 The author, who was born on 14 August 1963 in Baltistan, Kashmir, left Pakistan on 1 July 1990, out of fear for his personal security. He arrived in Canada on 15 August 1990 and requested a residence permit on the grounds that he was a refugee. The Immigration and Refugee Board of Canada heard the author on 14 January 1992 and concluded that the author was not a refugee within the meaning of the Refugee Convention. The author's subsequent motion for leave for judicial review was refused on 17 April 1992 by a judge of the Federal Court. No further effective judicial recourse is said to exist.

2.2 The author's request to be allowed to stay in Canada for humanitarian reasons was refused by the immigration authorities on 10 May 1994. The author's removal to Pakistan was ordered to be effectuated on 17 July 1994.

3.1 The author, who is a professional cricket player, is an active member of the Baltistan Student Federation and supports the Baltistan movement to join Kashmir. The Baltistan Student Federation is associated with the Jammu and Kashmir Liberation Front. According to the author, the Baltistan area is historically part of Kashmir but currently claimed by Pakistan as part of Pakistan. He claims that Pakistan has denied the inhabitants of Baltistan their full political rights and that the area is completely militarized. The Pakistani authorities violently repress the movement for civil rights and independence and individual activists are persecuted. In this context, the author states that a friend and co-activist was assassinated in August 1992.

3.2 The author submits that he fears persecution from Islamic fundamentalists, the Pakistan Inter-Service Intelligence (ISI) and the Government of Pakistan because of his membership in the Baltistan Student Federation (BSF). He states that he was a local leader and organizer for the BSF in Rawalpindi, and that he organized many demonstrations to publicize the goals of his organisation. He claims that he was arrested on several occasions and accused of being an Indian agent. In 1987, he was arrested by the ISI at the offices of the BSF in Skardu, together with four other BSF leaders. They were taken to the police station in Skardu and kept in a special ISI section. The author alleges that he and those arrested with him were hung from the ceiling by their hands with rope and badly beaten. After a week of maltreatment (cold showers, sleep deprivation, being placed on ice-blocks), the author was released on bail.

3.3 On another occasion, in April 1990, the author, together with others, was arrested after leading a demonstration for the BSF in Karachi. He was taken to jail in Hyderabad, where he was beaten and subjected to electric shocks. He also alleges that he was cut on his back and that chemicals were applied to the cuts, which caused him severe pain. After two weeks, he was released on bail and told to appear before the Court on 7 July 1990.

3.4 A letter, dated 27 July 1994, from a medical doctor at the Hôpital Saint-Luc in Montreal affirms that the author has marks and scars on his body which correspond with the alleged torture.

The complaint:

4.1 The author claims that the Canadian authorities did not address the central facts of his case in the decision not to recognise him as a refugee and that his claim was not justly dealt with.

4.2 The author, who is now in charge of the BSF overseas, claims that he cannot return to Pakistan, because he risks persecution and attacks on his life. He claims that he will be immediately arrested at the airport, be detained and tortured. In this context, the author refers to reports by Amnesty International and Asia Watch and claims that evidence exists of systematic torture by Pakistani authorities. He attaches a supporting affidavit by a Kashmir human rights lawyer, who testifies that demonstrations organized by the Baltistan Student Federation have been repressed by Pakistani authorities and that its leaders are at risk of being arrested or killed. He also attaches a copy of a letter, dated 15 August 1994, from the Baltistan Students Federation, in which the author is advised to remain in Canada, since the circumstances under which an arrest warrant was issued against him are still prevailing.

Issues and proceedings before the Committee:

5. On 15 July 1994, the communication was transmitted to the State party, with a request that the author should not be expelled before the Committee would have communicated its decision under rule 108 of the rules of procedure. In reply, the State party, by submission of 2 September 1994, requested the Committee to examine the communication on the merits during its next session in November 1994. For this purpose, the State party agreed not to contest the admissibility of the communication.

State party's observations:

6.1 In its submission, dated 3 October 1994, the State party states that a post-claim risk-assessment, conducted in September 1994, resulted in the conclusion that Mr. Khan would not face a danger to life, extreme sanction or inhumane treatment, should he be returned to Pakistan. In the light of this finding and in the light of the need to process a large number of refugee claims in Canada in a timely fashion, the State party requests the Committee to examine the merits of the communication at its thirteenth session. It confines its observations to the merits of the communication only.

6.2 The State party begins by explaining the refugee determination process in Canada, as applied to Mr. Khan, prior to amendments made in February 1993. The refugee determination process was composed of two separate oral hearings, both of which were held before independent, quasi-judicial administrative tribunals. In both these hearings, claimants had the right to be represented by counsel of their choice, and were afforded the opportunity to present evidence, cross-examine witnesses and make representations. If either member of a two-member panel which conducted the initial hearing determined that there was some possible basis for success in the claim for refugee status, the claim proceeded to a second oral hearing before the Refugee Division of the Immigration and Refugee Board. At the second oral hearing, two members of the Refugee Division examined whether the claimant met the definition of "Convention refugee". The claim would succeed, if either member of the panel was satisfied that this was the case. Leave to appeal a negative decision before the Federal Court of Appeal could be asked and was granted if the claimant could show that there was a "fairly arguable case" or a "serious question to be determined". If leave was granted and the Court rendered a negative decision, leave could be sought to challenge this decision before the Supreme Court of Canada.

6.3 The State party submits that the United Nations High Commissioner for Refugees has praised Canada's refugee protection system as being "among the very best in the world".

6.4 The State party states that outside the framework of the refugee claim process, the Immigration Act allows to determine whether circumstances exist which warrant the granting of permanent resident status to individuals for humanitarian and compassionate reasons. All failed refugee claims before February 1993 were automatically considered for this purpose. Guidelines have been developed to assist immigration officers in making this determination. The guidelines include an assessment of the risk to a person who may not be a "Convention refugee", but may nonetheless face maltreatment abroad.

6.5 After the amendments to the Immigration Act, which came into force on 1 February 1993, the Act provides for a post-claim risk assessment for those individuals who are found not to be Convention refugees but face a risk of serious harm should they be returned to their country of origin. A person is allowed to stay in Canada if he, upon removal, would be subjected to an objectively identifiable risk to his life, of extreme sanctions, or of inhumane treatment. In the risk-assessment process claimants have an

opportunity to make written submissions on the risks they would face if removed from Canada. A post-claim determination officer reviews also other relevant material, such as the claimant's immigration file, material from the Refugee Division hearing and country specific information. If a post-claim determination officer comes to the conclusion that removal from Canada would subject a person to the risk identified above, he is allowed to apply for permanent residency. A negative decision is subject to judicial review proceedings, with leave, before the Federal Court Trial Division, and from there to the Federal Court of Appeal and the Supreme Court of Canada.

6.6 After two non-governmental experts had prepared a study, in April 1994, in which concerns were expressed about the post-claim risk assessment process (in particular with regard to the low acceptance rate), the Minister of Citizenship and Immigration announced specific interim measures. Instructions were issued with regard to a broader application of the regulatory criteria. It was under these criteria and instructions that Mr. Khan's case was recently reviewed.

7.1 As to Mr. Khan's case, the State party states that he was first interviewed by immigration officials on 9 August 1990. He declared that he had entered Canada illegally from the United States, and that he had left Pakistan on 1 July 1990. On 18 September 1990, the author signed a Statutory Declaration in which he claimed political refuge. An interpreter was present at that occasion. He informed the immigration officer about his political activities and stated that he had received several threats. The author was then referred to an immigration inquiry to determine his status in Canada.

7.2 At the inquiry, the author made his claim for refugee status under the procedures set out in the Immigration Act. On that occasion, he described his political activity and alleged two instances of detention, one in November 1987 and the second in March 1990. After a hearing on 24 May 1991, the author's claim was found to have a credible basis and thus referred to the Refugee Division for a full oral hearing. At the hearing, on 29 August 1991, the author was represented by a lawyer; interpretation was provided. The State party submits that the information provided by the author at the hearing was inconsistent with that provided by him earlier. Furthermore, the oral testimony is said to have been internally inconsistent. Although numerous opportunities were given to the author to clarify these inconsistencies, the State party submits that the testimony remained self-contradictory. Consequently, in its decision, dated 14 January 1992, the Refugee Division determined that the author was not a refugee and that his oral testimony had been fabricated. The author's leave to appeal was dismissed by the Federal Court of Appeal on 22 April 1992.

7.3 The State party emphasizes that in no instance during the proceedings in determination of his refugee claim, the author or his counsel alleged ill-treatment or torture during the claimed periods of detention, nor did they allude to future fear of torture.

7.4 After the author's leave to appeal had been dismissed, he was informed that he should leave Canada on or before 23 May 1992. The author failed to do so. After the author failed to report to the immigration office on 16 September 1992, as requested, a warrant for his arrest was issued. The author was arrested on 21 September 1992, and on 23 September 1992, a deportation order was issued against him. He remained in detention until the scheduled day of his removal, 8 October 1992. On that date, his scheduled removal was delayed because of his violent and aggressive behaviour, which made it inappropriate to proceed with the removal without escort officers.

7.5 On 27 October 1992, the author's presence was required at a preliminary hearing in respect of charges of assault against him, following a fight in a bar in March 1992. Under paragraph 50(1)(a) of the Immigration Act, the author

could not be removed from Canada until after these charges were resolved. On 29 October 1992, the author was released from detention, awaiting the outcome of the trial against him, which was scheduled for 25 February 1993.

7.6 On 30 December 1992, counsel for the author requested the exceptional granting of resident status on humanitarian and compassionate grounds. The State party emphasizes that this request was mainly based on his community involvement in Quebec and on the unstable situation in Pakistan, and that no materials were filed demonstrating a personal risk for the author of torture or maltreatment, if he were to be returned to Pakistan. On 29 January 1993, the application was refused.

7.7 On 25 February 1994, the author was convicted of assault causing bodily harm and sentenced to one year probation and a ninety dollar fine. Consequently, his departure from Canada was scheduled for 17 March 1994. On 15 March 1994, the author was arrested while attempting to enter the United States illegally and contrary to the conditions imposed upon him after his release from detention. On 16 March 1994, he was ordered detained for removal purposes. According to the State party, the author threatened Immigration officers, saying that he could not be held responsible for what might happen to escort officers who would take him back to Pakistan. His removal was delayed and the author remained in detention.

7.8 On 15 April 1994, counsel for the author made another humanitarian and compassionate application. This application was refused on 10 May 1994. The State party submits that the author could have applied to the Federal Court if he felt that the review had been unfair, but he failed to do so. Instead, counsel made additional humanitarian and compassionate review submissions, without however submitting the requisite processing fee. As a result, the application was not considered. The State party states that in the materials submitted by counsel, no reference was made to the author having been previously illtreated in Pakistan.

7.9 On 15 June 1994, counsel brought an application before the Refugee Division for reconsideration of the author's refugee claim. On 18 June 1994, the application was denied. No attempt was made by counsel or the author to challenge this decision.

7.10 On 4 July 1994, the author was released from detention. The State party submits that it had been agreed that the author would get the opportunity to arrange his voluntary departure to a country other than Pakistan. It was agreed that he would leave Canada voluntarily by 15 July 1994, and that, failing that, removal to Pakistan would proceed on 17 July 1994.

7.11 After having been informed that the author had submitted a communication to the Committee against Torture, the State party arranged for a review of the author's case by a post-claim determination officer. It is submitted that the post-claim determination officer evaluated the materials filed by the author's counsel (including the materials submitted to the Committee), the author's Personal Information Form, the decision of the Refugee Division as well as other materials obtained from the Documentation Centre of the Immigration and Refugee Board (including reports from Amnesty International, Asia Watch and newspaper clippings on the situation of the Northern Territories in Pakistan). The officer also relied on research done by the staff of the Documentation Centre. On 19 September 1994, the author was informed that a negative decision had been reached. The officer concluded that the author was one of thousands of residents in Northern Pakistan who advocate a change in the status of Kashmir, that the Government of Pakistan had supported secessionist groups and that therefore no reasons existed why the Pakistani authorities would be interested in the author. Moreover, the officer doubted the credibility of the author's story, since he commenced his refugee claim in 1990, but did not allege torture until 1994.

8.1 The State party refers to the Committee's Views in respect of communication No. 13/1993 (Mutombo v. Switzerland), and submits that, in determining whether article 3 of the Convention against Torture applies, the following considerations are relevant: (a) the general situation of human rights in a country must be taken into account, but the existence of a consistent pattern of gross, flagrant or mass violations of human rights is not in and of itself determinative; (b) the individual concerned must be personally at risk of being subjected to torture in the country to which he would return; and (c) "substantial grounds" in article 3(1) means that the risk of the individual being tortured if returned is a "foreseeable and necessary consequence". The State party submits that it examined each of these elements and that it came to the conclusion that no substantial grounds existed for believing that the author would be in danger of being subjected to torture.

8.2 The State party submits that, although the human rights situation in Pakistan is of concern, this does not mean that a consistent pattern of gross, flagrant or mass violations of human rights exists. As regards the northern part of Pakistan, the materials examined by immigration officials show that the political status of the Northern Territories has never been resolved. In theory, it is disputed territory and it has never been represented in the Pakistan National Assembly. In practice, it is administered as Pakistani territory. The Jammu and Kashmir Liberation Front, to which the Baltistan Student Federation is allegedly associated, is one of the numerous militant organizations that operate in the Kashmir region of both India and Pakistan, some of whom advocate independence while others advocate accession to Pakistan. The State party submits that the JKLF was founded in 1964 and that it is responsible for numerous acts of terrorism, including summary executions, kidnappings and bomb explosions.

8.3 As to the question whether the author personally faces a risk of being subjected to torture if returned to Pakistan, the State party submits that there are significant inconsistencies in the statements made by the author during the various proceedings. For instance, the dates of arrests and length of detentions given by the author at several occasions are at variance with each other, as are the reasons given for his arrest. The State party contends that these inconsistencies impact significantly on the veracity of the author's story and the credibility of his claims.

8.4 In this context, the State party refers to the finding of the Refugee Division, whose members had the benefit of conducting an oral hearing with the author, that the author's testimony was largely fabricated. The State party submits that "it is a widely acknowledged principle of international law, recognized in the practice of international tribunals (and in particular human rights treaty bodies which have authority to consider individual communications) that the findings of national tribunals on matters of fact and domestic law should not be disturbed by an international body." It states that the Committee should therefore be extremely hesitant to alter findings of fact by the Refugee Division.

8.5 As regards the medical evidence submitted by the author, the State party emphasizes that this was not produced until July 1994, although the refugee claim dates from 1990. It further states that the evidence confirms that the author has various scars, but that there is no indication that these scars are the result of torture or that they could have been caused by other events in the author's life, such as his sports career. The State party states that the medical evidence was considered in the post-claim risk assessment, but that the author's failure to produce medical evidence in proceedings before the Canadian tribunals deprived them of the opportunity to test this evidence. The State party argues that there was no reason why the author could not have advanced this evidence in previous proceedings of competent tribunals and submits that the issue was directly relevant to the determination made by the

Refugee Division. It is argued that the generally applicable principles relating to the reception of new evidence militate strongly against the Committee accepting it now as a basis for overriding the prior findings of the Canadian tribunals.

8.6 The State party contends that the available evidence does not support the author's claim that he personally is sought after by the Pakistani authorities. The State party submits that the author's secessionist activities are pursued by thousands of others in his region with the support of Pakistan. It is moreover argued that there is no evidence that the Baltistan Student Federation, of which the author allegedly is a leader, is the target of Pakistani repression. The State party further points out that, although the author alleges that there is an outstanding warrant for his arrest, he does not identify the charge or actions on which that warrant is based. The State party moreover indicates that the author's family continues to live in Pakistan unharmed and without harassment.

8.7 In this context, the State party submits that article 3 of the Convention should not be interpreted to offer protection to persons who voluntarily place themselves at risk. "In other words, Mr. Khan should not be able to invoke article 3 on the basis that he might again participate in the activities of a militant organization and be subject to the risks associated with the violent activities such organizations use and in turn, face. [...] The important point is that currently Mr. Khan does not attract any particular attention in Pakistan and his return by Canada would not pose a risk."

8.8 In conclusion, the State party submits that the evidence presented by the author is insufficient to demonstrate that the risk of being tortured is a "foreseeable and necessary" consequence of his return to Pakistan. In this context, the State party submits that the supporting affidavit by a lawyer from Pakistan was from a member of the Jammu and Kashmir Liberation Front, itself a terrorist organization with a particular interpretation of the Kashmiri situation. No sufficient evidence has been submitted which shows that the author's BSF activities render him a target of the Pakistani authorities. On the contrary, the documentation available suggests that the author's militant activities were in fact common in the north of Pakistan and supported by the Government.

Counsel's comments and State party's clarification:

9.1 In his comments, dated 26 October 1994, on the State party's submission, counsel claims that it is clear that the real circumstances of the author's case have never been fairly examined by the State party. He refers to the documentation submitted to the Committee, among which information indicating that already eight activists for Kashmir independence had been killed by Pakistani supporters and that a bomb attack had taken place against one of the JKLF leaders, and claims that there is a great deal of documentary evidence of repression against those who want independence for Kashmir. He also refers to the earlier submitted affidavit by a Kashmir human rights lawyer, at present a refugee claimant in Canada, who corroborates the author's story.

9.2 In particular, counsel submits that there is a great deal of evidence of systematic torture by the Pakistani authorities. He states that the Pakistan Human Rights Commission's annual report refers to the prevalence of death by torture and torture with impunity by the police. Other reports support this finding.

9.3 Counsel concedes that the Canadian refugee claim determination system is good on paper, but argues that even in a good system, mistakes are made. In this context, he emphasizes that the Canadian system does not allow for an appeal on the merits, but only for an appeal (with leave) on matters of law.

Because of this, there is no possibility to correct errors on facts and the system has been criticised for that. Counsel refers to a report, dated December 1993, on the Immigration and Refugee Board, which shows that serious problems exist. He adds that it is known among refugee lawyers that the problems with the Board in Montreal are more serious than elsewhere, because of the incompetence of board members. He claims that it is clear from reading the decision of the Refugee Board in the author's case that the basis of his claim has not been examined. He claims also that the transcript of the hearing shows that the author and his representative were constantly interrupted in their presentation of the case, and that there was no examination of what had happened to the author in Pakistan. Instead, the members of the Board focused on contradictions in the dates of events.

9.4 Counsel submits that from early 1991 to early 1993, less than one percent of refused refugees were given status in Canada under the post-claim risk assessment process. After severe criticism, the system was amended and new regulatory criteria were established. However, counsel states that these new criteria were still applied by the same deportation officers who had refused everybody before. He claims that the recent figures (0.3% acceptance rate in 1993) show that the new system is a farce. For this reason, the government called for a further report (see above, para. 6.6). This report condemned incompetence, unwillingness to apply international human rights standards and bureaucratic opposition to treating people fairly. It stated that post-claim risk assessments should not be made by deportation agents, but by other officials. It is stated that the recommendations of the report have not been implemented by the Government.

9.5 Counsel claims that the post-claim decision in the author's case, dated 10 May 1994, show all the shortcomings established by the report, since the grounds in favour of protecting the author were not examined.

9.6 Counsel claims that the alleged inconsistencies and contradictions in the author's evidence and submissions are not such that they make his testimony unreliable. He states that the author has submitted sufficient evidence to corroborate his story. As regards the State party's argument that no evidence of previous torture was submitted before July 1994, counsel points out that the author was in detention from mid-March to July 1994 and that the medical examination was conducted immediately after his release. As to the State party's claim that the author was given the opportunity to find a third country, counsel states that he is not aware of such an offer.

9.7 As regards the review conducted by the State party after July 1994, counsel argues this was not an independent review. He states that the review was done by a low-level administrative official working for the enforcement side of Immigration Canada. He further states that there is no evidence that this officer examined the situation in Azad Kashmir and the Northern Areas of Pakistan. In this context, counsel points out that he made submissions on 15 September 1994, and that the decision is dated 19 September 1994. In the decision, no reference is made to the evidence submitted. Counsel argues that the decision is based on wrong grounds: (a) it states that Pakistan supports groups which want independence: according to counsel, Pakistan is strongly opposed to the independence movement and wants Kashmir to become part of Pakistan; (b) it states that the author has no profile that is different from thousands of other people in his area: counsel submits that there is evidence (newspaper pictures, a police report, a video, an affidavit) which shows him to be a leader in the Baltistan Student Federation; (c) it states that the author never mentioned torture before 1994: according to counsel, this is untrue, since the author earlier made reference to being "so weak that my family was scared to see me", to Pakistan being governed under torture, and to having been beaten in the police station.

9.8 Counsel agrees generally with the interpretation given by the State party to the application of article 3 of the Convention. He contends, however, that it is an exaggeration to say that torture must be a necessary and foreseeable consequence. He argues that substantial grounds clearly exist to fear that the author, who is a student leader of the Kashmiri independence movement and has been its representative in Canada, will be subjected to torture. Counsel refers to a report of Amnesty International, which states that "torture, including rape, in the custody of the police, the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan." He contests the State party's view that there is no consistent pattern of gross, flagrant or mass violations of human rights in Pakistan, and submits that the situation in the northern areas is particularly bad. In this context, counsel refers to testimonies given by human rights activists to the United Nations Commission on Human Rights in March 1994.

9.9 Counsel contests the State party's view that the JKLF is a terrorist organization, and claims that there is no evidence of use of violence by the JKLF in Pakistan-occupied Kashmir. He submits that the party is widely recognized to be the most popular political party in both Indian- and Pakistan-occupied Kashmir. He submits that the vast majority of Kashmiris today support independence for their country. He claims that the Pakistani authorities are repressing everyone who advocates independence.

9.10 To support the argument that the author will risk torture upon his return to Pakistan, counsel submits an arrest warrant, dated 12 September 1990, against the author, apparently related to an incident on 6 June 1990, in which the author, referred to in the accompanying police report as "President Baltistan Student Federation, Rawalpindi", led a demonstration in Rawalpindi to demand constitutional rights for Baltistan and criticised the government. He also claims that the author's brother has fled the country and now lives in England, whereas the author's parents have left Baltistan and now live in Azad Kashmir. Counsel further refers to the medical evidence, and argues that, if the State party doubts its conclusions, it should have conducted an examination by its own experts.

9.11 Counsel concludes that there is sufficient evidence to show that the author is personally sought after by the Pakistani authorities. He argues that the author should not be sent back to a country where his life is in danger. He claims that the evidence shows that the author faces immediate detention and torture on his return.

10. In reaction to counsel's submission, the State party argues that the central issue before the Committee is not the general operation of Canada's refugee determination system, but whether the author has established that he is personally at risk of being subject to torture in Pakistan upon his return.

Decision on admissibility and examination of the merits:

11. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 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. The Committee notes that the State party has not raised any objections to the admissibility of the communication and that it has requested the Committee to proceed to an examination of the merits. The Committee finds therefore that no obstacles to the admissibility of the communication exist and proceeds with the consideration of the merits of the communication.

12.1 The Committee notes that both parties have made considerable submissions with regard to the fairness of the refugee claim determination system and the post-claim risk assessment procedures. The Committee observes that it is not called upon to review the prevailing system in Canada in general, but only to examine whether in the present case Canada complied with its obligations under the Convention. Nor is the Committee called upon to determine whether the author's rights under the Convention have been violated by Pakistan, which is not a State party to the Convention. The issue before the Committee is whether the forced return of the author to Pakistan would violate the obligation of Canada under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

12.2 Article 3 reads:

"1. No State party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

"2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Khan would be in danger of being subject to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

12.3 The Committee notes that the author of the present case has claimed that he was a local leader of the Baltistan Student Federation, that he has twice been tortured by Pakistani police and military, that he was scheduled to appear before a Court upon charges related to his political activities, and that he will face arrest and torture if he were to return to Pakistan. In support of his claim, the author presented, among other documentation, a medical report which does not contradict his allegations. The Committee notes that some of the author's claims and corroborating evidence have been submitted only after his refugee claim had been refused by the Refugee Board and deportation procedures had been initiated; the Committee, however, also notes that this behaviour is not uncommon for victims of torture. The Committee, however, considers that, even if there could be some doubts about the facts as adduced by the author, it must ensure that his security is not endangered. The Committee notes that evidence exists that torture is widely practised in Pakistan against political dissenters as well as against common detainees.

12.4 The Committee considers therefore that in the present case substantial grounds exist for believing that a political activist like the author would be in danger of being subjected to torture. It notes that the author has

produced a copy of an arrest warrant against him, for organizing a demonstration and for criticising the government, and that moreover he has submitted a copy of a letter from the President of the Baltistan Student Federation, advising him that it would be dangerous for him to return to Pakistan. The Committee further notes that the author has adduced evidence that indicates that supporters of independence for the northern areas and Kashmir have been the targets of repression.

12.5 Moreover, the Committee considers that, in view of the fact that Pakistan is not a party to the Convention, the author would not only be in danger of being subjected to torture, in the event of his forced return to Pakistan, but would no longer have the possibility of applying to the Committee for protection.

12.6 The Committee therefore concludes that substantial grounds exist for believing that the author would be in danger of being subjected to torture and, consequently, that the expulsion or return of the author to Pakistan in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Tahir Hussain Khan to Pakistan.

[Done in English, French, Russian and Spanish, the English text being the original version.]