UNITED NATIONS

CAT

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

Distr.
RESTRICTED*[*]

CAT/C/40/D/293/2006
15 May 2008

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Fortieth session
(28 April-16 May 2008)

DECISION

Communication No. 293/2006

Submitted by:	Mr. J.A.M.O., on his own behalf and on behalf of his wife, Mrs. R.S.N., and his daughter Ms. T.X.M.S. (represented by counsel)
Alleged victim:	The complainants
State party:	Canada
Date of the complaint:	8 May 2006
Date of the present decision:	9 May 2008
Subject matter:	Risk of the complainants being deported to Mexico
Basic issues:	Risk of torture following expulsion
Procedural issues:	None
Article of the Convention:	3

[ANNEX]

* Made public by decision of the Committee against Torture.

Annex

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Fortieth session

concerning

Communication No. 293/2006

Submitted by:	Mr. J.A.M.O., on his own behalf and on behalf of his wife, Mrs. R.S.N., and his daughter Ms. T.X.M.S. (represented by counsel)
Alleged victims:	The complainants
State party:	Canada
Date of the complaint:	8 May 2006

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

Meeting on 9 May 2008,

Having concluded its consideration of complaint No. 293/2006, submitted on behalf of Mr. J.A.M.O., his wife Mrs. R.S.N., and his daughter Ms. T.X.M.S., 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 complainants and the State party,

Adopts the following:

Decision of the Committee against Torture under article 22, paragraph 7, of the Convention

1.1 The complainant, Mr. J.A.M.O., a Mexican citizen, resides in Canada and is the subject of an order for expulsion to his country of origin. He submits his complaint also on behalf of his wife, Mrs. R.S.N., and his daughter, Ms. T.X.M.S. He claims that his forced return to Mexico would constitute a violation, by Canada, of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention in a note verbale dated 19 May 2006. At the same time,

the Committee, pursuant to rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Mexico while his complaint was being considered. In response to this request, the State party decided to defer the deportation.

The facts as submitted by the complainants

2.1 In September 1995, the complainant was employed at vehicle pound No. 1 of the Procurator-General's Office (*Procuraduría General de la Justicia*) in Mexico City, where he was in charge of human resources. His two supervisors were Mr. J.C. and Mr. A.B. From the beginning of his employment he noticed there was corruption within the pound. He states that the workers used extortion against vehicle owners with the consent of the supervisors. They "asked for money to return vehicles, for towing, for the sale and purchase of vehicles or parts, for 'quicker' services, for information, and for privileged access to private tow-trucks". He also noticed that there was trading in drugs and weapons, as well as illicit dealings with insurance companies.

2.2 The complainant was threatened by Mr. J.C., who accused him of having reported the above-mentioned facts to the Procurator-General's Office. At one point he called the complainant into his office, where two men beat him up. Owing to this situation the complainant requested a transfer to vehicle pound A in Mexico City in March 1997. Later he was also transferred to other vehicle pounds, always at the instigation of Mr. A.B. In September 1997, Mr. A.B. was murdered. The very next day, the complainant began to receive anonymous death threats over the telephone. Suspecting Mr. J.C., he resigned from his job and moved to Cuautla. His wife stayed in Mexico City to work, but she moved to a different apartment. In July 1999 he again received death threats from Mr. J.C., who accused him of having destroyed his extortion network. The complainant did not dare to report this to the police, since he feared that was the very reason why Mr. A.B. had been murdered. The complainant claims that Mr. O.E.V., the former mayor of Mexico City, was ultimately responsible for the corruption network, and that Mr. O.E.V.'s collaborators are seeking to "eliminate" him and his family in order to protect their boss.

2.3 On 2 August 1999, the complainant left Mexico with his family for Canada, where he filed a request for refugee status on 23 September 1999. On 10 July 2000, the Canadian Immigration and Refugee Board (CISR) rejected the request on the grounds that the complainant had not furnished sufficient evidence of the risk that he faced in Mexico. The complainant submitted an application for authorization of a judicial review before the Federal Court, which was also rejected on 8 November 2000.

2.4 On 14 July 2002, the complainant and his family returned to Mexico, where they received new threats, including threats to his family. The complainant therefore returned to Canada as a tourist, but after October 2003 he was no longer entitled to that status and he remained in the country illegally. His family remained in Mexico. Between December 2002 and April 2003, his son received numerous threats from soldiers and police officers in the State of Hidalgo, who were apparently looking for his father.

2.5 On 2 August 2004, there was a fire at the complainant's apartment, and he suffered serious burns. He remained in hospital for several months. Following this incident, his wife and daughter joined him in Canada.

2.6 On 19 November 2004, the complainant submitted a pre-removal risk assessment (PRRA) application, which was rejected on 7 December 2004. He and his family also submitted a Humanitarian and Compassionate application (H&C) for an immigration visa in March 2005, which was rejected on 4 July 2005. They were therefore requested to present themselves for departure on 5 July 2005, but their removal was postponed in order to allow the complainant to continue medical treatment in Canada.

2.7 In February 2005, based on his health problems, the complainant and his family filed an application for residence on humanitarian grounds, in order to be able to remain in Canada, since the complainant could not receive the necessary medical care in Mexico. This application was rejected on 4 July 2005.

2.8 The complainant submits that his daughter-in-law, Mrs. V.V.J., who had remained in Mexico and had lived in his home even since her husband had left for Canada following the complainant's accident, on numerous occasions between August and November 2004, had been visited by unknown persons who were asking for him and had threatened her with a revolver. She had also been threatened over the telephone. Some of the unknown persons had been wearing coats that were part of the PGJ (*Procuraduría General de la Justicia*) uniform, and travelled in a car without registration plates. On one occasion the house was broken into. It was because of this that she had left Mexico on 2 December 2004 to apply for refugee status in Canada. On 21 December 2005 she was granted refugee status under the Geneva Convention, even though her case was based entirely on that of the complainant.

2.9 The complainant sent the Committee a copy of the decision in which the Canadian Immigration and Refugee Board of Canada granted Mrs. V.V.J.'s asylum request. The Board took into account the following aspects: "the claimant testified that she tried on two occasions to telephone the police but received no reply and no assistance. The Tribunal gives the claimant the benefit of the doubt regarding this aspect, given that she is a young woman residing alone, who was trying to live her life with no support and minimal resources at her disposal. Thus, in view of all of the evidence submitted to the Tribunal, and the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*, the panel considers that the claimant has met the burden of proof and gives her the benefit of the doubt on certain credibility issues that have been raised."

2.10 In the light of that decision, the complainant submitted new visa exemption applications on humanitarian grounds and a PRRA, which were also rejected on 19 May 2006. Prior to that, on 21 April 2006, the complainants had reported to the Canada border services agency, where they had been told to report to Trudeau Airport on 20 May 2006 in order to leave Canada. On 27 November 2006, the Federal Court rejected an application for a judicial review of the previous PRRA decision.

The complaint

3. The complainants allege that if they were returned to Mexico they would be in grave danger of being subjected to torture and ill-treatment, or even death, in violation of article 3 of the Convention.

State party's observations

4.1 In a note verbale dated 7 March 2007, the State party submitted its comments on the admissibility and, additionally, on the merits of the complaint. The State party contends that the complaint is inadmissible in respect of Mrs. R.S.N. and Ms. T.X.M.S., since they are not subject to an expulsion order from Canada. Their complaint is therefore premature. The complainant's case is also inadmissible; it is manifestly unfounded, given the lack of evidence and the fact that the alleged risks do not fall within the definition contained in article 1 of the Convention. The complaint is therefore incompatible with article 22.

4.2 The State party describes the different remedies invoked by the complainant. With regard to the denial of refugee status, CISR decided that the evidence submitted was insufficient to show that there was a basis for the request. It also noted that the complainant had not sought the protection of the Mexican authorities. The evidence before CISR indicated that State protection was available and would have been effective. According to the complainant's testimony, the Mexican authorities had conducted an investigation into corruption at the vehicle pound after a complaint had been filed by a client, and it had made some arrests following the murder of the complainant's former employer. Indeed, according to the allegations, the Mexican authorities had dismantled the alleged "corruption network". CISR also raised doubts about the existence of a subjective fear, highlighting the complainants' lack of urgency in filing their claims for refugee status after arriving in Canada. Later, they renounced the PRRA, opting instead to leave Canada voluntarily on 14 July 2002, in order to apply for immigration visas from the Delegation of Quebec in Mexico, which they would not have been able to do had they remained in Canada. Their application was denied, however.

4.3 On 19 November 2004, the complainant submitted a PRRA application alleging the same risks of persecution as had been mentioned in his request for refugee status, which had been rejected. The PRRA officer noted firstly that the complainant had not submitted any evidence of the threats which he allegedly had received during his visit to Mexico between 14 July and 16 October 2002. The officer also noted that the complainant's behaviour did not corroborate the existence of such threats, since he had returned to Canada on his own, leaving behind his wife and two children, even though he claimed that the whole family was being targeted by the new threats and that his children and home had been visited and put under surveillance by individuals wishing to do him harm. Furthermore, his family had stayed in Mexico without any apparent difficulties until August 2004, when they had returned to Canada because of the complainant's accident, and not in order to flee from threats or danger in Mexico. The PRRA officer also noted that the complainant's return to Canada on 16 October 2002 did not prove that there was any subjective fear on his part, since he had been planning to return all along, having left all his family belongings in the apartment that he had been renting in Canada since 1999. The PRRA officer further concluded that there was no evidence that the complainant could not benefit from the protection of the Mexican authorities. The complainants had not challenged the rejection of their PRRA application before the Canadian Federal Court.

4.4 Regarding the application filed on humanitarian grounds, the deciding officer noted that it contained no new evidence that would allow him to arrive at a different conclusion from that reached by CISR and the PRRA officer. The complainants had still not provided any evidence to

substantiate the alleged risks. The lack of evidence also prompted the deciding officer to reject the allegation based on the state of health of the complainant, since the latter had failed to prove that he would be unable to receive the necessary treatment in Mexico.

4.5 The complainant submitted a second PRRA application on 12 April 2006, in which he argued that his daughter-in-law, Mrs. V.V.J., had obtained refugee status in Canada and that her asylum application was based entirely on his story and testimony. He also alleged, for the first time, that Mr. O.E.V., the former Mayor of Mexico City, was behind the death threats that he had allegedly received in Mexico. The PRRA officer who had rejected his application noted that each request for protection was a specific case and that he was not bound by the conclusions reached by CISR in the daughter-in-law's case. The officer noted that the complainant had not produced all the evidence and documents that had been submitted to CISR in support of the daughter-in-law's asylum application. In particular, he had not provided her personal information form, which would have shown the exact grounds given in her application. CISR had given her the benefit of the doubt, despite certain discrepancies in her statement, on account of the fact that she was a young woman living on her own in Mexico, and in implementation of the "Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution". The PRRA officer further noted that the asylum application of the daughter-in-law was not based exclusively on the complainant's allegations and testimony. His son had also submitted an affidavit in support of the application, in which he mentioned threats and persecution, which were not shown to be linked with the complainant. It was therefore unclear which testimony CISR had used as a basis for granting the daughter-in-law refugee status. The PRRA officer concluded that the complainant had failed to show a link between the former mayor's legal troubles and the problems that the complainant allegedly had with the managers of the vehicle pounds where he had worked. The officer also noted that the complainant had not raised the issue of the risk before and that the evidence did not support the allegation. The complainants did not challenge the dismissal of their PRRA application before the Federal Court.

4.6 Regarding the second application on humanitarian grounds, the deciding officer noted that the complainant had completed his medical treatment in April 2006 and had declared himself fit for work. Although he claimed that he needed aftercare and access to appropriate medical services, he provided no details as to the aftercare and medical services which he allegedly required. On the issue of the complainants' links with Canada, the PRRA officer noted that the complainants were not financially independent in Canada and that they had provided no evidence of their alleged integration into the community. The deciding officer therefore concluded that, under the circumstances, return to Mexico would not cause the complainants any unusual and unjustified or excessive difficulties.

4.7 The State party maintains that the complaint is incompatible with article 22 of the Convention, since the alleged risks do not constitute torture for the purposes of the Convention. Torture, as defined in article 1, requires that the suffering 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". In the present instance, it has not been shown that the persecuting agent is a public official or is acting in an official capacity. By all accounts Mr. O.E.V. does not perform a public function in Mexico and does not act in an official capacity on behalf of the Mexican authorities. Regarding Mr. O.E.V.'s alleged "collaborators", the complainants have not furnished any evidence to show that those persons are public officials or persons acting in an official capacity.

The only "collaborator" that the complainant identified was Mr. J.C., who, according to the complainant, also had problems with the law. However, no information has been provided on his current situation. Given the lack of evidence, or even an allegation, that Mr. O.E.V. and his collaborators were acting in an official capacity, the complaint should be declared inadmissible.

4.8 The complaint is also manifestly groundless, since there is no evidence whatsoever of the existence of the threats and persecution, nor is there any evidence that Mr. O.E.V. is seeking to "eliminate" the complainant and his family or would have any interest in doing so. The complaint is based on mere speculation, which is neither plausible nor rational.

4.9 The State party affirms that the complainant's testimony at the hearing for his daughter-in-law contradicts his allegations before the Committee and before the Canadian authorities in the context of his own complaint. He had alleged that he had received death threats, including against his family, during his three-month stay in the State of Hidalgo from 14 June to 16 October 2002. On 11 October 2005, however, in support of his daughter-in-law's asylum claim, he declared that he had not been the victim of any threats or persecution during that time. Taking this contradiction into account, the State party maintains that the complainant's allegations are not credible. Furthermore, the State party maintains that the complainants failed to show that no domestic remedies were available against Mr. O.E.V.'s alleged collaborators.

4.10 Besides its comments on admissibility, the State party maintains that the complaint should be dismissed on the merits, for the above-mentioned reasons regarding the lack of basic merit.

Complainants' comments

5.1 As regards the admissibility of the communication vis-à-vis the complainant's wife and daughter, counsel asserts that their status is very precarious and that they are liable to be expelled from Canada. The wife and daughter should form an integral part of the complaint because, in addition, they are also in danger as members of the family.

5.2 The complainant also considers that he has submitted sufficient evidence to have the protection of the State party. Concerning Mr. O.E.V., he states that this person enjoys the support of very powerful people in the Mexican Government and that his daughter-in-law was persecuted by men who seemed to be police officers and who resembled the men who had been working in the compound of the Attorney General's Office. As to the State party's observation that Mr. O.E.V. is no longer a public official, the complainant emphasizes that he has been mayor of Mexico City and that he has contacts with powerful public officials in Mexico. Consequently, the complainant and his family are at risk of being tortured by serving public officials and former officials.

5.3 The complainant has always affirmed that in the State of Hildago, where they remained in hiding, he did not receive death threats. However, the threats were received at his home in the Federal District where his parents lived. Contrary to the Government's statement, he did not say that he had not been the victim of threats or persecution during this period, but rather that he had not directly received threats in the State of Hildago.

5.4 The applicant states that he sent a letter to the Mexican consulate saying that there was no hospital in Mexico where he could be treated. A letter of 3 May 2005 from his Canadian doctor stated that he would need further treatment in a specialized rehabilitation unit for about one year. However, that had not been taken into account by the Canadian authorities. It was only after the publication of several press articles about his case that his expulsion was deferred by six months.

5.5 According to the complainant, after his asylum hearing on 6 June 2000, no Canadian agency would listen to his argument. All the proceedings were in writing. In each PRRA application he could have been asked to attend a hearing in order to make his allegations better understood, but he was never invited. Often, the decisions were taken very quickly and without assessment of the evidence. In addition, the same official reached a decision on his first and second humanitarian applications and his second PRRA application. An effective remedy would be the Refugee Appeal Section, which the State party was unwilling to bring into play, despite the fact that it is covered by the new Immigration Act. The Federal Court is an effective remedy, but limited to procedural errors. It does not analyse cases on their merits, and if it decides in favour of applicants the case is referred to the preceding body for a new analysis and decision. The PRRA is not an effective or adequate remedy, and its officials are insensitive to the suffering and risks faced by persons who fear being deported to countries where they may be subjected to torture or cruel treatment or punishment.

5.6 As to the fact that the applicant did not challenge the rejection of his first PRRA application, he states that he could not afford and had no possibility of obtaining legal assistance. Moreover, he did not believe in the effectiveness of such a remedy.

5.7 Concerning the immigrant visa application lodged with the Delegation of Quebec in Mexico in July 2002, the complainant states that he decided to leave for Mexico because the Quebec authorities were unwilling to interview him in Montreal. He gave up the Post-Determination Refugee Claimants in Canada (PDRCC) Class because it was even more difficult to join than the PRRA programme and he was sure that he would be accorded his immigrant visa.

5.8 Contrary to the State party's affirmation, the complainant did not return to Canada three months after his immigration application had been rejected, but only two days after having received a refusal of the application for a review of the initial decision. That shows his fear due to the alleged danger. His family remained in hiding in Mexico. When his sister went to the Attorney General's Office in the Federal District to ask for an attestation of employment which he had to submit to the Canadian authorities, the officials insisted on seeing him and obtaining his address, stating that they had matters to settle with him.

5.9 As to the complainants' links with Canada, he submits copies of a 2004 attestation of employment (Parc Hotel Management), a letter from his employer dated January 2007 (OCE Business Services) and Revenue Canada's Contribution Assessment for 2006. He also submits the temporary work permit issued to his wife, letters attesting to his participation in the research project run by the McGill University physiotherapy and ergonomics school, a certificate of participation in the support group for serious burns victims and a confirmation of his participation in the CHUM hospital's serious burns study.

Comments concerning the complainant's family

6.1 In a letter of 24 May 2007 the complainant states that, when he submitted his case to the Committee, his wife and daughter were awaiting a reply to their application for extension of their visitor status. They were not therefore about to be expelled from Canada. Their applications were approved on 28 February 2007 but only until 15 August 2007. It is clear that they have exhausted all remedies: application for refugee status, two humanitarian applications, three applications to the Federal Court of Canada, a PRRA application, etc. Visitor status is totally precarious and does not guarantee residence in the country. The case of the daughter-in-law demonstrates that the people persecuting the complainant decided to target other members of the family. Consequently, these two people should form part of the complaint before the Committee.

6.2 In a letter of 26 June 2007, the State party replied that the complaint had been submitted in the name of three people. However, the complainant's wife and daughter had never been the subject of a deportation order. The wife and daughter held renewable visitor's visas valid until 15 August 2007. Consequently, the complaint was manifestly premature and inadmissible with respect to them.

Additional submission of the State party

7.1 In a note verbale dated 31 July 2007, the State party reiterates that there is no evidence corroborating the existence of the threats and persecution to which the complainants claim they were subjected in Mexico. None of the documents that they have submitted establishes any link between them and Mr. O.E.V. The complainants have likewise not furnished evidence leading to the conclusion that Mr. O.E.V. or his alleged colleagues meet the requirements of article 1 of the Convention. According to the complainant's allegations, Mr. O.E.V. is a fugitive from Mexican justice. This is therefore incompatible with the claim that he enjoys the support of the Mexican authorities. Even if he did have such support, the complainants would still have to demonstrate that he instigated or agreed to the alleged persecution. However, no evidence of this kind has ever been presented.

7.2 In addition, Mrs. V.V.J.'s asylum application was not based exclusively on the allegations and testimony of the complainant. Mr. J.A.M.S., the complainant's son and husband of Mrs. V.V.J., had also submitted an affidavit in support of the latter's asylum application. In it he claimed that he had had problems with "four soldiers and two PDJ officials", whose link with the complainants has not been established. It is therefore not clear what testimony led the CISR to grant Mrs. V.V.J. refugee status. Moreover, the fact that the CISR rejected the asylum application by Mrs. V.V.J.'s husband is not without significance.

7.3 As to the threats which the complainant allegedly received during his visit to Mexico in 2002, if they had been genuine he would have mentioned them to CISR in order to justify his alleged fear. However, neither he himself nor his son nor Mrs. V.V.J.'s lawyer informed CISR of the existence of any threat received during that time.

7.4 The complainant has given only one example of "threats" that he allegedly received in Mexico between 14 July and 16 October 2002. He claims that his sister went to his former workplace in order to obtain an attestation of employment and that she was forcefully questioned

about him. However, this allegation is not based on any evidence and is not credible since the "unidentified" persons who thus "threatened" the complainant's sister nevertheless gave her the attestation of employment. In addition, the documentary evidence shows that the complainants were not in the State of Hildago during their three-month visit to Mexico in 2002. In various applications to the Canadian authorities, they stated that they had been staying in Cuautla (Morelos) during the period in question, in other words, the very place where they claim to have received death threats.

7.5 As regards the allegation that the PRRA official did not give sufficient weight to the CISR decision in the case of Mrs. V.V.J., the State party reiterates that this is not "evidence" capable of corroborating the complainants' allegations.

7.6 The State party reiterates that the complaint is premature and inadmissible in respect of Mrs. R.S.N. and Ms. T.X.M.S., since they are not the subject of an expulsion order.

7.7 In the same note verbale the State party requested the lifting of the interim measures relating to the complainant, because it has not been established that he would suffer irreparable harm following his deportation to Mexico. In addition, the request for interim measures made on 19 May 2006 only concerned the complainant. If Mrs. R.S.N. and Ms. T.X.M.S. were also covered by the request for interim measures, the State party maintains that this request should be withdrawn in respect of all the complainants for the reason given above.

7.8 The State party maintains that the requests for interim measures are not appropriate in cases, like the present one, which do not reveal any manifest error on the part of the Canadian authorities and which have not been characterized by procedural abuses, bad faith, manifest bias or serious procedural irregularities.

Submission of the complainant

8.1 In a letter of 12 August 2007 counsel asked the Committee to grant interim measures to Mrs. R.S.N. and Ms. T.X.M.S., given the fact that their visitor status would expire on 15 August 2007.[1]

8.2 In a letter of 2 September 2007 the complainant reaffirms that, contrary to the claims of the Canadian Government, the asylum application filed by Mrs. V.V.J. was based mainly on the persecution that he had suffered and which also affected family members. In the asylum application there were no other grounds than the fact that she had been persecuted for reasons having to do with the activities of her father-in-law.

8.3 As to the complainants' address in Mexico in 2002, they reiterate that they were staying in the State of Hidalgo. If that was not clear from some of the forms that they had filled out, it was a question of an involuntary error, owing to the fact that they did not consider it to be their real address.

[1] The Committee did not accede to this request. On the other hand, the interim measures benefiting the complainant were maintained.

Issues and proceedings before the Committee

Examination of admissibility

9.1 Before considering a claim contained in a communication, the Committee must decide whether or not the communication 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.

9.2 The Committee notes that the State party has raised an objection to admissibility based on the fact that the communication is manifestly unfounded, in its view, given the lack of evidence and the fact that the risk alleged by the complainant does not correspond to the definition in article 1 of the Convention. The complaint would therefore be incompatible with article 22 of the Convention. The Committee is of the opinion, however, that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone. In the absence of any other obstacles to admissibility, the Committee declares the communication admissible with respect to Mr. J.A.M.O.

9.3 The State party also contests admissibility with regard to Mrs. R.S.N. and Ms. T.X.M.S., respectively the wife and daughter of the complainant, on the grounds that they have visitors' status and are not therefore subject to a deportation measure. The Committee takes note, however, of the complainant's contention regarding the precarious nature of visitor's status and it considers that the risk of deportation also exists for the two women. It therefore regards this part of the communication also to be admissible.

Merits of the communication

10.1 The issue before the Committee is whether the forced return of the complainants to Mexico would violate the State party's obligation under article 3, paragraph 1, of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

10.2 In evaluating the risk of torture, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, 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 or she 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 particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show 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 or her specific circumstances.

10.3 The Committee recalls its general comment No. 1 on implementation of article 3 of the Convention in the context of article 22, which states that the Committee is to assess whether there are substantial grounds for believing that the complainant would be in danger of torture if returned to the country in question. The risk of torture need not be highly probable, but it must be personal and present.

10.4 As to the burden of proof, the Committee also recalls its general comment and its jurisprudence, which establishes that the burden is generally upon the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

10.5 The Committee takes note of the complainants' arguments, and the evidence provided to substantiate the latter was submitted to different authorities of the State party. In this connection, it also recalls its general comment, which states that considerable weight will be given to findings of fact that are made by organs of the State party; however, the Committee is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case. In particular, the Committee must assess the facts and evidence in a given case, once it has been ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, and that domestic courts clearly violated their obligations of impartiality.[2] In the case under consideration, the evidence before the Committee does not show the examination by the State party of the allegations of the complainant to have been marred by any such irregularities.

10.6 In assessing the risk of torture in the case under consideration, the Committee notes the absence of objective evidence pointing to the existence of risk other than the complainant's own account. The fact that at no time did the complainant seek the protection of the Mexican authorities, the inaccuracies regarding the identity of the persons who made the threats of which he complains, the time that has elapsed since the complainant left his job at the vehicle pound and the country, and the fact that his wife and daughter do not appear to have been targeted by such threats, do not allow for a finding that the complainants are the subject of persecution by the Mexican authorities and that they would run a foreseeable, real and personal risk of being tortured if they are expelled to their country of origin.

10.7 With regard to the complainant's argument that the asylum application filed by Mrs. V.V.J. was based mainly on the persecution that he had suffered, the Committee notes that the decision by CISR took account of factors specific to her, including the fact that she was a young woman

[2] See the Committee's decision in case No. 282/2005, *S.P.A. v. Canada* (para. 7.6). See also, for example, the Committee's decision in case No. 258/2004, *Dadar v. Canada*, where it states that while it "gives considerable weight to findings of fact made by the organs of the State party, it has the power of free assessment of the facts arising in the circumstances of each case" (para. 8.8).

residing alone who was trying to live her life with no support and minimal resources at her disposal, as well as the *Chairperson's Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution.*

11. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the expulsion of the complainants to Mexico by the State party would not constitute a breach of article 3 of the Convention.

[Adopted in French (original version), English, Spanish and Russian. Subsequently to be issued also in Arabic and Chinese as part of the Committee’s annual report to the General Assembly.]
