



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

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COMMITTEE AGAINST TORTURE
Thirty-eighth session
(30 April-18 May 2007)

DECISION

Communication No. 298/2006

Submitted by: C.A.R.M. et al. (represented by counsel)

Alleged victim: The complainants

State party: Canada

Date of the complaint: 26 June 2006 (initial submission)

Date of the present decision: 18 May 2007

Subject matter: Complainant's expulsion to a country where he risks being subjected to torture or other cruel, inhuman or degrading treatment or punishment

Basic issues: Risk of torture in case of expulsion; risk of cruel, inhuman or degrading treatment or punishment in case of expulsion

Procedural issues: Exhaustion of domestic remedies and failure to support allegations

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**

Thirty-eighth session

concerning

Communication No. 298/2006

Submitted by: C.A.R.M. et al.
Alleged victims: The complainants
State party: Canada
Date of the complaint: 26 June 2006 (initial submission)

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

Meeting on 18 May 2007,

Having concluded its consideration of complaint No. 298/2006, submitted by C.A.R.M. et al. 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 against Torture**

1.1 The complainants, C.A.R.M. et al., Mexican nationals, are currently located in Canada, where they applied for asylum on 12 November 2002. Their application was rejected on 11 March 2004. The complainants claim that their return to Mexico would constitute a violation by Canada of article 3 of the Convention against Torture. They are 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 on 28 June 2006, requesting the Government to provide information and observations on the admissibility and substance of the allegations. At the same time, the Committee, pursuant to rule 108, paragraph 1, of its rules of procedure,

requested the State party not to deport the complainants while their complaint was being considered. In a note verbale dated 29 June 2006, the State party informed the Committee that it was acceding to that request.

1.3 On 27 September 2006, the State party requested that the interim measures should be lifted. On 19 October 2006, the Special Rapporteur on new communications suspended the interim measures.

The facts as submitted by the complainant

2.1 In 1995, C.A.R.M. became the head of SIMA Computación, a company in San Andrés Cholula, Puebla State, Mexico, which specialized in the sale, installation and maintenance of computer equipment. His company was awarded a contract by an accountant to supply computer equipment for the town hall. In the course of his work for the town hall, C.A.R.M. witnessed irregularities and acts of corruption on several occasions.

2.2 In 2002, C.A.R.M. submitted a tender for the installation of equipment in the town hall offices. The accountant allegedly called him into his office to tell him that a friend of the mayor had also put in a tender at an inflated price and asked him to write a letter explaining the differences in the prices. Subsequently, on 22 August 2002, the mayor's secretary, who was also the mayor's nephew and acted as his spokesman, summoned him to ask why he had written such a letter. He suggested that C.A.R.M. should also inflate his prices and that he should use materials of inferior quality and give a percentage of the profits to the mayor. During this conversation the mayor was in the next room with the door open. C.A.R.M. rejected the suggestion.

2.3 On 22 September 2002, C.A.R.M. was informed by the mayor's secretary that he no longer had access to the town hall. C.A.R.M. then warned him that he would lodge a complaint with the Revenue Bureau. The secretary informed him that they had contacts and were protected by the Government. C.A.R.M. was subsequently contacted once more by the accountant, who told him that he appreciated his work and the fact that he had been honest and that he had arranged the disagreement between him and the mayor. He also told him that he had been awarded a contract for the installation of computer equipment in the municipal prison. This work, which was carried out between 25 September and 11 October 2002, involved prisoner-identification equipment. C.A.R.M. thus had access to the list of prisoners. At that point, the prison director informed him that key members of the Gulf Cartel were held in the prison and that his work would be dangerous, since the purpose of the system was to keep them under surveillance.

2.4 On 11 October 2002, C.A.R.M. received two telephone calls from the accountant, who informed him that his computer installation had been destroyed and that persons having ties to prisoners protected by the mayor intended to kill him and his family. The accountant advised him to leave the country. C.A.R.M. and his family left San Andrés Cholula the same day and took refuge in a hotel in Mexico City. Several days later, a friend of the family went to their house and found that it had been ransacked. There were several police officers at the site, who asked her to tell them if she had any news of the family. The complainants immediately decided to leave the country for Canada.

2.5 On 16 October 2002, the complainants left Mexico by air for Canada. They were admitted as visitors for a period of six months. On 12 November 2002, they appeared before Citizenship and Immigration Canada in Montreal and claimed refugee status. On 11 March 2004, the Canadian Immigration and Refugee Board concluded that they were not refugees under the Convention, or persons requiring protection. The Board noted several inconsistencies in C.A.R.M.'s testimony, concerning in particular the question of whether or not the mayor had been present during the meeting on 22 August 2002 and the content of telephone conversations C.A.R.M. claimed to have had with the accountant on 11 October 2002. Moreover, the Board had not been satisfied with C.A.R.M.'s explanation as to why he had not mentioned to the immigration officer at his first interview that he and his family had been threatened by Gulf Cartel drug traffickers. At his interview with an immigration officer on 12 November 2002, C.A.R.M. stated that he was being persecuted by the mayor. In his Personal Information Form and in his testimony to the Board, he stated that he was afraid of members of the Gulf Cartel who had ties to prisoners protected by the mayor. During the asylum procedure, C.A.R.M. explained that he had been afraid for the accountant and that he feared deportation if the officer thought him a criminal because he did not know the country's laws.

2.6 On 6 April 2004, the complainants applied for leave and for judicial review of the Board's negative decision. On 23 June 2004, the application for leave to appeal was rejected by the Federal Court of Canada.

2.7 On 1 September 2005, the complainants were offered a pre-removal risk assessment (PRRA). A PRRA application was submitted by the complainants on 16 September 2005. The following supplementary information and documents were submitted to the Canadian authorities in the course of this procedure.

2.8 The complainants lodged a complaint with the Mexican police, which was submitted on 17 February 2005 by C.A.R.M.'s half-brother, who was kidnapped and had his van stolen in the month of February. In the course of this episode, one of his assailants asked him where the complainants were. According to his half-brother, the assailants were police officers, but his lawyer had allegedly advised him not to include that information in his police statement. The complainants also mention a letter dated 16 September 2005, sent by their family firm, stating that "someone" was trying to obtain further information about them. The letter advised the complainants not to return to Mexico. The complainants also submitted an article dated 19 May 2004 from the Internet, which stated that a person named Rafael Cielo Ramírez, the director of San Pedro Cholula prison, had disappeared after a warrant for his arrest had been issued for assault and threats against the deputy mayor of San Rafael.

2.9 The complainants submitted a new report on their psychological state. They had undergone two psychological evaluations, one in November 2003, during the Immigration and Refugee Board procedure, and the other in September 2005, conducted by the same psychologist, who had concluded that they were suffering from post-traumatic stress disorder and that that condition had been triggered by their vulnerable status and their fear of being sent back to their own country. L.G.U. suffered from a deep depression, accompanied by suicidal thoughts. The complainants claimed that the whole family, and particularly L.G.U., was in a fragile psychological state and required attention and an appropriate environment to avoid irreparable damage.

2.10 In support of their allegations concerning the human rights situation in Mexico, the complainants submitted reports issued by Governments, non-governmental organizations and experts. These included reports from the Department of State of the United States of America and Amnesty International (2006).

2.11 The PRRA procedure issued its decision on 3 March 2006, its conclusion being that the complainants had not convincingly demonstrated that they were at personal risk of retaliation by the former mayor of San Andrés Cholula, drug traffickers in his pay or corrupt police officers. The decision stated that, according to case law, it must be assumed that a State was capable of protecting its citizens, except in the case of a total collapse of State structures, which was not the case in Mexico.

2.12 On 8 June 2006, the complainants applied for visa exemption and permanent resident status on humanitarian grounds. At the same time, they applied for an administrative suspension of their deportation so that their case could be reviewed on humanitarian grounds. Their application for suspension of the deportation order was rejected on 13 June 2006. They subsequently submitted an application for suspension to the Federal Court.

2.13 On 27 June 2006, the complainants informed the Committee that their application for suspension had been rejected that day by the Federal Court. They had been given only a few minutes to express their views and the hearing had lasted less than 20 minutes, whereas it ought to have lasted approximately two hours. The complainants explained that the judge had criticized them for not having applied to the Federal Court for judicial review of the negative decision of the PRRA procedure. They had tried to explain that their former lawyer had been tired by the number of negative decisions issued both by the PRRA officer and the Federal Court and that there were serious grounds for the application for a suspension. The judge had not, however, allowed them to develop their argument and had rejected their application. They considered that they had not had a fair hearing.

The complaint

3.1 The complainants allege that the Immigration and Refugee Board rejected their asylum request unjustly and erroneously. The Board had concluded that there were discrepancies in C.A.R.M.'s testimony whereas, in fact, no such discrepancies existed. With regard to the question of whether the mayor was present or not at the meeting on 22 August 2002, they explained that C.A.R.M. had spoken with the mayor's secretary, who spoke on the mayor's behalf while the mayor himself was at that moment in an adjoining office with the door open. They emphasize that there is no discrepancy in this part of C.A.R.M.'s statement. As for the alleged discrepancy concerning the officers who were persecuting them and the reason that C.A.R.M. had not mentioned that they were being threatened by Gulf Cartel drug traffickers, the complainants state that C.A.R.M. had said that he was afraid of individuals having ties to prisoners protected by the mayor and that he was being sought by the police and the mayor. The complainants state that the person principally involved in their persecution was the mayor, who acted also through members of the Gulf Cartel and corrupt police officers. Once again, there was no discrepancy in C.A.R.M.'s story.

3.2 Moreover, C.A.R.M. had been nervous at his interview, since he was not familiar with Canadian law and was afraid of being deported to his own country. The complainants note that at that stage interviews are conducted very quickly, and C.A.R.M. had not had time to give a full explanation. They also point out that the Refugee Appeal Division provided for under the new Immigration and Refugee Protection Act had not yet been established, which meant that there had been no possibility of appeal.

3.3 The complainants state that they are in danger anywhere in Mexican territory. The mayor of San Andrés Cholula, the drug traffickers under his protection and the corrupt police officers can easily find them and execute them. The State is incapable of ensuring the complainants' protection. They draw attention to reports on the human rights situation in Mexico, including a report issued by Amnesty International in 2006. They consider that they have submitted sufficient documentary evidence to show that human rights violations are widespread in Mexico and that the State is unable to protect victims.

3.4 With regard to the PRRA decision, the complainants state that the officer in charge of the procedure did not take the reports on their psychological state, particularly that of L.G.U., seriously. They say that their deportation to Mexico would cause her and the whole family irreparable harm. They reject the assertion by the PRRA officer that their distress and feelings of stress at the prospect of deportation to Mexico had not been questioned and that such symptoms were common among people in such situations. They consider that the officer was not qualified to determine whether their psychological state had been caused by distress and feelings of stress in the face of possible deportation to Mexico or by the post-traumatic stress disorder diagnosed by the psychologist.

3.5 The PRRA officer also overlooked the very convincing evidence presented in support of the complainants' allegations of corruption, impunity and lack of adequate protection in Mexico and was selective in his handling of the evidence. The officer rejected outright the information regarding the kidnapping of C.A.R.M.'s half-brother and the letter from the family friend bearing out the fact that the complainants were still being sought, claiming that the letter was not part of an ongoing correspondence and did not come from an independent source. Yet the officer had never checked to determine whether an ongoing correspondence existed. Lastly, with regard to the Internet article, the officer, while not disputing the fact that the complainant had installed computer equipment in the prison and that the prison director was wanted for assault, threats and embezzlement, simply rejected the complainants' claim on the grounds that their allegations of persecution by the former mayor and the drug traffickers in his pay had not been proved.

3.6 The complainants state that the obligation to exhaust all domestic remedies exists only if such remedies are adequate and there is a real opportunity to be heard by the courts, which is not the case with the PRRA and judicial review.

State party's observations on admissibility

4.1 In a note verbale dated 28 September 2006, the State party disputes the admissibility of the complaint on the grounds that domestic remedies have not been exhausted and the complainants have not established a prima facie case for the purpose of admissibility.

4.2 With regard to the exhaustion of domestic remedies, the State party submits that, after the negative PRRA decision of 3 March 2006, the complainants ought to have applied for leave and for judicial review of the decision before the Federal Court of Canada and should also have applied to the Federal Court for a suspension of their deportation pending the outcome of the judicial review. Yet they had not done so. The State party states that the complainants did not challenge the PRRA decision, despite the numerous complaints against that decision raised in their communication.

4.3 The State party asserts that, in order to obtain leave to apply for judicial review, the complainants needed to show only that they had an “arguable case”, which required a lesser burden of proof than that required for judicial review on the merits. The State party explains the procedure for applying for judicial review. It cites the communication *T.A. v. Canada*,¹ which demonstrates the usefulness and effectiveness of an application for stay and review before the Federal Court. In that decision, the Committee acknowledged that applications for leave and judicial review “are not mere formalities, but that the Federal Court may, in appropriate cases, look at the substance of a case”. The complainants, however, did not apply for judicial review of the PRRA decision and indicated that they considered the remedy in question unlikely to produce a satisfactory outcome. The State party also cites the Committee’s conclusions with regard to the communication *M.A. v. Canada*,² in which the Committee observed that “it is not within the scope of the Committee’s competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author’s claims”.

4.4 The State party observed at the time that the application for a visa exemption and permanent resident status in Canada on humanitarian grounds submitted by the complainants on 8 June 2006 was another remedy that was not exhausted. Once a decision had been taken under that remedy, other remedies would be available, namely an application to the Federal Court for leave and for judicial review. The complainants could also request suspension of their deportation on humanitarian grounds if they were still in Canada at the time of the decision. The State party reiterates that the complaint is inadmissible because the complainants have failed to exhaust domestic remedies.

4.5 The State party maintains that C.A.R.M.’s allegations are not credible and that there is no evidence that returning the complainants to Mexico was likely to cause them irreparable harm. The State party recalls the facts alleged by the complainants in their application for asylum and also the Canadian Immigration and Refugee Board decision of 11 March 2004. It notes that their complaint is based on the same facts and virtually the same evidence as that submitted to the Canadian authorities and is thus almost identical to their application regarding a visa and permanent resident status in Canada on humanitarian grounds.

¹ Communication No. 273/2005, *T.A. v. Canada*, Views adopted on 15 May 2006.

² Communication No. 22/1995, *M.A. v. Canada*, Views adopted on 3 May 1995.

4.6 The State party recalls the discrepancies noted by the Canadian Immigration and Refugee Board and the explanations given during that procedure. It considers that the additional explanations given by C.A.R.M. in his complaint are not credible. The State party affirms that the argument that C.A.R.M. forgot to mention the Gulf Cartel because he always claimed that the “person principally involved in his persecution” was the mayor and that “the person principally involved includes the others” is particularly unconvincing. The earlier explanations indicate that he knowingly omitted any mention of the Gulf Cartel because he was afraid for the accountant and for himself. Moreover, C.A.R.M.’s testimony does not corroborate the claim that the mayor was “the person principally involved” and that the Cartel or the police were trying to kill him on his behalf. C.A.R.M. stated in his Personal Information Form that he was being sought by “agents of the Gulf Cartel” and that it was the prisoners, and not the mayor, who were “very upset” with him “for having installed the new surveillance technology”. It is unlikely that the mayor wanted to kill C.A.R.M. and his family for having installed a surveillance system in the municipal prison, since it was he who had asked C.A.R.M. to undertake the project.

4.7 The State party also rejects C.A.R.M.’s second explanation as to why he was too nervous and too rushed to accurately identify his persecutors during the interview on 12 November 2002, which was too short. According to the State party, the immigration officer asked C.A.R.M. several questions about the identity of his persecutors and gave him ample opportunity to explain who was looking for him and why. C.A.R.M.’s anxiety cannot in itself explain the discrepancies that exist with regard to such an important part of his account.

4.8 Another discrepancy identified by the Immigration and Refugee Board has to do with C.A.R.M.’s meeting at the town hall on 22 August 2002. During his interview with the Board, C.A.R.M. spontaneously stated that he was alone with the mayor’s secretary when the latter told him that he should inflate his prices and hand part of the profit over to the mayor. Yet C.A.R.M.’s Personal Information Form contains a different version of the encounter, in which the complainant states “... I arrived, the mayor and his secretary, who was his nephew, told me that they had agreed to continue working with me ...”. When confronted with this discrepancy, C.A.R.M. explained that he was alone with the secretary but that the mayor could have followed the conversation by listening on his telephone loudspeaker. During his interview on 12 November, C.A.R.M. said that it was the mayor who had asked him to get involved in the corruption. In his communication to the Committee, C.A.R.M. explained that the secretary was not speaking in his personal capacity but on behalf of the mayor.

4.9 As for the PRRA, the State party states, with reference to the psychological test, that the PRRA officer noted that C.A.R.M. and L.G.U. had not undergone treatment for post-traumatic stress disorder after the November 2003 evaluation. It was only when they were summoned in connection with their deportation from Canada that they again consulted the psychologist. The State party also points out that the psychological reports do not in any way support C.A.R.M.’s major contention that his return to Mexico would cause him irreparable harm.

4.10 Also in the context of the PRRA and the criminal complaint brought by C.A.R.M.’s half-brother, the State party observes that C.A.R.M. claimed that, on the advice of his attorney, his half-brother had not mentioned in his police statement that his attackers were to all

appearances police officers and that they wanted to know where C.A.R.M. was. He ostensibly refused to send sworn testimony to C.A.R.M. confirming his allegations because he was afraid he would be placing himself in danger. According to C.A.R.M., the members of his family were not used to helping each other out, and his half-brother was angry with him. The State party observes that the PRRA officer noted that the half-brother had nevertheless taken the trouble to send a copy of the complaint to C.A.R.M. as well as a copy of his voter registration card.

4.11 With regard to the letter from the family friend informing the complainants that they were still being hunted, the State party says that the PRRA officer noted that the letter was dated subsequent to the time that the PRRA had been offered to the complainants, and that it did not form part of an ongoing correspondence relating similar incidents that had occurred since the complainants' departure from Mexico. The PRRA officer also felt that it was unreasonable to think that police officers would have waited three years before showing up if they were really looking for the complainants, and that the letter did not come from an independent source.

4.12 The State party says, with regard to the Internet article stating that the former director of the prison in San Pedro Cholula had fled after a warrant was issued for his arrest, that C.A.R.M. stated in his PRRA application that the individual in question was the same person who had warned him that the drug traffickers from the Gulf Cartel were in the prison. According to C.A.R.M.'s Personal Information Form, however, it was the mayor's secretary who told him about the presence of the drug traffickers. The PRRA officer also concluded that the article did not establish any link between the events discussed in the article and the complainants' allegations. It was not possible to conclude from the article that the complainants' life or security were in jeopardy in Mexico.

4.13 With regard to the documentation on the general situation in Mexico, the State party declares that the PRRA officer studied a number of the reports on the situation of human rights in Mexico and concluded, inter alia, that "corruption and abuse of the justice system are widespread". He noted, however, that the Mexican Government had had some success in combating corruption and that remedies existed for victims. The officer concluded that the complainants had not demonstrated the inability of the Mexican State to protect them, having used none of the remedies available to them.

4.14 The State party submits that the complaint is not even minimally founded. The State party recalls the Committee's general comment No. 1, which establishes that "it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of his or her communication". The complaint submitted to the Committee for consideration is, first of all, manifestly devoid of any substance, given the clear lack of evidence to show that the complainants run any personal risk of being subjected to reprisals in Mexico. As the letter from the family friend cannot be considered to have come from an independent source, the complaint is based almost entirely on the allegations of C.A.R.M., whose credibility has been cast into serious doubt by the many discrepancies in his testimony. C.A.R.M. has failed to establish that, if a risk did exist, it would exist anywhere in Mexico. The State party believes that the complainants have not established that they would be personally at risk of torture anywhere in Mexican territory.

Complainant's comments on the State party's observations concerning the complaint

5.1 On 16 October 2006, the complainants submitted their comments on the State party's observations.

5.2 On the matter of exhaustion of domestic remedies, the complainants explain that they applied to the Federal Court for a suspension of their deportation during consideration of the application on humanitarian grounds and that their application was denied. The State party's argument is thus erroneous. The complainants applied for a suspension of their deportation. They also applied for refugee status and for judicial review of the negative decision by the Federal Court. They submitted an application under the PRRA procedure. They applied for permanent resident status on humanitarian grounds. They applied for an administrative suspension in order to halt their deportation and allow their case to be reviewed on humanitarian grounds. The complainants conclude that the complaint is admissible.

5.3 The complainants reiterate that the PRRA is not an effective and adequate remedy, and that the officers who conduct the procedure are insensitive to the suffering and risks of deportees in countries where they may be tortured. They refer to a document submitted by the American Association of Jurists, a non-governmental organization, to the Human Rights Committee during its consideration of the periodic report of Canada in October 2005, according to which the acceptance rate for persons under the PRRA is only 1.5 per cent for all of Canada.

5.4 As to the allegation that the complaint is not even minimally founded, the complainants maintain that they have submitted several pieces of evidence and refer to: the psychologist's reports on post-traumatic stress disorder; the various items submitted to the Canadian authorities on corruption, impunity and the lack of adequate protection in Mexico; the fact that C.A.R.M.'s half-brother was abducted and that his kidnappers asked him where the complainants were; and the letter from the family friend. Moreover, they do not contest the fact that C.A.R.M. installed computer equipment in the penal facility. The danger to the complainants is proved by the fact that C.A.R.M.'s half-brother was abducted by persons seeking the complainant. The PRRA officer could at least have given the complainants the benefit of the doubt.

5.5 The complainants conclude that they have exhausted domestic remedies and that there is not enough evidence to prove that their complaint is lacking in substance. Lastly, they state that they have demonstrated that they would be subjected to irreparable harm if they were returned to Mexico.

State party's observations on admissibility and the merits

6.1 In a note verbale dated 8 January 2007, the State party reiterates that the complaint is inadmissible because the complainants have not exhausted domestic remedies and have not established a prima facie case for the purpose of admissibility. With regard to the exhaustion of domestic remedies, the State party points out that the complainants attribute remarks to it that it has not made. It was never stated that the complainants had not submitted an application for suspension with the Federal Court of Canada. In its observations of 26 September 2006, the

State party clearly indicated that the complainants, by submitting an application for leave and for judicial review, would also have had the option of applying for a suspension of their deportation if they were still in Canada at the time of the decision on humanitarian grounds. The State party points out that these remedies, while distinct, are not mutually exclusive.

6.2 The State party reports that on 22 December 2006 the application for permanent resident status on humanitarian grounds was rejected on the grounds that the complainants had not demonstrated that they would be personally targeted by the law enforcement authorities, the mayor of San Andrés Cholula or the Gulf Cartel drug traffickers upon their return to Mexico. The State party points out that the complainants could submit an application to the Federal Court of Canada for leave and for judicial review of this decision. They could also request the Federal Court to suspend their deportation pending the outcome of the judicial review.

6.3 The State party reiterates its earlier arguments and maintains that the communication is inadmissible on the grounds that domestic remedies have not been exhausted and that the complainants have not established a prima facie case for the purpose of admissibility.

Additional information and comments submitted by the complainants

7.1 On 24 January 2007, the complainants informed the Committee that their application for permanent resident status on humanitarian grounds had been rejected on 22 December 2006 and that they had submitted an application for judicial review with the Federal Court. On 28 February 2007, they informed the Committee that their application for suspension of their deportation had been rejected by the Federal Court on 26 February 2007.

7.2 On 7 March 2007, the complainants submitted their comments on the State party's observations. They reiterate their arguments on the exhaustion of domestic remedies. They note that the application on humanitarian grounds had been rejected, as had the application for suspension. They reiterate that they have exhausted all available remedies. In the light of their situation, they have been forced to remain in Canada illegally.

7.3 As to the allegation that their complaint is not even minimally founded, they reject the State party's claim that the letter from the family friend does not come from an independent source. The State party is wrong to require that the letter be part of an ongoing correspondence. The conclusion of the PRRA in this regard serves to demonstrate yet again why this remedy is ineffective and inadequate, as well as the fact that the PRRA officer looked for any possible grounds for rejecting their application. The only response the PRRA officer could make to the claim that the complainants' rights would not be protected in Mexico was to say that there had been statements made by the Mexican Government indicating its intention to change the situation. The complainants further reiterate their observations regarding the existence of several pieces of evidence to support their allegations.

7.4 They refer also to a document on torture in Mexico issued in 2005 by the Miguel Agustín Pro Juárez Human Rights Centre, a non-governmental organization, in which that organization notes that, as the Mexican Government acknowledged in its report to the Committee against Torture, no one had been convicted of the crime of torture in Mexico between 1997 and 2003.

They conclude that they have exhausted domestic remedies and that there is not enough evidence to prove that their complaint is not minimally founded, and they reiterate that they have demonstrated that they would suffer irreparable harm if they were returned to Mexico.

Issues and proceedings before the Committee

8.1 Before considering any of the allegations in a communication, the Committee against Torture 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 paragraph 5 (a) of that article, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply where it has been established that the application of the remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

8.3 The Committee notes that the State party contests the admissibility of the complaint because domestic remedies have not been exhausted, given that the complainants did not submit an application to the Federal Court of Canada for leave and for judicial review of the decision of 3 March 2006 rejecting their PRRA application and that proceedings relating to their application for permanent resident status on humanitarian grounds have not yet been concluded. The State party observes that the complainants did not contest the decision rejecting their PRRA application despite the many allegations they made against it in their complaint to the Committee. The Committee also takes note of the complainants' allegations that the PRRA and judicial review by the Federal Court were not adequate or effective remedies, and of the information submitted on the numerous remedies that they did try.

8.4 With regard to the exhaustion of domestic remedies, the Committee notes that the complainants filed a request for asylum and that, following the rejection of that request, they filed an application for judicial review before the Federal Court. They also filed a PRRA application and an application for permanent resident status on humanitarian grounds, and filed for judicial review with the Federal Court following the negative decision in the latter procedure which, according to the most recent information received from their lawyer, is ongoing. In addition, on two occasions they applied for suspension of their deportation. The Committee also takes note of the fact that the complainants did not request permission to submit an application for judicial review of the negative decision concerning the PRRA application. However, the Committee notes that the complainants submitted their request for asylum on 12 November 2002 and that, more than four years later, their fate has still not been decided. In the circumstances, the Committee considers that the proceedings as a whole have not been concluded within a reasonable time and, consequently, that the communication is admissible under article 22, paragraph 5 (b), of the Convention.

8.5 The Committee must decide whether the complainants' return to Mexico would violate the obligation of the State party, under article 3 of the Convention against Torture, not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.6 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture if they were returned to Mexico. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, 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 individuals concerned would be personally at risk of being subjected to torture in the country to which they 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. Other grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross, flagrant or mass 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.

8.7 The Committee recalls its general comment on the implementation of article 3 of the Convention, in which it states that it is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he or she to be returned to the country in question, and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but the danger must be personal and present.

8.8 The Committee notes that the State party has pointed out many discrepancies in the main complainant's testimony to the various authorities that examined his allegations. It also notes the information provided by the complainants in this regard, in particular that some of the alleged contradictions were the result of misunderstandings of C.A.R.M.'s statements; that he had been nervous during his first interview and had not had sufficient time during his interviews to explain his case.

8.9 However, the Committee is of the view that the complainants have not provided satisfactory explanations on some of the points raised by the State party, in particular regarding the contradictions concerning the identity of their persecutors and the alleged discrepancies concerning the meeting at the town hall. The Committee notes that the complainants were never arrested, that they never lodged a complaint at the time of the alleged events or asked for protection from the Mexican authorities, and that they did not attempt to take refuge in another region of Mexico.

8.10 On the burden of proof, the Committee recalls its jurisprudence to the effect that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.³

³ See communications No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

8.11 On the basis of all the information submitted, the Committee is of the view that the complainants have not provided sufficient evidence that would allow it to consider that they face a foreseeable, real and personal risk of being tortured if they are expelled to their country of origin.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainants to Mexico would not constitute a breach of article 3 of the Convention by the State party.

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