



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1066/2021* **

<i>Communication submitted by:</i>	H.G. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	23 October 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 31 March 2021 (not issued in document form)
<i>Date of adoption of decision:</i>	19 April 2024
<i>Subject matter:</i>	Deportation of the complainant to Sri Lanka
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is H.G., a national of Sri Lanka born in 1987. At the time of submission, his request for asylum in the State party had been rejected, and he was facing deportation to Sri Lanka. The complainant claims that, if the State party were to proceed with his deportation, it would be in violation of its obligations under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is not represented by counsel.

1.2 On 31 March 2021, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Sri Lanka while the communication was being considered by the Committee.

Factual background

2.1 The complainant is an ethnic Tamil who arrived in Australia illegally, by boat, on 11 May 2010. He lodged a request for a refugee status assessment on 7 August 2010 and was interviewed on 10 August 2010, with the assistance of a Tamil interpreter. He alleged that his father had been abducted in 1995 by the Sri Lanka Army, but he did not know why his

* Adopted by the Committee at its seventy-ninth session (15 April–10 May 2024).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Jorge Contesse, Claude Heller, Erdogan Iscan, Peter Vedel Kessing, Liu Huawen, Maeda Naoko, Ana Racu, Abderrazak Rouwane and Bakhtiyar Tuzmukhamedov.



father had been abducted or whether his father had had any involvement with the Liberation Tigers of Tamil Eelam (LTTE). The complainant's mother had become mentally unstable as a result of his father's abduction. With the help of the complainant's aunt, who lived in Canada, the family had moved to Colombo in 1995 so that his mother could receive medical treatment. The family had remained in Colombo until 1999 and, during that time, the police and the Sri Lanka Army had come to their house to enquire as to the whereabouts of the complainant's father. The situation had become worse in 1999, when the conflict between LTTE and the Sri Lankan forces had escalated. In that year, the Sri Lanka authorities had come to the house about 10 times. At the recommendation of the same aunt, who obtained visas for them, the complainant and his family had moved to India, where he had stayed until 2010. The complainant stated that he did not have a national identity card and had heard that other Tamils who returned to Sri Lanka without identity documents had been abducted and killed.

2.2 On 6 September 2010, the Department of Immigration and Citizenship rejected the complainant's application. The delegate noted that neither the complainant nor members of his family had ever been detained or mistreated by the Sri Lankan authorities. The delegate also noted that the complainant had departed Sri Lanka legally when he had travelled to India and that it was specified in the passport that he had used on that occasion that he did not have a national identity card. Consequently, he would be able to apply for a national identity card upon returning to Sri Lanka, which was a process commonly undertaken by Tamils displaced during the conflict. The delegate concluded that the complainant did not have a profile that would make him a person of interest to the Sri Lankan authorities.

2.3 On 26 September 2010, the complainant requested an independent merits review of the refugee status assessment, introducing new information: he claimed on that occasion that his father had actually been arrested by the army, that he had witnessed his father's arrest and that his father had had links to LTTE. An independent merits reviewer conducted an interview with the complainant on 9 April 2011, with the assistance of a Tamil interpreter. On 19 September 2011, the reviewer found that the complainant's case did not meet the criteria for a protection visa. The reviewer noted that, during the interview, the complainant had referred to his father's arrest and other reasons why he feared returning to Sri Lanka; only towards the end of the interview had the complainant made the new claim that his aunt had recently told him that the reason for his father's arrest had been his LTTE links. The reviewer found it implausible that the complainant would not have asked his aunt about the reasons for his father's arrest until the very last stage in the application process. The reviewer observed that the complainant and his family had left Sri Lanka in 1999 because his aunt had urged them to do so rather than because of the complainant's subjective fear that he would be arrested and killed by the police or army. Consequently, the reviewer did not consider that the complainant would be subjected to harassment or detention, as there was no reason for him to be suspected of being an LTTE member, including as a result of his long absence from Sri Lanka.

2.4 On 13 April 2012, the Federal Magistrates Court dismissed the complainant's application for judicial review of the independent merits review recommendation. The court considered that the complainant had not demonstrated that the review had been procedurally unfair or had not been conducted with reference to the appropriate, correctly applied legal principles.

2.5 On 14 May 2012, the Department of Immigration and Citizenship reconsidered the complainant's protection claims in the light of new information that the Department had received following the independent merits review, namely, a statutory declaration signed by the complainant's aunt, according to which the complainant had sought to find out the exact details of his father's arrest and according to which she had advised the complainant that the army had arrested his father and that his father had indeed been an LTTE supporter. The Department conducted an assessment of the new information in the light of the Convention against Torture, the International Covenant on Civil and Political Rights and information about the current situation in the country and concluded that there had been no changes in the complainant's circumstances or the situation in Sri Lanka.

2.6 On 24 August 2012, the Federal Court of Australia dismissed the complainant's appeal against the decision of the Federal Magistrates Court of 13 April 2012. On 15 March

2013, the High Court of Australia dismissed the complainant's special leave application on the basis that, if the appeal were granted, it would have insufficient prospects of success.

2.7 On 3 September 2012, the complainant made a request under section 46A (2) of the Migration Act,¹ submitting that his claims had not been fully considered during the independent merits review and that his case fell within the complementary protection provisions of the Migration Act. On 1 November 2012, the Department of Immigration and Citizenship determined that his claims did not meet the criteria set out in the guidelines for ministerial consideration, as the complainant had not provided any credible new information that he would be viewed as an LTTE sympathizer or would have an adverse profile such as would make him face a real risk of persecution. The Department considered that the complainant had not presented any new claims or additional information that would increase the chance of success of a protection visa application, including under the complementary protection criterion set out in section 36 (2) (aa) of the Migration Act. Accordingly, the request was not referred to the competent minister.

2.8 On 11 April 2013, the complainant lodged a second application for judicial review of the independent merits review recommendation on the basis that the complementary protection criterion under section 36 (2) (aa) of the Migration Act had not been considered. On 18 October 2013, the competent minister withdrew from the proceedings on the basis that the independent merits review recommendation revealed a probable error of law, in the light of a recent decision of the Full Federal Court. The matter was remitted to the Department of Immigration and Border Protection for consideration.

2.9 On 20 March 2015, the Department commenced an international treaties obligations assessment to determine whether the complainant's case engaged the non-refoulement obligations of Australia under the Convention relating to the Status of Refugees, the Convention against Torture or the International Covenant on Civil and Political Rights. On 22 July 2015, the complainant made new submissions, claiming mental health vulnerability and stating that he had recently been informed by his aunt that all his relatives, including his mother and four siblings, had been LTTE members.

2.10 On 6 June 2016, the Department of Immigration and Border Protection found that the complainant's case did not engage the non-refoulement obligations of Australia. It did not accept that the complainant's father or other family members had been involved in supporting LTTE in any significant way or that the Sri Lanka Army, the Criminal Investigation Department or the police maintained an ongoing adverse interest in the complainant's family. While the harm claimed by the complainant was deemed to be significant, there were no substantial grounds for believing that there was a real risk of such harm, including torture. The Department noted that the periodic visits by the authorities to the complainant's home between 1995 and 1999, shortly after his father's disappearance, would not result in the complainant facing a real risk of serious harm for any reason under the Convention relating to the Status of Refugees if he returned to Sri Lanka, noting that none of the complainant's surviving family members at that time had been arrested, detained, required to report to the police or put under surveillance. The complainant had provided little detailed information to indicate that his father had been directly associated with LTTE, how his father's family members had been associated with LTTE or what they had done in support of LTTE. The Department therefore did not accept that the complainant's father or other family members had been clearly identified by the Sri Lankan authorities as having LTTE links.

2.11 On 16 June 2016, the complainant applied for a review of the international treaties obligations assessment decision of the Federal Circuit Court, submitting that the assessor had fallen into jurisdictional error by applying the wrong test when considering his supposed links to LTTE. On 22 February 2019, the Federal Circuit Court dismissed the application, finding that the Department of Immigration and Border Protection had not made the jurisdictional error that the complainant had alleged, for reasons including the fact that the officer had applied the correct test under international law and had not overlooked the

¹ In accordance with this non-compellable power, the competent minister can allow an unauthorized maritime arrival to make a valid visa application (in the complainant's case, a protection visa application) if he or she thinks that it is in the public interest to do so.

applicable guidelines of the Office of the United Nations High Commissioner for Refugees, as it was the officer who had put them to the complainant for comment and had referred to them in the explanation of the reasons for the decision.

2.12 On 17 October 2019, the Full Court of the Federal Court of Australia dismissed the complainant's appeal. On 5 February 2020, the High Court of Australia dismissed the complainant's application for special leave, stating that there was no reason to doubt the correctness of the decision of the Federal Court.

2.13 On 16 March 2020, the complainant made another request for ministerial intervention under section 46A of the Migration Act. He submitted new claims in that request, including the claim that the new Government of Sri Lanka, under Gotabaya Rajapaksa, had been accused of human rights abuses against Tamils. On 17 July 2020, an officer of the Department of Home Affairs found that the request did not meet the criteria set out in the guidelines for ministerial intervention, on the basis that the new information from the complainant was not likely to result in a finding that the protection obligations of Australia were engaged. The request was therefore not referred to the competent minister for consideration.

2.14 The officer noted that the monitoring and harassment of Tamils in the north and east of Sri Lanka continued, but at a much-reduced level compared with the period immediately after the war. The officer also considered the complainant's allegations regarding the presidency of Mr. Rajapaksa. At the time, the officer noted that it was unclear what impact the election of Mr. Rajapaksa in November 2019 would have on reports of the monitoring, surveillance, intimidation and harassment of Tamils in day-to-day life by the security forces in north and east Sri Lanka. Nevertheless, the officer noted that there was no information to suggest that there had been any changes in the treatment of minority populations in Sri Lanka, in particular Tamils, nor was there any information about a change in policy towards those with LTTE associations or those suspected of such associations. The complainant did not state how he would personally be at risk of harm from the change of government in November 2019, nor did he show that he would be persecuted or discriminated against.

Complaint

3. The complainant submits that, due to the current political situation, if he is returned to Sri Lanka, he faces a real risk of being tortured and suffering cruel, inhuman or degrading treatment or punishment, in violation of article 3 of the Convention.

State party's observations on admissibility and the merits

4.1 On 1 March 2022, the State party submitted its observations on the admissibility and merits of the complaint. The State party challenges the admissibility of the complaint, arguing that the claims made by the complainant are inadmissible *ratione materiae* because they do not meet the threshold for torture under article 1 of the Convention. It submits that the complainant's claims are manifestly unfounded within the meaning of rule 113 (b) of the Committee's rules of procedure, as they have already been considered through comprehensive domestic administrative and judicial processes.

4.2 On the merits, the State party recalls in detail the decisions rendered at the domestic level. It concludes that the complainant has not provided sufficient evidence to indicate that there are substantial grounds for believing that he would be personally at risk of treatment amounting to torture under article 1 of the Convention.

Complainant's comments on the State party's observations on admissibility and the merits

5. On 1 May 2023, the complainant submitted his comments on the State party's observations. In particular, he notes that the most up-to-date country information referred to by the State party dates to November 2019. The political landscape in Sri Lanka has since changed dramatically, with the overthrow of the Government of Mr. Rajapaksa and the installation of a new Government, led by Ranil Wickremesinghe. He refers to different reports, issued by Human Rights Watch and Amnesty International between 2021 and 2023, in which reference is made to the adoption of policies hostile to Tamil and Muslim

communities during the presidency of Mr. Rajapaksa and to unlawful killings committed by the new Government, corruption and impunity. The complainant therefore concludes that violence and corruption persist in Sri Lanka and that he would be a target for corrupt police officers and others demanding money.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies.

6.3 The Committee notes that, in the present case, the State party has contested the admissibility of the communication, stating that it is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure. The Committee notes the State party's argument that the evidence produced has already been examined by the domestic authorities. The Committee recalls that it is for the courts of States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.² The Committee gives considerable weight to findings of fact made by organs of the State party concerned;³ however, it is not bound by such findings. It follows that the Committee will make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.⁴

6.4 In the present case, the Committee observes that the State party's immigration and judicial authorities thoroughly examined the facts and evidence presented by the complainant – including new evidence presented at later stages of the proceedings – and noted that neither the complainant nor members of his family had ever been detained or mistreated by the Sri Lankan authorities, that the complainant had departed Sri Lanka legally when he had travelled to India and that the complainant had not demonstrated that his father or other family members had clearly been identified by the Sri Lankan authorities as having LTTE links. On that basis, the authorities concluded that the complainant had not established the existence of substantial grounds to show that he would face a foreseeable, real and personal risk of being tortured if returned to Sri Lanka. The Committee also notes that the complainant contests the assessment by the State party's authorities of his credibility. However, the Committee observes that the complainant provides no documentation or other evidence to substantiate his assertions and that the authorities of the State party found, after a thorough assessment of all the facts and evidence presented to courts of different levels, that the complainant had not provided sufficient evidence that he was at a foreseeable, real and personal risk of being tortured if returned to Sri Lanka. Consequently, the Committee finds that the complainant has not established in the communication that the domestic evaluation of the facts and evidence concerning the complainant's alleged risk of treatment contrary to the Convention upon return to Sri Lanka suffered from any defects.⁵

² *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12. See also *Z.S. v. Georgia* (CAT/C/70/D/915/2019), para. 7.4; and *S.K. v. Australia* (CAT/C/73/D/968/2019), para. 12.5.

³ For example, *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

⁴ For example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.4.

⁵ *S.K. v. Australia*, para. 12.5.

6.5 The Committee recalls earlier decisions in which it has found claims to be manifestly unfounded where the complainant failed to submit substantiated arguments showing that the danger of being subjected to torture was foreseeable, present, personal and real. The Committee also recalls that, for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must not be manifestly unfounded. In the light of the above, and in the absence of any further relevant information, the Committee concludes that the complainant has failed to substantiate his claims sufficiently for the purposes of admissibility.⁶

7. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (2) of the Convention;
 - (b) That the present decision shall be communicated to the complainant and to the State party.
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⁶ Ibid., para. 12.6.