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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 4308/2023*, **

Communication submitted by:	G (represented by counsel, Lorne Waldman)
Alleged victims:	The author and H, I and J
State Party:	Canada
Date of communication:	9 February 2023 (initial submission)
Document references:	Decisions taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State Party on 9 February 2023 (not issued in document form)
Date of adoption of decision:	17 July 2025
Subject matter:	Deportation of the author to Sierra Leone; separation of the author from his minor children
Procedural issues:	Exhaustion of domestic remedies; substantiation of claims
Substantive issues:	Children's rights; cruel, inhuman or degrading treatment or punishment; family rights; non-refoulement; torture
Articles of the Covenant:	7, 17 (1) and 23 (1), each read alone and in conjunction with 2 (2) and (3); and 2 (3), 14 and 26
Articles of the Optional Protocol:	2 and 5 (2) (b)

1.1 The author of the communication is G, a national of Sierra Leone born in 1991. He submits the communication in his own name and on behalf of his three minor children, H, I and J, born in 2018, 2018 and 2022 respectively . The author claims that if it deported him to Sierra Leone, the State Party would violate his family's rights under articles 7, 17 (1) and 23 (1) of the Covenant, read alone and in conjunction with article 2 (2) and (3), of the Covenant.[1] The Optional Protocol entered into force for the State Party on 19 August 1976. The author is represented by counsel.

* Adopted by the Committee at its 144th session (23 June–17 July 2025).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

[1] The author's claims under articles 2 (3), read alone, 14 and 26 of the Covenant were raised at a later stage.

1.2 On 9 February 2023, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State Party to refrain from deporting the author to Sierra Leone while his case was under consideration by the Committee.

1.3 On 13 September 2023, the State Party requested that the Committee withdraw its request for interim measures. On 20 September 2023, the Committee, acting through its Special Rapporteurs on new communications and interim measures, granted the State Party's request.

Facts as submitted by the author

2.1 The author was born in Sierra Leone. He arrived in Canada on 2 October 2004, when he was 13 years old, and was granted permanent residence after being sponsored by his mother, who had arrived in Canada a few years earlier. The author has lived in Canada since then. His three children were born in Canada and are Canadian nationals. The author's current partner, his mother and his younger sister are also Canadian nationals and live in Canada.

2.2 On 9 December 2011, the author was convicted of manslaughter. He had been present during a shooting in which he had not been directly involved. Because he had failed to call the police, he was arrested in 2009. He served three years in prison and was released on parole in 2015.

2.3 Meanwhile, on 24 September 2012, the author was found inadmissible to Canada for serious criminality, in view of the above-mentioned criminal conviction. His permanent resident status was revoked, and a deportation order was issued. On 4 February 2014, he submitted an application for a pre-removal risk assessment, which was rejected on 31 March 2014. On 30 March 2015, he became eligible to submit another application for a pre-removal risk assessment.

2.4 On an unspecified date, the author applied for permanent residence in Canada on humanitarian and compassionate grounds. He states that the application was rejected in 2015.

2.5 In 2015, upon the author's release from prison on parole, he was placed in immigration detention. However, the Canada Border Services Agency was unable to execute the deportation order because it was awaiting a travel document for the author from Sierra Leone, where there had been an outbreak of Ebola virus disease. Accordingly, the author was released from immigration detention in August 2015, subject to reporting conditions.

2.6 Thereafter, the author worked in various factories until around 2017 or 2018, when his work permit expired. His applications for renewal of his work permit were rejected. In 2018 and 2022, his three children were born.

2.7 In 2021, the author was convicted of a drug-related offence and received a two-year conditional sentence. He only became involved in drug trafficking to support his family financially. He lacked a work permit at that time and was not eligible for social assistance owing to his immigration status.

2.8 In December 2022, the Canada Border Services Agency notified the author that the removal process was under way. On 1 January 2023, the author filed an application for permanent residence in Canada on humanitarian and compassionate grounds. The application, which was pending when the author submitted the communication, did not have a suspensive effect with respect to his removal.

2.9 On 24 January 2023, the author applied to the Canada Border Services Agency for administrative deferral of removal, pending a decision on his application for permanent residence on humanitarian and compassionate grounds. He maintained that his deportation would be contrary to his children's best interests and would be grossly disproportionate. On 3 February 2023, the Agency rejected the application.

2.10 On the same date, the author applied to the Federal Court for judicial review of the decision of the Canada Border Services Agency on his application for deferral of removal. He also applied a second time for administrative deferral of removal. On 6 February 2023, the Agency rejected the second application. At the time of the author's submission of the

communication, his application to the Federal Court for judicial review of the first decision on deferral was pending. If it were refused, there would be no other remedy available to him.

Complaint

3.1 The author submits that by deporting him to Sierra Leone, the State Party would violate his rights under articles 7, 17 (1) and 23 (1), each read alone and in conjunction with article 2 (2) and (3), of the Covenant.

3.2 With respect to article 7 of the Covenant, the author and his children risk experiencing cruel, inhuman or degrading treatment and irreparable harm. The author's separation from his children, family, friends and community would be disproportionate, inhumane and offensive and would cause him enormous suffering. He has lived in Canada for more than 18 years and is established there. He was 13 years old when he left Sierra Leone and would now be returning to an unfamiliar country without family or support. He provides critical care for his children on a weekly basis, thus relieving the childcare duties on all three of the children's mothers and reducing their childcare expenditure.

3.3 The children are of a young age (5 years old, 4 years old and 5 months old) and would experience emotional and psychological suffering if separated from their father. The State Party has never considered the children's best interests.

3.4 The immigration authorities treated him as a mere source of an abstract risk.[2] In 2009, he was charged with manslaughter and served only three years in prison before being released on parole in 2015. He was released from immigration detention when it became clear that his removal could not be enforced, and he has since complied with his reporting conditions. In 2021, he was found to be in breach of his parole conditions, for which only an additional 30 days were added to his sentence. For his drug trafficking conviction, he was given a conditional sentence, which further illustrates the lack of risk that he presents to the public.

3.5 With regard to articles 17 and 23, the author's deportation would violate his family rights. It would be disproportionate to the State Party's objective of ensuring public safety. He is a beloved and cherished member of his family and community.[3] He provides critical support to his children. His conviction for serious violent crime occurred more than 10 years ago, and he has not been convicted of any other violent crime since then. He acknowledges his error in recently selling drugs and is highly motivated to comply with the law going forward. His family would face financial hardship if he were deported. He would be unable to support them from Sierra Leone, where he would struggle to find a job because of the dire economic situation. Residents of Sierra Leone struggle to obtain basic necessities. He would not be able to live with family in Sierra Leone, as he has no ties there. His inability to provide for his family constitutes an obvious interference with the family's financial stability and adequate standard of living. His mere absence would also constitute a hardship for the children, who are all under the age of 5. He has a network of friends and family in Canada who rely on him.

State Party's observations on admissibility and the merits

4.1 In its submission of 13 September 2023, the State Party maintains that the communication is inadmissible because the author has not exhausted three domestic remedies. First, his application for permanent residence, filed in 2023, remains pending and, if it is unsuccessful, he may pursue judicial review. The State Party regrets the position of the Committee in some decisions in which it has considered that such applications do not need to have been completed for the purposes of admissibility. The State Party disagrees with that view and notes that in several communications, the procedure has resulted in the granting of permanent residence. Second, while the author applied to the Federal Court on 6 February 2023 for leave and for judicial review of the negative decision on his application for deferral of removal, he discontinued that application on 24 February 2023, once the Committee had

[2] See *A.H.G. v. Canada* (CCPR/C/113/D/2091/2011).

[3] The author provides a personal statement and statements from two of the mothers of his children, two of the children's grandmothers and two friends. They state that the author is of good character and a good father and request that he remain in Canada.

granted his request for interim measures. That fact renders the communication inadmissible. Third, since 1 April 2015, the author has been eligible to apply for a second time for a pre-removal risk assessment, but has not done so, even after the birth of his three children. The author's evidence of risk for a second application could be based on the same evidence as he submitted to the Committee, in which he claims that his removal would place him and his children at risk of irreparable harm. While he would not be subject to an automatic stay of removal during such a process, he could apply to the Federal Court for a judicial stay of removal pending the determination on his application. He could also file for judicial review of a negative decision on his application. The State Party emphasizes that the Committee lacks the competence to examine the communication because the option of filing a second application for pre-removal risk assessment is available.

4.2 In addition, the communication is inadmissible and without merit because it is manifestly ill-founded. The domestic decision makers thoroughly considered the alleged risks to the author and found that he is not at risk of irreparable harm upon return to Sierra Leone. The author provides no evidence, even on a prima facie basis, to suggest that his removal could have irreparable consequences for his rights or for those of his children.

Criminal history

4.3 The State Party clarifies and corrects several facts. The author has a criminal record spanning a period of 16 years, starting on 11 July 2007 when he was 16 years old, to his current age of 32 years old. His offences have increased in both frequency and severity and reflect a high degree of violence and disregard for the safety of others.

4.4 In 2007, the author, aged 16, was convicted of assault. He received a conditional discharge, 12 months of probation, and a prohibition order not to be in possession of any weapons.

4.5 In 2009, the author, aged 18, was convicted of two counts of robbery, two counts of theft under the value of 5,000 dollars and failure to comply with recognizance. He was put on probation for a one-year term for each charge, to be served concurrently, and 108 days of pre-sentence custody. He offended repeatedly while on probation.

4.6 In 2009, the author was charged with first-degree murder and, in 2011, was convicted of manslaughter, as described in further detail below. He also became subject to a lifelong prohibition from possessing any weapon.

4.7 The author continued his violent behaviour thereafter. In February 2011, he was involved in a fight in prison. Prison officials found him with drugs and a weapon. In June 2011, he was found with a makeshift, knife-like weapon.

4.8 In 2019, the author, aged 28, was charged with possession of property obtained by crime to the value of 5,000 dollars. He was given a suspended sentence.

4.9 In 2020, the author was charged with two counts of threatening death by bodily harm. He was convicted, served three days in jail and was put on probation for one year.

4.10 Later in 2020, the author was charged with possession of crystallized methamphetamine and fentanyl for the purpose of trafficking. He was also charged with possession of property obtained by crime. He received a conditional sentence of 730 days, an order of prohibition for 10 years and concurrent probation for one year. In 2022, as the author had not complied with his conditional sentence order, his case was reopened.

4.11 On 18 July 2023, the author attended a court hearing for a charge of assault with a weapon.

Manslaughter conviction

4.12 The State Party disputes the author's account of the incident that led to his conviction for manslaughter. In 2009, when the author was 18 years old, he was charged with first-degree murder for the shooting to death of a 17-year-old male. On 9 December 2011, the author pleaded guilty to manslaughter and was sentenced to nine years in prison.

4.13 The author had lent his fully loaded 9-mm semi-automatic handgun to the shooter. They went with the victim to a field. The shooter fired nine shots at the victim using the author's handgun. Two gunshots hit the victim, one in his stomach, and the other his neck. One gunshot hit the author in the finger. The author and the shooter fled the scene to leave the victim to die. That same evening, the author went to the hospital to treat his wounded finger, where he was questioned by the police. The author lied to the police by stating that he had been shot by unknown persons at a different location. In the days following the shooting, the author made repeated efforts to retrieve his semi-automatic handgun from the shooter. On 2 August 2009, three days after the shooting, a resident living near the field called the police to report that their children had found a deceased male lying in the field. The police located the victim's body, and during their investigation, using footage from surveillance cameras, the police identified the author and the shooter. Warrants were then issued for their arrest on charges of first-degree murder, and they were arrested by the police.

4.14 At the time of the victim's murder, the author was subject to three separate court orders – a weapons prohibition order, a probation order, and a peace bond protection order against him – all of which prohibited him from possessing weapons.

4.15 The State Party explains in detail the applicable legislation that renders the author inadmissible to Canada for serious criminality. In 2012, after preparing a report on the author's inadmissibility and holding a subsequent hearing on the same issue, the immigration authorities determined that he was inadmissible for serious criminality and issued a deportation order.

4.16 On 29 October 2014, the author completed his prison sentence and was transferred to immigration detention to await his removal to Sierra Leone, because the immigration authorities were concerned that he would not appear for his scheduled removal. He was subject to periodic hearings before the immigration authorities to review his detention.

4.17 During his immigration detention, as a result of an Ebola virus disease epidemic, Sierra Leone stopped issuing travel documents and imposed a travel restriction, thus suspending the return of deportees such as the author. On 14 December 2015, Sierra Leone was removed from the list of countries affected by Ebola virus disease and removals to Sierra Leone resumed.

4.18 Following a detention hearing on 4 August 2015, the author was released on 5 August 2015, subject to stringent reporting conditions. Specifically, he was required to report weekly to a reporting officer and to a parole supervisor.

Family situation

4.19 In 2015, after the author's release from prison, he became involved in three relationships with three Canadian individuals, and a Canadian child was born as a result of each of those relationships.

4.20 The author resides at the residence of his current partner, who herself resides at both her residence and her parents' residence, as her parents look after the child whom she had with the author. The author's partner financially supports the author and their daughter. The author states that he makes an effort to visit his other two children on a weekly basis to assist with childcare responsibilities. They also receive care from their grandparents.

False claim

4.21 In 2014, while in prison, the author submitted an application for a pre-removal risk assessment. He falsely stated that he was bisexual. He stated that his Muslim family in Canada objected to his bisexuality. He also stated that he was involved with two men, one named Francis and another unidentified man who had since moved away. He stated that he feared being killed in Sierra Leone because of his bisexuality. Two months later, the application was denied on the basis of the absence of a risk upon removal.

4.22 In his communication, the author states that he lied because he hoped that his false claim would help him become a permanent resident of Canada. He blames others for the fact that he lied.

Timeline of removal proceedings

4.23 As mentioned above, the author's removal to Sierra Leone was delayed owing to his outstanding criminal charges and the need to await his travel documents issued by Sierra Leone, which the State Party received in November 2022. On 5 December 2022 and 12 January 2023, the author and his counsel attended interviews to discuss the arrangements for his departure to Sierra Leone. The author was advised that he was required to report at the airport on 13 February 2023 for his removal, and he was given his flight itinerary.

Basis for and examination of deferral applications, and substance of claims

4.24 On 24 January 2023, the author requested administrative deferral of removal on three grounds. Specifically, he asserted that he was awaiting the results of two applications for permanent residence on humanitarian and compassionate grounds (one filed on an unspecified date, and the other filed in 2023), that he was established in Canada and that the best interests of his children required him to remain in Canada.

4.25 The immigration officer searched and found no record of any application by the author for permanent residence. The author provided no evidence of such an application. However, the immigration officer proceeded to discuss the purported two such applications, based on the timeline of the author's file. The officer noted that the timeliness of an application for permanent residence on humanitarian and compassionate grounds was a factor in considering whether to grant deferral of removal. The officer found that the author's application was untimely, as it had been submitted nine years after his imminent removal. Regarding the best interests of his children, the officer recognized the children's young age but found that they received support not only from their respective mothers and relatives, but also from the author's network of caring and supportive friends. The officer also recognized that because each child, their mothers and their grandparents were nationals of Canada, they could access social programmes in areas such as education, healthcare and social assistance, with necessary financial support. Regarding the author's establishment in Canada, the officer recognized that the author had arrived in Canada at the age of 14, had an established network of family and friends in Canada and had no immediate family in Sierra Leone. However, the officer also noted that the author had spent almost half his life in Sierra Leone before arriving in Canada, and remained a member of that country's diaspora. The officer considered that the author had demonstrated that his network of family and friends could support him when he returned to Sierra Leone. The officer noted that the author could maintain ties with his children through video and phone calls. The officer considered that the author and his children would not be at risk of death or ill-treatment if he were removed, and that it would not be in the best interests of the Canadian public or Canadian values to defer his removal, given his lengthy and significant history of failing to comply with immigration laws and regulations.

4.26 Thus, contrary to the author's assertion, the officer did consider the impact of the author's removal on him and his three children, including the children's best interests and the author's separation from them.

4.27 The State Party recalls in detail the Committee's standards on the review of facts and evidence, and on the substance of articles 7, 17 and 23 of the Covenant. The State Party has the right to control the entry, residence and expulsion of foreign nationals and to maintain the integrity of immigration system by removing claimants who are not in need of protection. Independent Canadian decision makers, subject to judicial review, have determined that the author would not personally be in danger of torture, his life would not be at risk and he would not be at risk of cruel or unusual treatment or punishment if returned to Sierra Leone. The economic hardship to which the author refers does not rise to the level of ill-treatment under article 7 of the Covenant. The author did not provide a psychologist's report or other evidence that would indicate that his removal would threaten his children's security, taking into account the fact that they could maintain a relationship with him through phone and video calls.

4.28 The author's removal does not arbitrarily interfere with his family, given the legitimate and compelling State interest as balanced with the familial disruption of his

removal.[4] His removal is based on the gravity of his violence against the Canadian public, as demonstrated by his serious criminal record over 16 years. His violent offending was sufficiently severe as to constitute serious criminality under domestic law. His removal is neither unlawful nor arbitrary. Both his maternal grandmother and his father lived in Sierra Leone until they passed away in 2022 and 2023 respectively. The author resided with his maternal grandmother before coming to Canada. As demonstrated above, there was no arbitrariness, error or denial of justice in the domestic decisions or procedures.

Author's comments on the State Party's observations on admissibility and the merits

5.1 In his comments dated 13 October 2023, the author informs the Committee that his application for permanent residence on humanitarian and compassionate grounds – which he filed in 2023, and which does not have a suspensive effect on his deportation – is still pending.[5] The application process may involve an extra step in order for the author to obtain authorization to remain in Canada because of his inadmissibility. The process is discretionary and can take a considerable amount of time. The author delayed filing that application because he could not afford the processing fee and could only file it when he found a lawyer to act pro bono. Thus, he cannot be faulted for the delay. While his application would be processed even if he is not in Canada, his children would suffer if he were removed.

5.2 The author discontinued his application for judicial review of the negative decision on his application for deferral of removal because it was no longer necessary to proceed once the Committee had granted interim measures. The sole purpose of filing for judicial review was to prevent the author's removal.

5.3 While the State Party observes that the author did not file a second application for a pre-removal risk assessment, that process would not allow for the consideration of his family circumstances and possible separation from his children.

5.4 The author is extremely remorseful about his criminal record and wishes to reintegrate into society and be present in the lives of his three young daughters. He developed his criminal life in the environment that Canada had provided to him.

5.5 The State Party discriminated against the author on the basis of his nationality, in violation of article 26 of the Covenant. When a national of Canada commits a crime, they are not subject to deportation. In contrast, the State Party did not attempt to rehabilitate the author, even though he arrived in Canada when he was 13 and committed his first crime when he was only 17. The State Party should have welcomed him to give him a new chance at life; instead, it focused on his expulsion.

5.6 The State Party also violated the author's right to an effective remedy under articles 2 (3) and 14 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State Party's position that the communication is inadmissible because the author did not exhaust several available domestic remedies, as required under article 5 (2) (b) of the Optional Protocol. For example, since 1 April 2015, he

[4] The State Party also explains the distinctions between the present case and the circumstances in many other cases; for example, *Warsame v. Canada* (CCPR/C/102/D/1959/2010).

[5] The author retracts his previous, incorrect statement that, on an unspecified date, he filed a first application for permanent residence on humanitarian and compassionate grounds that was rejected in 2015. He had confused it with his application in 2014 for a pre-removal risk assessment.

has been eligible to file a second application for a pre-removal risk assessment. He could have filed one at any time thereafter, including after the birth of his children, to have his new claims in his own name and on his children's behalf assessed. The Committee notes that the author could file for a stay of removal during a new assessment procedure.[6] The Committee notes the author's assertion that the assessment procedure would not allow for the consideration of his family circumstances or the impact of his separation from his children. The Committee notes the State Party's statement, however, that through a second application, the author could submit the same evidence as he submitted to the Committee, concerning his claims that his removal would place him and his children at risk of irreparable harm. Accordingly, because the author has not submitted a second application for a pre-removal risk assessment despite being eligible to do so, the Committee considers that article 5 (2) (b) of the Optional Protocol precludes it from examining the communication.

6.4 In the light of its findings, the Committee does not deem it necessary to examine other grounds of inadmissibility.

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State Party and to the author.

[6] *M.M. v. Canada* (CCPR/C/135/D/3645/2019), para. 10.4; and see *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017). See also *D.J.D.G. et al. v. Canada* (CCPR/C/99/D/1872/2009), paras. 5.3 and 7.4.