



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. 1032/2020*,**

<i>Communication submitted by:</i>	S. and V. (represented by counsel, John Sweeney)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Australia
<i>Date of complaint:</i>	9 October 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 21 October 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	10 April 2025
<i>Subject matter:</i>	Deportation 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 complainants are S. and his wife V., nationals of Sri Lanka born in 1983 and 1990 respectively. At the time of the initial submission, their request for asylum in the State party had been rejected, and they were facing deportation to Sri Lanka. They claim that the State party would violate their rights under article 3 of the Convention if it removed them to Sri Lanka. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainants are represented by counsel.

1.2 On 21 October 2020, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

Factual background

2.1 The complainants are ethnic Tamils of Hindu faith. S. was born in an area controlled at that time by the Liberation Tigers of Tamil Eelam (LTTE), and his father allegedly worked as a driver for a man who was an LTTE supporter. Owing to the civil conflict, S. fled with his parents to India in 1989, where he remained until coming to Australia in 2012. V. was

* Adopted by the Committee at its eighty-second session (7 April–2 May 2025).

** 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.



born in India, in a family of Sri Lankan nationals who fled their native country, and she never travelled to Sri Lanka. Her father allegedly worked in Sri Lanka as a stonemason who built memorials for fallen LTTE soldiers and was targeted as a result.

2.2 The complainants arrived in the State party by boat, from India, on 5 November 2012, as undocumented illegal maritime arrivals. They were held in immigration detention in January 2014, when a data breach occurred¹ at the Department of Immigration and Border Protection² and, as a result, their details were published on the internet.

2.3 On 31 January 2017, the complainants applied for a protection visa,³ which was refused by the delegate of the Minister for Immigration and Border Protection on 7 July 2017. While the delegate accepted that S. would be unable to recall any episodic memories of his family's experiences in Sri Lanka up to the point of his departure given his young age, she noted that S. was unable to elaborate or provide additional details about any role his father had in connection with the LTTE as a driver. The delegate also noted that during the protection visa interview, S. claimed that none of his family members were members or involved with the LTTE. The delegate therefore did not accept S.'s father had an imputed LTTE profile of interest to either the Indian or Sri Lankan authorities, hence she did not accept S. would be imputed with an adverse profile on account of his father's alleged activities.

2.4 The delegate accepted that V. feared harassment and discrimination on the basis of her Tamil ethnicity but noted that neither V. nor any of her family members have ever been part of the LTTE or shown support for the LTTE. Moreover, the level of discrimination and harassment described was not considered to amount to serious harm. While accepting that the complainants' absence from the country may be noted, the delegate did not accept that this would be sufficient to attract the adverse attention of the Sri Lankan authorities. There had been over 5000 UNHCR assisted returnees from India since the end of the war without any country information suggesting that they have faced persecution for their extended period of time away from Sri Lanka. The delegate also did not accept V.'s allegation that as a woman, she will be subjected to physical, mental and sexual torture.

2.5 The delegate then admitted that evidence indicated that both complainants were affected by the Immigration Department's data breach and thus the Sri Lankan authorities may have accessed the information released on the Department's website. As a consequence, both complainants could be identified as persons who lived and claimed asylum in Australia. However, the delegate examined country information to conclude that the Sri Lankan authorities would not single them out from other returnees or subject them to detention or questioning separate from the standard practices of re-entry. The delegate also noted that in its latest guidelines for Sri Lanka, the UNHCR did not mention failed asylum seekers, failed Tamil asylum seekers, or Tamils returning after residence abroad as being identified as being at risk of persecution.⁴

2.6 The delegate further noted that country information no longer supported a finding that Tamil ethnicity of itself imputes LTTE membership or a pro-LTTE opinion, even when combined with a person's place of origin. Country information indicated a marked improvement in the economic and security situation for Tamils in Sri Lanka, including in former LTTE-controlled areas. As such, the complainants were not deemed of having a well-founded fear of persecution for being Tamils from the East of the country or for being from an area previously controlled by the LTTE.

2.7 As to the complainants' claim that they have no close relatives or friends in Sri Lanka, the delegate examined country information according to which they would be able to access initial assistance from the International Organization for Migration on arrival in Sri Lanka, which would support them to relocate and reintegrate into Sri Lankan community. The

¹ No further information is provided about that data breach.

² Now Department of Home Affairs.

³ The complainants were held in different detention canners until March 2014 and were invited to apply for a protection visa in June 2016.

⁴ *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka*, 21 December 2012.

delegate also noted that both applicants have completed schooling and subsequently have been employed and that they have both demonstrated the ability to independently earn a living, travel to Australia and manage their affairs since 2013, without having close familial support in the same country.

2.8 On 24 April 2018, the Immigration Assessment Authority upheld the delegate's decision. On 9 September 2019, the Federal Circuit Court of Australia dismissed the complainants' application for judicial review. On 18 February 2020, the Federal Court of Australia dismissed the complainants' appeal. On 18 June 2020, the High Court of Australia dismissed the complainants' application for special leave to appeal.

2.9 The complainants then requested the Minister for Immigration and Border Protection to intervene in their case,⁵ invoking their fear of suffering serious harm and their economic situation upon return and V.'s need for kidney dialysis.⁶ On 7 September 2020, the Department of Home Affairs determined that the complainants' claims did not meet the guidelines for ministerial intervention. In particular, the Department acknowledged that V.'s condition was serious and that treatment in Australia would likely be better than that provided in Sri Lanka. However, the Department also noted that V. had not provided any evidence that indicated she would be unable to access medical treatment for her condition in Sri Lanka and there was no evidence to suggest that she would be denied access to medical services for her medical condition, or that the medical services she would receive would expose her to an increased risk of serious harm. As a result, the Department rejected the claim that V.'s medical condition would pose her at risk of serious harm in Sri Lanka. The complainants' request for intervention was therefore not referred to the Minister.

Complaint

3.1 The complainants submit that, if they are returned to Sri Lanka, they face a real risk of being tortured and suffering cruel, inhuman or degrading treatment or punishment, in violation of article 3 of the Convention.

3.2 The complainants allege that the fact that no one of their families has ever returned to Sri Lanka, despite being forced to live in difficult conditions in Tamil Nadu in India, could lead to suspicions that the nature of the LTTE connections which caused their flight in the first place was in fact more serious. S. and also possibly V. face the real risk of prolonged detention in Sri Lanka because of their families' links to the LTTE and the fact that they will not be able to locate any family member to provide them with a place to stay nor to pay for possible bail for their illegal departures. The Sri Lankan authorities would have no knowledge of S.'s departure from Sri Lanka and therefore would not assume that he was not legally responsible for that departure. The complainants refer to various news media sources on the political and security situation in Sri Lanka since the Rajapaksa election, including to the April 2019 Easter bombings, to allege that the political situation in Sri Lanka has worsened for Tamils and the likelihood of being suspected of pro-LTTE sympathies is much higher as a result.

3.3 Finally, the complainants inform that V. is suffering from significant kidney failure and requires complex treatment. Her health condition also puts her at an even higher risk of severe consequences of a Covid-19 infection.

State party's observations on admissibility and the merits

4.1 In its observations of 20 August 2021, the State party challenges the admissibility of the complaint, arguing that the claims made by the complainants are inadmissible *ratione*

⁵ The Minister's guidelines set out the circumstances in which the Minister may wish to consider exercising the ministerial intervention power under section 48B of the Migration Act. Notably, the Minister may wish to consider the section 48B public interest power where there are exceptional circumstances that justify considering new information or where significant changes in circumstances have occurred subsequent to a decision to refuse a protection visa.

⁶ A medical certificate of 19 March 2020 confirms that V. is in end stage kidney disease and is awaiting the creation of an AV fistula to initiate haemodialysis. Permanent residency status will enable the doctors to consider her for renal transplant surgery.

materiae because the treatment described in their allegations does not meet the threshold for torture under article 1 of the Convention. It also submits that the complainants' claims are manifestly unfounded within the meaning of rule 113 (b) of the Committee's rules of procedure, because their claims have already been considered through comprehensive domestic administrative and judicial processes.

4.2 On the merits, the State party recalls in detail the decisions issued at the domestic level. It submits that the domestic authorities have considered all the claims made by the complainants before the Committee, with the exception of their claim based on the updated country information. However, the State party notes that the various reports regarding the situation in Sri Lanka do not indicate that the complainants would be personally at risk of harm meeting the definition of torture.

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

5. On 8 January 2024, the complainants submitted their comments on the State party's observations. In particular, they contested the domestic decisions and provided a further update on the human rights situation in Sri Lanka. They also informed that V. has received a kidney transplant and thus will be particularly vulnerable – in case of prolonged detention to verify her identity – to the well-known lack of medical attention given to those detained by the Sri Lankan authorities.

Additional submission by the State party

6. On 3 December 2024, the State party provided additional observations. As to the country information, the State party notes that it does not demonstrate that the complainants would be personally at risk of harm. The State party also refers to the most recent Country Information Report on Sri Lanka dated 2 May 2024 and published by the Australian Government Department of Foreign Affairs and Trade (DFAT). This report indicates that – depending on the circumstances of their departure, their personal circumstances, and their travel documents – individuals who have sought asylum overseas may face questioning upon their return to Sri Lanka from Sri Lankan Immigration, the State Intelligence Service, Navy Intelligence and the police. Individuals who departed the country illegally will be charged with an offence under the Immigrants and Emigrants Act 1948. Once airport processes are complete, these individuals are presented to court in Negombo (near Colombo Airport) and bailed (with no payment required to secure bail). Once bailed, returnees are free to leave – they do not spend any time in prison. If Negombo court is closed by the time returnees are presented, they will be remanded and presented to court the following day. DFAT estimates that the entire process (including questioning at the airport, court appearance, bail and release) generally takes 12 to 24 hours from the point of arrival, depending on the number of returnees. Recent reporting from Tamil asylum seekers who had returned to Sri Lanka from Australia indicates that they experienced no mistreatment at the airport, and that the overall process was “straightforward.”⁷ With respect to the healthcare system in Sri Lanka, “the public health system is free for all Sri Lankan citizens and medicines can be accessed free of charge from government-run hospitals in all provinces.”⁸

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

⁷ DFAT, *DFAT Country Information Report Sri Lanka*, 2 May 2024, paras. 5.36, 5.39, 5.41 and 5.43-44.

⁸ *Ibid.*, para. 2.34.

7.2 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 complainants have exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 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 the 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.⁹ The Committee gives considerable weight to findings of fact made by organs of the State party concerned;¹⁰ 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.¹¹

7.4 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 complainants and considered that they had not demonstrated that they themselves or their parents had been targeted by the Sri Lankan authorities, that they had a political profile of interest to the Sri Lankan authorities or that the level of harm resulting from their status as failed asylum seekers or V.'s medical condition would amount to persecution. On this basis, the authorities concluded that the complainants had not established the existence of substantial grounds to show that they would face a foreseeable, real and personal risk of being tortured if returned to Sri Lanka.

7.5 The Committee also notes that the complainants contest the assessment made by the authorities of the State party. However, the Committee observes that the complainants provided no documentation or other evidence to substantiate their assertions of a personal risk and that the authorities of the State party found, after a thorough assessment of all the facts and evidence presented at different levels of jurisdiction, that the complainants had not provided sufficient evidence that they would run a foreseeable, real and personal risk of being tortured if returned to Sri Lanka. Consequently, the Committee finds that the complainants have not established that the domestic evaluation of the facts and evidence concerning their alleged risk of treatment contrary to the Convention upon return to Sri Lanka suffered from any defects.¹²

7.6 The Committee recalls its earlier decisions in which it found claims to be manifestly unfounded where the author of a communication failed to submit substantiated arguments showing that the danger of being subjected to torture was foreseeable, present, personal and real.¹³ 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

⁹ *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12; *S.K. v. Australia* (CAT/C/73/D/968/2019), para. 12.5; and *Z.S. v. Georgia* (CAT/C/70/D/915/2019), para. 7.4.

¹⁰ 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.

¹¹ For example, *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.4. See also general comment No. 4 (2017), para. 50.

¹² *S.K. v. Australia*, para. 12.5.

¹³ For example, *S.M. v. Australia* (CAT/C/76/D/981/2020), para. 7.5; *N.J. v. Australia* (CAT/C/79/D/1021/2020), para. 6.5; *H.G. v. Australia* (CAT/C/79/D/1066/2021), para. 6.5; and *L.S. v. Australia* (CAT/C/81/D/1010/2020), para. 7.6.

Committee concludes that the complainants have failed to substantiate their claims sufficiently for the purpose of admissibility.¹⁴

8. 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 complainants and to the State party.
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¹⁴ *S.K. v. Australia*, para. 12.6.