



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2484/2014*, **

<i>Communication submitted by:</i>	S.K. (represented by counsel, Nilufar Sadeghi)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	26 November 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 27 November 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2019
<i>Subject matter:</i>	Non-refoulement; past torture of the author
<i>Procedural issues:</i>	Non-substantiation of the claims, exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture, right to life, arbitrary detention, non-refoulement
<i>Articles of the Covenant:</i>	6 (1), 7 and 9 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is S.K., a Sri Lankan national born in 1976. He sought asylum in Canada, his application was rejected and he risks deportation to Sri Lanka. He claims that his deportation would violate his rights under articles 6 (1), 7 and 9 (1), of the Covenant because he fears that he will be killed or tortured in Sri Lanka on the grounds of his past work for a non-governmental organization (NGO) that helped persons of Tamil origin. He is represented by counsel.

1.2 On 27 November 2014, in accordance with rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to expel the author to Sri Lanka while the communication was being considered. On 11 January 2017, the State party requested that the interim measures with regard to the author be lifted on the grounds that he had failed to

* Adopted by the Committee at its 127th session (14 October–8 November 2019).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christoph Heyns, Bamariam Koita, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.



substantiate his claims, and that he had not exhausted domestic remedies. On 17 March 2017, the Committee decided to accede to the State party's request to lift the interim measures.

The facts as presented by the author

2.1 The author came to Canada on 18 October 2013, having travelled through Qatar, Brazil, Mexico and the United States of America. He applied for asylum immediately. On 8 August 2014, the Immigration and Refugee Board of Canada rejected his asylum application, determining that the claimant was not "a person in need of protection". Having heard all the evidence, the Board panel concluded that the author did not face a personal risk of torture in Sri Lanka.

2.2 The author submits that on 3 October 2014, he filed an application for leave to appeal at the Federal Court.¹ He did not benefit from an automatic stay of removal pending this application because he entered Canada through the United States. In practice, leave to appeal is granted in only 10 per cent of all applications and the evidence is reviewed based only on a "reasonableness" standard, which does not allow for a genuine review of the case.

2.3 Regarding the pre-removal risk assessment, under the amended Immigration and Refugee Act, applications for such assessments for individuals who have had their refugee claims rejected are no longer allowed, unless 12 months have passed since the rejection. The author cannot therefore use that procedure.

2.4 The author submits that while he lived in Sri Lanka, he worked for the Sewalanka Foundation as a field officer. Sewalanka is a non-governmental organization "linked" to the Office of the United Nations High Commissioner for Refugees (UNHCR), helping displaced Tamils. He was employed by this organization for 13 years. He claims that his "active role" on the ground in Sri Lanka makes him an easy target of the authorities, who view the work of the organization as a threat to their reputation.²

2.5 The author submits that the officers of the Criminal Investigation Department of Sri Lanka suspect NGO workers of leaking information to the press and media. In August 2011, Sri Lankan soldiers beat the author's driver and threatened the author himself after he refused to give them a lift from a refugee camp.³ In March 2013, the author received a death threat from the Department and was ordered to stop collecting information regarding Tamil women raped in detention.

2.6 The author further submits that even after his arrival in Canada, two officers of the Criminal Investigation Department visited him in April 2014. He was not at home at the time.⁴

The complaint

3. The author submits that if he is removed to Sri Lanka, he will face the risk of torture and death at the hands of the authorities there, which would violate the State party's obligations under article 6 (1), 7 and 9 (1) of the Convention.

State party's observations on admissibility and the merits

4.1 By a note verbale of 10 July 2015, the State party provided its observations on admissibility and the merits. It notes that the author claims that if deported to Sri Lanka, he would face a risk to his life, be at risk of torture or other cruel, inhuman or degrading treatment or punishment, and be at risk of arbitrary detention. The risk would come from

¹ His request was pending at the time of the initial submission, but subsequently rejected.

² The author, describing the "worsening situation" in Sri Lanka, cites several reports from Human Rights Watch, Amnesty International, Freedom from Torture Group, UNHCR and several newspaper articles. He also cites the most recent concluding observations of the Committee against Torture concerning Sri Lanka, in which the Committee stated that the widespread use of torture in police custody was "continued and consistent".

³ The author provides no further details.

⁴ The author was questioned regarding this event by the Immigration and Refugee Board. He testified that he did not know that these two persons were from the Criminal Investigation Department, but that they spoke Tamil.

the Government, the military and the police, as well as associated military groups. He claims that he would be targeted because of his previous employment as a field worker with a non-governmental organization, the Sewalanka Foundation, which provided assistance to Tamils displaced during the civil war. The author himself is a Tamil male from the north of Sri Lanka and would be identified as a failed refugee claimant. The author claims that he was threatened several times by governmental soldiers in the period 2011–2013.

4.2 The State party's authorities have determined that if the author is deported to Sri Lanka, he would face no risk of persecution, no risk of torture, no risk to life, nor a risk of cruel and unusual treatment or punishment. The State party authorities found that some of the author's statements were not credible and that he was able to avoid threats by changing work assignments and location. On the basis of objective country reports, the State party authorities have concluded that the author's profile would not place him at risk, even if he was identified as a former field worker for an NGO and as a failed refugee claimant.

4.3 The State party notes the author's claims that in 2001 he started working for an NGO assisting Tamils who had been displaced. In August 2011, he was threatened by governmental soldiers after he had refused to comply with their demand to give them assistance by transporting them in his NGO vehicle. After explaining this to his supervisor, he was transferred to another location. In March 2013, after the author began collecting information about sexual assaults against women in police detention, he received death threats from the police asking him to stop. In August 2013, he left Sri Lanka with the help of an agent.

4.4 The author's claim for protection was heard by the Refugee Protection Division of the Immigration and Refugee Board of Canada on 8 July 2014. At the hearing, the author was represented by legal counsel and had the right to adduce evidence and make submissions. The author gave an oral testimony and provided identity documents and reports on conditions in Sri Lanka. The Division is an independent, quasi-judicial specialized tribunal that considers applications for protection based on fears of persecution, torture or certain similarly serious violations of their human rights if they were to be removed to their country of origin. The Division determines whether a person is a refugee, or whether he or she is in need of protection for the purposes of section 97 of the Immigration and Refugee Protection Act. It conducts oral hearings in an informal and non-adversarial manner.

4.5 In its decision dated 8 August 2014, the Refugee Protection Division found that the author had failed to adequately explain his choice to include in his written testimony the allegation raised at the hearing that a colleague had also been threatened in March 2013. That allegation had not been repeated before the Committee. The author had also failed to adequately explain that he had omitted the allegation that he believed two police officers had followed him everywhere he went before his departure from Sri Lanka and this allegation had also not been raised before the Committee. The Division highlighted the author's testimony that he had left the United States, despite the expectation that he would have been granted refugee status if he had remained there. After receiving threats in 2011, the author was able to move to another work location and did not receive any further threats until March 2013. The March 2013 threats stopped after the author completed his work on collecting information about sexual assaults in detention. After June 2013, the author was moved to an office job in Vavuniya and the threats stopped. The author was never threatened at his home in Sri Lanka.

4.6 The Refugee Protection Division further rejected the author's claim that he was at continuing risk because two people had visited his former residence in Sri Lanka in April 2014 and asked his wife about his whereabouts. The Division found that the author had not adduced enough evidence to show that these people were police officers or whether they posed any threat. Furthermore, it found that the author's past work with the Sewalanka Foundation was not of a kind that would expose him to the risks described in the documents concerning conditions in Sri Lanka. The documents concerning the killing of aid workers during the armed conflict in 2006 and 2007 do not show that aid workers are still at risk. More recent reports, for example, do not describe such workers being targeted. Instead, the reports describe past allegations of threats against particular types of NGO workers, especially those who were actively critical of the Government. The author also seems to accept that the Sewalanka Foundation is not critical of the Government, arguing instead that

NGOs are attacked even if they are not critical of the Government. The Division found that the Foundation worked with the United Nations with the approval of the Government.

4.7 The Amnesty International report for 2014/2015 on Sri Lanka states that human rights defenders were threatened and otherwise abused.⁵ It is not suggested in the report that this pattern extends to current or former NGO workers who are not engaged in public advocacy. In its report for 2013, Amnesty International suggested there was State repression of aid workers, but in the report itself examples are described of such violence taking place during the civil war, of attacks on persons accused of supporting the Liberation Tigers of Tamil Eelam or of attacks on persons who were actively critical of the Government. Similarly, a 2015 report by Human Rights Watch describes a crackdown on human rights defenders and other activists, but cites no threats against aid workers.

4.8 The author cites a document published by the Research Directorate of the Immigration and Refugee Board stating that failed refugee claimants who return to Sri Lanka may be at increasing risk of encountering “difficulties with the authorities” if they have been involved with NGOs. The relevant passage, however, comes from a report produced by the Home Office of the United Kingdom of Great Britain and Northern Ireland in 2009, which merely indicated that persons who had, for example, been involved with an NGO might be questioned by the authorities, not that they would be subjected to a real risk of irreparable harm.

4.9 The Refugee Protection Division also found that that the documents concerning discrimination against Tamils showed that the Tamils might face more severe treatment when they were suspected of opposing the Government or having a connection to the Tamil Tigers. The author had not shown, however, that he was suspected of any such activities. Several reports confirm these statements, for example one from the Netherlands Council of State, a judicial body that serves as the highest court in the country for appeal against executive branch decisions, which confirmed that the Sri Lankan authorities were capable of distinguishing ordinary Sri Lankan returnees, including former asylum seekers, from activists who posed a risk to the unity of Sri Lanka because they played a significant role in separatist Tamil organizations. Based on such reports, the State party submits that even if the Sri Lankan authorities identify the author as a returning Tamil male from the Northern Province who has unsuccessfully sought protection in Canada, that will not lead the authorities to subject the author to irreparable harm.

4.10 On 3 September 2014, the author applied to the Federal Court for leave to seek a judicial review of the decision of the Refugee Protection Division. The Federal Court dismissed the author’s application without providing any reasons (in accordance with its usual practice). On 27 October 2014, the author was served with a “direction to report” form, indicating that he was scheduled to be removed on 27 November 2014. On 26 November 2014, the author submitted a communication and a request for interim measures from the Committee. As a consequence, the State party temporarily deferred the removal of the author.

4.11 The State party submits that the author’s communication is inadmissible in whole or in part due to the non-exhaustion of domestic remedies. When the author was notified in October 2014 that he was scheduled for removal the following month, he failed to request an administrative deferral of removal from the Canada Border Services Agency. Although enforcement officers have limited discretion as to the timing of removal, the Federal Court of Appeal has repeatedly held that enforcement officers must defer removal if there is “compelling evidence” that the removal would expose a person to “a risk of death, extreme sanction or inhumane treatment”. The author did not pursue this remedy.

4.12 Furthermore, the alleged risk of arbitrary detention in Sri Lanka does not engage the State party’s obligations under article 9 of the Covenant. According to the Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the obligation of non-removal is limited to situations “where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant”. Similarly, the European Court of Human Rights has not handed down any decisions in which it found that a returning State

⁵ The State party refers to the *Amnesty International Report 2014/15: The State of the World’s Human Rights* (February 2015).

party would be in violation of article 5 if the applicant faced a risk of arbitrary detention in the receiving State.

4.13 The author's allegations are manifestly unfounded owing to non-substantiation of his claims and his communication must therefore be declared inadmissible. The author has failed to establish a prima facie case that he faces a real risk of irreparable harm if returned to Sri Lanka. In that regard, it is the Committee's long-standing view that "important weight should be given to the assessment conducted by the State party", unless it is found that such evaluation of the facts and evidence is manifestly arbitrary or amounted to a denial of justice. The author's submissions to the Committee do not present new material facts and evidence that speak to personal risk to the author.

4.14 Objective reports indicate that there continue to be serious human rights violations in Sri Lanka, especially concerning Tamil males who have been detained by police or other authorities and face the risk of torture or other mistreatment, particularly if they are suspected of ties to the Tamil Tigers. Despite these concerns, it is not the case that all Tamil males originally from the North are at a real risk of irreparable harm. According to the 2012 UNCHR eligibility guidelines, additional personal characteristics are required to establish prima facie grounds for believing that the author would be at risk if returned.

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

5.1 The author provided his comments on 14 September 2015. He notes that all documentary evidence which was submitted to the Committee confirms that not only human rights defenders who criticize the Government are targeted by the authorities. The evidence demonstrates that simple local community workers are targeted by the security forces. This persecution did not stop at the end of the conflict in Sri Lanka in May 2009 and continues today.

5.2 According to a report published by Amnesty International in April 2013, Sri Lanka has targeted human rights defenders who are not actually prominent activists engaged in advocacy at the international level but local community workers providing assistance to people struggling to recover from decades of armed conflict.⁶ Another report by the International Truth and Justice Project refers to an abducted Tamil NGO worker, who was tortured and sexually assaulted.⁷

5.3 The Government of Sri Lanka continues to impose strict conditions on the operations of NGOs. A recent article in the magazine *Foreign Policy* states that the Government keeps a tight grip on organizations which implement development projects, especially those which are involved in matters concerning human rights and psychological care in the area where the fighting was at its most intense. OHCHR itself has investigated allegations of war crimes, which made "a paranoid regime even more skittish" according to the author. The Government is trying to create an intimidating environment to discourage community members and civil society organizations from providing information that might incriminate it. The shrinking space in which NGOs are operating is a reflection of broader trends in Sri Lanka. People's freedom of movement is curtailed, especially in the north. Freedom of expression is limited via a restrictive media environment. The recent crackdown on NGOs is another example of the attempt by the Government to centralize power and stifle dissent.

5.4 More importantly, a recent letter from the Sewalanka Foundation clearly provides support for the author and describes him as one of the field workers who were threatened, interrogated and detained for doing their jobs.⁸ Even if the NGO itself operates with the approval of the Government, according to the author that approval "masks the reality that they continue to target" even simple field workers. The author's wife recently received a "message form" from the Sri Lankan police requesting that the author present himself to the

⁶ Amnesty International, "Sri Lanka's assault on dissent".

⁷ The author refers to a report entitled *A Still Unfinished War: Sri Lanka's Survivors of Torture and Sexual Violence 2009-2015*.

⁸ A copy of the letter is provided.

police for questioning.⁹ No clear reason for the request was given. The police have been visiting the author's wife continuously, a practice that continues to the present.

5.5 The author also objects to the State party's argument that he has failed to exhaust all domestic remedies by not requesting administrative deferral of removal. Such a request was requested and rejected on 25 November 2014 in a letter that also sets the date of removal of the author. The author therefore requests the Committee to consider his communication admissible, keep the interim measures in place and find a violation on the merits.

Additional observations

From the State party

6.1 In its supplementary observations, dated 1 March 2016 and 12 January 2017, the State party submits that on 19 September 2015 the author applied for a pre-removal risk assessment and provided additional materials in support of that application on 29 September 2015. In accordance with section 232 of the Canadian immigration and refugee protection regulations, the removal order against the author was stayed pending the determination of the risk assessment. This means that the communication must be considered inadmissible for lack of exhaustion of domestic remedies.

6.2 The pre-removal risk assessment process is founded on the domestic and international commitments to the principle of non-refoulement undertaken by Canada. Such applications are considered by officers trained to assess risk and, more particularly, to consider international human rights obligations relating to refugee protection. Those officers also receive training on administrative law and jurisprudence and keep up to date with developments around the world. For the author, whose claim has already been evaluated by the Refugee Protection Division, a pre-removal risk assessment is to determine whether there have been any new developments since the decision taken by the Refugee Protection Division and whether there is new evidence to demonstrate that he is now at risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment. The risk assessment process for the author will involve an updated assessment of such risks. In his application, the author raised many of the same aspects and allegations that were contained in his initial submission to the Committee. The risk assessment should be considered as a remedy, since it addresses the same allegations as are currently being considered by the Committee.

6.3 In its additional submission dated 11 January 2017, the State party provides a copy of the findings from the pre-removal risk assessment to the effect that the author would not be subject to risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment if he returned to Sri Lanka. The State party further submits a letter from a member of the Sri Lankan parliament, which was not previously submitted to the Canadian authorities, nor was it in the author's initial submission to the Committee. In the letter, the Member of Parliament states that the author was unofficially interrogated and detained on many occasions. Those claims were not previously made and this unexplained inconsistency weakens his credibility.

From the author

7.1 In his additional submissions, dated 11 May 2016 and 1 March 2017, the author reports on the results of his application for a pre-removal risk assessment, which was rejected on 17 March 2016. The author submits that the domestic remedies have therefore been exhausted. He mentions again the support letter from the NGO where he worked as a field staff member and the fact that his wife received a "message form" from the Sri Lankan police. The author therefore claims that he will be detained at the airport upon his return. His wife has also been visited by unknown armed individuals asking to see him. While no arrest warrant has been issued against him, he is a Tamil NGO worker who is wanted for questioning by police.

7.2 A recent case decided by the Immigration and Refugee Board, dated 4 February 2015, corroborates the fact that local community workers, such as the author, are

⁹ The author provides a copy of what appears to be a notice from the police, dated 7 March 2015. No reason is given for the notice.

persecuted. The author therefore submits that his initial submissions and recent evidence clearly support the fact that he fits a profile of individuals who have been persecuted in the past and at present. The author's wife also went to see a Member of Parliament, who provided a letter that supports the author's request for protection in Canada, also stating that he had been "unofficially interrogated and detained on many occasions" but had been released when the Member of Parliament got involved.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

8.3 The Committee takes note of the State party's submission that the communication should be declared inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. The State party submits that the author first failed to file a request for deferral of his removal and subsequently failed to file an application for a pre-removal risk assessment. The Committee notes, however, that the author filed a request for deferral which was rejected on 25 November 2014 and an application for a pre-removal risk assessment, which was rejected on 17 March 2016. Accordingly, the Committee finds that it is not prevented by the requirements of article 5, paragraph 2 (b), of the Optional Protocol from examining the present communication.

8.4 The Committee notes the State party's argument that the author's allegations under article 9 (1) are incompatible *ratione materiae* with the Covenant. In that connection, it notes that the author has not provided any information, evidence or explanation as to how his rights under article 9 (1) would be violated by the State party through his removal to Sri Lanka in a manner that would pose a substantial risk of irreparable harm, such as that contemplated under articles 6 and 7 of the Covenant.¹⁰ The Committee concludes that this part of the communication is inadmissible pursuant to article 3 of the Optional Protocol.

8.5 The Committee notes the State party's argument that the author's allegations under articles 6 (1) and 7 of the Covenant are insufficiently substantiated. However, the Committee is of the view that, for purposes of admissibility, the complainant has provided sufficient information as to the risk of irreparable harm that he would allegedly face if he was returned to Sri Lanka. Accordingly, the Committee declares the claim admissible and proceeds with its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by article 7 of the Covenant (para. 12). The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹¹ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹²

¹⁰ See *N.D.J.M.D. v. Canada* (CCPR/C/121/D/2487/2014).

¹¹ See *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2, and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

¹² *Ibid.*

9.3 The Committee recalls its jurisprudence, according to which important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.¹³

9.4 The Committee notes the author's contention that his removal to Sri Lanka would expose him to a risk of irreparable harm, in violation of articles 6 (1) and 7 of the Covenant, owing to the fact that he worked as a field worker for an NGO assisting Tamils displaced during the conflict. Furthermore, the author collected information about sexual violence against women in detention and, owing to his work, he received threats on several occasions from Sri Lankan soldiers. His family have continued to receive threats and upon return, the author will be identified as a failed refugee claimant. The author further provided a notice requesting him to appear before the police.

9.5 The Committee notes the State party's argument that the author's allegations of risk have been thoroughly assessed by several State party decision makers in the framework of the Refugee Protection Division and pre-removal risk assessment procedures, which determined that the author had failed to substantiate his allegations. Specifically, the State party submits that the author has no high profile, was not actively critical of the Government and that the NGO he worked for, the Sewalanka Foundation, operated with the approval of the Government. The State party also submits that the author's allegations are not credible since he could not sufficiently explain why he failed to mention his allegation that two police officers had followed him everywhere prior to his departure (para. 4.5 above) or that he was "unofficially" interrogated and detained on several occasions (para. 7.2 above). The State party further challenges the reports on conditions in Sri Lanka, claiming that they mostly reflect conditions during the conflict, which ended in May 2009.

9.6 The Committee notes that the State party's authorities, after examining the evidence provided by the author and reports by States and non-governmental organizations on the situation of Tamils in Sri Lanka at the time of the examination of his request, rejected his application since they considered that the author had failed to substantiate the real risk he would be exposed to if removed to Sri Lanka, because he had failed to provide reliable evidence to corroborate his account and because being a field worker for a registered NGO, a Tamil from the north and a failed asylum seeker would not, in itself, expose him to a real and personal risk. The Committee considers that the author has not identified any irregularity in the decision-making process or any risk factor that the State party's authorities failed to take properly into account. The Committee finds that, while the author disagrees with the factual conclusions of the State party's authorities, the facts before it do not allow it to conclude that the assessment of the facts by the State party's authorities and the evidence they provided were clearly arbitrary or amounted to a manifest error or denial of justice. Accordingly, the Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to articles 6 (1) and 7 of the Covenant if he were to be removed to Sri Lanka.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the removal of the author to Sri Lanka would not violate his rights under articles 6 (1) and 7 of the Covenant.

¹³ See *Pillai et al. v. Canada*, (CCPR/C/101/D/1763/2008), para. 11.4, and *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.