



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. 951/2019*, **

<i>Communication submitted by:</i>	R.K. (represented by counsel, Gabriella Tau)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	30 August 2019 (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 2 September 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	4 November 2022
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment if deported to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	3, 14 and 16

1.1 The complainant is R.K., a national of Sri Lanka born on 23 March 1977. His application for asylum has been rejected by the State party and he claims that his deportation to Sri Lanka would amount to a violation by the State party of his rights under articles 3, 14 and 16 of the Convention. The State party made the declaration provided for under article 22 (1) of the Convention on 2 December 1986. The complainant is represented by counsel.

1.2 On 2 September 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Special Rapporteur on new complaints and interim measures, decided to issue a request for interim measures.

Facts as submitted by the complainant

2.1 The complainant is of Tamil ethnicity and is from Thirunelvely, Jaffna District, in Northern Province, Sri Lanka. He indicates that he was arrested and detained in 2000, following the arrest of his older brother on 21 October 1999.¹ He claims that he was held in

* Adopted by the Committee at its seventy-fifth session (31 October–25 November 2022).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

¹ The complainant has provided a certificate issued by the International Committee of the Red Cross according to which his older brother was visited by persons working for the Red Cross on various



a camp where he was subjected to severe torture during interrogation. He was released the same day but was required to remain at the disposal of the authorities for three months. Later that year, the situation in the country “returned to normal” thanks to the peace talks undertaken at the time. The complainant’s older brother was released, and the complainant opened a sewing shop near a military base in Thirunelvely. He indicates that, in 2002, he was asked to make Pongu Tamil flags. Since he was sympathetic to the Liberation Tigers of Tamil Eelam (Tamil Tigers) and Pongu Tamil, he agreed to the request in return for payment.

2.2 In 2005, a bomb exploded in the military base near the complainant’s workshop. The complainant indicates that, as the authorities had found out that he was making Pongu Tamil flags and suspected him of having links to the Tamil Tigers because of his older brother, they interrogated and tortured him. He claims that the torture left him with serious injuries; for example, he is now unable to fully stretch out one of his arms. Fearing further abuse, he closed his workshop and left Thirunelvely. Between 2005 and 2011, he changed his place of residence several times but remained in the Jaffna area. The complainant adds that, in 2008, his nephew was arrested and subsequently reported missing, which prompted the complainant to go into hiding for a long period of time for fear of being the next person in his family to suffer this fate.

2.3 When the war ended in 2009, the complainant opened another sewing workshop, this time near the University of Jaffna. On 27 November 2012, a day of commemoration in memory of fallen fighters of the Tamil Tigers, students from the University organized a demonstration on the campus, which was violently repressed by the authorities. The complainant indicates that the organizer of the demonstration hid in his workshop and that persons dressed in civilian clothes followed him in and brutally assaulted him. The complainant tried to intervene but was prevented from doing so by the aggressors. Shortly afterwards, the aggressors left, leaving the victim lying on the floor, seriously injured. The complainant tried to report the incident to an army patrol, but the soldiers told him to keep quiet about it. He indicates that it was at this point that he realized that the persons who had attacked the student in his workshop were probably agents of the Criminal Investigation Department. The complainant claims that the following day, 28 November 2012, he was kidnapped by agents of the Criminal Investigation Department. Two individuals on motorcycles took him to an unknown location, where they repeatedly asked him why the student had sought shelter in his workshop. They also demanded to know the whereabouts of his brother, who had disappeared. They accused him of supporting the Tamil Tigers by relaying messages to the movement and making flags for them. The complainant indicates that the agents beat him with clubs, stripped him naked and brutalized his genitals. He claims that he lost consciousness a number of times and that he still bears the physical and psychological scars of this torture. The complainant states that he was released the next day on the condition that he keep his workshop and become an informant for the Criminal Investigation Department, monitoring the activities of students who supported the Tamil Tigers. The complainant adds that the agents of the Criminal Investigation Department forbade him from filing a complaint or contacting a non-governmental organization (NGO) and threatened to kill him if he did.

2.4 The complainant indicates that he decided to flee the country at that very moment but did not have enough money to do so and had no way of contacting people smugglers. He also claims that he was placed under strict surveillance by the Criminal Investigation Department and that he was constantly harassed by agents who regularly came to his workshop to ask him about the activities of students who supported the Tamil Tigers. The complainant indicates that, from 2015 onward, the Criminal Investigation Department intensified its surveillance and began questioning him on a systematic basis. He would inform the agents of visits by students to his workshop, without providing many details. He assumed that the agents knew that he was not telling them the whole truth and so he started working faster on his escape plan. Eventually, he managed to contact a smuggler in Colombo who gave him a fake passport, which he used to board a flight to Doha on 24 January 2016.

occasions between 21 October 1999 and 20 September 2000. This brother was granted asylum in Switzerland on an undetermined date.

2.5 The complainant arrived in Switzerland the same day and filed an asylum application on 8 February 2016. He states that, on 18 February 2016, he attended a personal background interview at a reception centre and mentioned that he had been tortured on multiple occasions. On 28 August 2018, the complainant was interviewed by an official of the State Secretariat for Migration regarding his reasons for seeking asylum.

2.6 The complainant claims that, on 26 July 2016, the body of his younger brother was discovered on the shore of a lake. His body showed signs torture; for example, he had only one eye. The complainant indicates that the autopsy report, which indicated that the cause of his brother's death was an accident, had been falsified, a possibility that was also suggested in an article that appeared in the local press.

2.7 The complainant's asylum application was rejected by the State Secretariat for Migration on 3 December 2018. The decision did not call into question the credibility of the complainant's allegations regarding the incidents that had occurred in 2000, 2005 and 2012, which were related to his claims of torture. However, the State Secretariat for Migration found that there was no temporal causal link between these events and the complainant's departure in 2016, four years after the last of the alleged incidents. The State Secretariat for Migration found that the complainant had not adduced any specific incidents occurring after 2012 and that the interrogations allegedly conducted by agents of the Criminal Investigation Department had not been sufficiently intense to support the conclusion that the complainant would be at risk of serious harm if he were returned to Sri Lanka. The Secretariat also stated that nothing in the complainant's statements or his case file indicated that he would attract the attention of the Sri Lankan authorities if he were returned to his country of origin.

2.8 The complainant appealed the decision of the State Secretariat for Migration before the Federal Administrative Court on 4 January 2019. He challenged the State Secretariat for Migration's conclusion that there was no causal link between the persecution he had suffered and his reasons for fleeing the country, arguing that his harassment at the hands of the Criminal Investigation Department should be considered sufficiently intense. He also argued that the interview regarding his reasons for seeking asylum, which was conducted by an official of the State Secretariat for Migration, did not go well because of the official's inappropriate behaviour and statements, which prevented the complainant from substantiating the grounds for his flight in 2016. On 11 February 2019, the Federal Administrative Court rejected the complainant's appeal, upholding the findings of the State Secretariat for Migration with regard to the absence of a temporal causal link between the events that had occurred in 2000, 2005 and 2012 and the complainant's departure in 2016. The Court also upheld the finding that the complainant would not run the risk of being tortured if he were returned, since he was not on the radar of the Sri Lankan authorities. The Court noted that the applicant had been able to run his workshop until his departure and found that, since the authorities knew his whereabouts, as indicated by his claims that he was constantly being questioned by agents of the Criminal Investigation Department, they could easily have arrested him if they had had a particular interest in doing so. The Court also found that the complainant had had sufficient opportunity to explain the reasons for his flight and that there was nothing blameworthy about the manner in which the official had conducted the interview. On the contrary, the Court found that the complainant had persistently failed to give direct answers to the questions asked of him.

2.9 On 19 March 2019, the complainant filed a request for reconsideration of his asylum application based on a new medical certificate showing that he was suffering from multiple forms of physical and psychological trauma as a result of the torture inflicted on him and the psychological pressure exerted on him by the agents of the Criminal Investigation Department.² The complainant indicated that this certificate proved that he had been

² The applicant provided a medical certificate, dated 11 March 2019 and signed by Dr. A.A., a specialist in psychiatry and psychotherapy, accompanied by a French translation. The diagnosis is that the complainant suffers from post-traumatic stress and severe depressive episodes and experiences sleep problems, flashbacks and other consequences of trauma. The certificate indicates that no treatment had taken place until the complainant was examined by Dr. A.A., who prescribed therapy and two different antidepressants. The certificate also indicates that, if the complainant were to be

subjected to unbearable psychological pressure by the Sri Lankan authorities, in particular the Criminal Investigation Department, which demonstrated that he was in fact on the authorities' radar up to the time of his departure in 2016. On 16 April 2019, the complainant informed the State Secretariat for Migration that he had been referred to a psychiatric clinic by his psychiatrist because of the severity of his condition.³ He also requested that a psychiatric examination be performed on him. On 1 May 2019, the State Secretariat for Migration rejected his request for reconsideration on the ground that the complainant's health problems could not be considered independently of the asylum application procedure, especially since, according to the medical certificate provided, he had not received any prior treatment despite the fact that he had exhibited certain symptoms since 2017. The Secretariat also observed that the complainant could receive the treatment he needed in his country of origin.

2.10 The complainant appealed the decision of the State Secretariat for Migration before the Federal Administrative Court on 16 May 2019. On 27 June 2019, the Federal Administrative Court rejected the appeal. The Court found that the complainant's return to Sri Lanka would not constitute inhuman or degrading treatment, nor a violation of his right to rehabilitation, and that he would have access to the care that he needed in Sri Lanka. The Court also indicated that, while the medical certificate that had been presented as evidence had been submitted belatedly, it had nonetheless considered it and had found it to be inconclusive. The events to which the certificate related had already been deemed credible during the asylum procedure. In addition, the certificate did not indicate that the complainant had been under psychological pressure as a result of forced collaboration with the Criminal Investigation Department in the years before his departure. Moreover, even if the doctor's findings were to be taken into account, they would not be sufficient to attest to the causes of the complainant's post-traumatic stress.⁴

Complaint

3.1 The complainant claims that his deportation to Sri Lanka would expose him to a real risk of treatment contrary to article 3 of the Convention. He claims that the State party's authorities had not properly assessed the risk that he would face ill-treatment upon his removal to Sri Lanka and would again be targeted by the authorities for his perceived connections to the Liberation Tigers of Tamil Eelam. He also claims that, during the period between his last arrest in 2012 and his flight in 2016, he was subjected to psychological pressure by the Sri Lankan authorities and was forced to act as an informant. He claims that the State party's authorities did not conduct a serious and thorough investigation into his claims of torture or his claims regarding the psychological pressure exerted on him by the Sri Lankan authorities between 2012 and 2016. The complainant indicates that the State Secretariat for Migration failed to identify him as a victim of torture and did not refer him to a doctor.⁵ He further indicates that the official of the State Secretariat for Migration who

deported to Sri Lanka, he would experience unbearable psychological suffering "and an intensification of his depressive symptoms culminating in suicidal thoughts".

³ The complainant provided a medical certificate, dated 15 April 2019 and signed by Ms. L.L., a psychologist at the Gravita Psychiatric Clinic, which is associated with the Swiss Red Cross in Zurich, accompanied by a French translation. The psychologist indicates that the complainant was very unwell and had no respite as he was constantly "overwhelmed by visions of torture and prison". She adds that he "can barely eat and is never at peace". The complainant indicates that he was unable to continue his treatment at the Gravita Psychiatric Clinic for financial reasons.

⁴ The complainant indicated that he was hospitalized on 31 July 2019 and remained in hospital until an unspecified date in August. On 19 August 2019, he submitted to an examination conducted according to the standards established in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). He provides a medical certificate translated into French, dated 28 August 2019 and signed by Dr. O.O. The complainant indicates that the doctor concluded, on the basis of a preliminary examination, that the available forensic evidence was consistent with the account given by the complainant regarding his torture and mistreatment.

⁵ The complainant referred to a medical report dated 31 August 2018, signed by G.H., a general physician, written in German and translated into French by the complainant. The report indicates that the complainant has "scarred thickenings at the tip of his penis corresponding to painful scarring that

questioned him concerning the reasons why he was seeking asylum did not allow him to substantiate his assertions regarding the pressure exerted on him between 2012 and 2016. On this point, the complainant argues that he tried to explain that, because of the torture he had suffered and his position as an informant, he lived in constant fear of being subjected to further persecution and torture and that, in order to substantiate his claims of being subjected to pressure from 2012 on, he had to first explain what had happened to him before that date. However, the official of the State Secretariat for Migration repeatedly interrupted him and told him that he did not believe that the events of 2012 were relevant to his reasons for fleeing, which confused and stressed the complainant to the extent that he broke down into tears several times. Referring to the Committee's general comment No. 4 (2017), the complainant claims that the fact that he has been the victim of severe torture in the past, a fact which is not disputed by the State party, is an indication that he is at risk of being subjected to torture again if he is deported to his country of origin. The complainant refers to several country reports in support of his claim that he would be at risk of being subjected to treatment contrary to article 3 of the Convention if he were returned to Sri Lanka.⁶

3.2 In addition, the complainant states that, if he were deported to Sri Lanka, he would be at risk of being exposed to further trauma, which would constitute treatment contrary to articles 3 and 16 of the Convention. He claims that the authorities of the State party did not duly take into account the information he provided on his state of health, including the medical report issued by the psychiatrist A.A., in which it is stated that, if the complainant were to be deported to Sri Lanka, he would experience unbearable psychological suffering "and an intensification of his depressive symptoms culminating in suicidal thoughts".

3.3 The complainant argues that, by dint of his frailty and state of health and the risk of ill-treatment, even torture, to which he would be exposed if he were to be returned to Sri Lanka, the threshold of severity established by article 16 of the Convention has been reached. His expulsion would therefore constitute degrading treatment within the meaning of article 16 and would also be contrary to the principle of non-refoulement inherent in article 3 of the Convention.

3.4 The complainant adds that in Sri Lanka he would not have access to the specialized medical care he needs, which would constitute a violation of article 14 of the Convention, since he would not have access to rehabilitation services. He maintains that he needs continuous and thorough medical care. He believes that the authorities of the State party did not sufficiently take into account his extreme vulnerability and should have given due consideration to the real and personal risk he would face if deported instead of relying on general information and on the assumption that therapy for persons suffering from the effects of trauma exists in Sri Lanka and that the medication he needs would be available to him. The complainant claims that psychiatric care is not readily available in Jaffna and that there is no rehabilitation programme for victims of torture in Sri Lanka.⁷ He also indicates that he would not dare seek the medical treatment he needs, since doing so would risk drawing attention to himself. In this regard, he refers to a report by the Swiss Refugee Council according to which there is a risk that medical personnel may report victims of torture to the police.⁸

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits on 27 February 2020. It contends that the present complaint should be declared inadmissible as it

is quite consistent with his claim that his condition is the result of torture by clamping of the penis and pulling of the glans". However, the report indicates that the complainant's "restricted elbow movement could be the result of an injury and subsequent operation during childhood".

⁶ United States of America, Department of State, "Sri Lanka 2019 Human Rights Report"; Freedom from Torture, "Too Little Change: Ongoing Torture in Security Operations in Sri Lanka", February 2019; and [A/HRC/34/54/Add.2](#).

⁷ See Swiss Refugee Council, "Sri Lanka: accès aux traitements de réhabilitation pour les victimes de la torture", August 2019.

⁸ Ibid.

is manifestly unfounded. Should the Committee find the complaint to be admissible, the State party submits, in the alternative, that the complaint is without merit.

4.2 The State party argues that the complainant has not demonstrated that the facts described above raise separate issues under article 16 of the Convention, since the allegations he makes under that article form part of the allegations regarding his personal situation which he puts forward to support his claim under article 3 of the Convention.⁹ Therefore, the complainant has not substantiated, for purposes of admissibility, his claim under article 16 of the Convention.

4.3 In relation to the claims made concerning article 3 of the Convention, the State party indicates that the Committee has clarified the meaning of article 3 in its general comment No. 4 (2017), according to which the complainant must prove the existence of a personal, present and substantial risk of being subjected to torture in the event of deportation to his or her country of origin. The State party refers to paragraph 49 of the aforementioned general comment, in which the Committee refers to the information that may be taken into account when determining such a risk. The State party then analyses these items in the context of the present case.

4.4 The State party asserts that the existence of a pattern of human rights violations does not constitute sufficient grounds to conclude that an individual would be tortured upon return to his or her country and contends that there must be additional grounds for the risk to be characterized as personal, present and substantial. It notes that, in the present case, the complainant has not provided any evidence that he would face such a risk in Sri Lanka. The State party refers to the jurisprudence of the European Court of Human Rights concerning cases involving deportation to Sri Lanka and reiterates that article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) comes into play only when an applicant is able to establish that there are substantial grounds for believing that he or she would be of such interest to the Sri Lankan authorities as to be liable to be detained and interrogated by those authorities upon returning to the country. The State party argues that the complainant has not demonstrated that the Sri Lankan authorities have such an interest in him, as noted in the decisions of the State Secretariat for Migration and the Federal Administrative Court. The State party points to the Federal Administrative Court's observation that the complainant was not a member of the Tamil Tigers and that his activity in support of this organization was limited to making flags in 2004–2005, which led it to conclude that the complainant did not have a particularly close connection to the organization. Equally, the complainant's older brother, who lives in Switzerland, according to the complainant himself, was not a member of the Tamil Tigers. Moreover, the complainant has not been politically active in exile and no legal proceedings have been brought against him in Sri Lanka. The State party points to the Federal Administrative Court's finding that the fact that the complainant came from the north of the country did not in itself constitute a risk, because most Sri Lankans returning to the country from abroad come from that region.

4.5 The State party further indicates that the complainant has already made these arguments before the national authorities, but he has not explained why the authorities' findings are wrong. Neither the State Secretariat for Migration nor the Federal Administrative Court questioned the credibility of his allegations regarding the incidents that occurred in 2000, 2005 and 2012. They therefore had no reason to examine them further. However, both the State Secretariat for Migration and the Federal Administrative Court found that, in the absence of a temporal causal link between these incidents and the complainant's departure from Sri Lanka, it was impossible to conclude that he would be at risk of torture or ill-treatment in the event of his return to the country. In fact, the complainant remained in his home country until 2016, more than seven years after the end of the war and four years after the last of the alleged incidents. During his interviews, he stated that, from 2012 onward, he was neither arrested nor tortured but merely questioned several times in his workshop. According to the State party, the Swiss authorities found that these interrogations were not sufficiently intense to support the conclusion that the complainant would be at risk of "serious harm" if returned to his country. The State party also argues that if the Sri Lankan authorities

⁹ *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.3.

had a particular interest in the complainant, they would have taken tangible action against him in the period before his departure. According to the State party, the Federal Administrative Court also determined that the complainant lived in Thirunelvely until his departure, a fact which contributed to its conclusion that he was not at risk of being tortured in the event of his return to Sri Lanka. Moreover, the complainant's mother, wife and children were still living there at the time of the Court's decision. The State party considers that the fact that the complainant left his country of origin with his own passport is an additional indication that he had no reason to fear prosecution.

4.6 With regard to the complainant's claims concerning his younger brother, the State party notes that both the State Secretariat for Migration and the Federal Administrative Court observed that the brother's autopsy report indicated that his death was the result of an accident. The State party is therefore of the view that the complainant's claim that his brother was killed by the Sri Lankan authorities is unfounded. With regard to the complainant's assertions concerning the medical certificate indicating that his scars are consistent with his claim to have been subjected to torture, the State party maintains that this changes nothing, since it might reasonably be expected that the complainant would have left the country immediately after being tortured, which was not the case.

4.7 The State party takes note of the Federal Administrative Court's statement in its decision of 27 June 2019 that the medical certificate submitted in support of the request for reconsideration of the complainant's asylum application was not decisive in nature because the events to which it referred had already been deemed credible during the asylum procedure and because it did not indicate that the complainant was under psychological pressure as a result of forced collaboration with the authorities in the years preceding his departure.

4.8 With regard to complainant's argument that he was unable to say what he wanted to during his interviews with the State Secretariat for Migration, the State party indicates that, although it is true that the person who interviewed the complainant interrupted him several times, it was this person's responsibility to conduct the interview in such a way as to establish the facts relevant to the asylum application as best he could. The State party notes that the complainant was questioned several times about the reasons for his departure and was made aware that the link between the alleged events and his departure was unclear. However, he consistently went off topic and repeated himself. Moreover, the complainant signed a document confirming that he had mentioned everything that he considered essential for his asylum application.

4.9 As for the complainant's claims in relation to his state of health, the State party submits that the Federal Administrative Court took them into account in its judgment of 27 June 2019 and concluded that: (a) the complainant claimed to suffer from psychological problems of the alleged magnitude only once he had reached the stage of the review procedure and first sought psychiatric support only in 2019, three years after his arrival in the State party; and (b) the complainant's health problems could be treated in Sri Lanka, with the treatment in principle being financed by the State, and even if the public health system in Jaffna had its shortcomings, treatment for the complainant's psychological disorders would be available in the form of outpatient therapy, which was offered by various hospitals in the area, or in the form of group therapy, which was offered by NGOs. The State party indicates that the State Secretariat for Migration did not recognize the complainant as a victim of torture because of the lengthy period of time between his alleged torture and his departure from Sri Lanka and because of the long period during which he sought no help for his mental health problems. Regarding the medical certificates submitted by the complainant in support of his complaint, the State party indicates that they do not lead it to draw any new conclusions and do not point to a serious deterioration in the complainant's state of health. Furthermore, the State party reiterates that the complainant has not established a causal link between the events to which the certificates refer and the significant psychological problems from which he claimed to suffer in his request for reconsideration.

4.10 Consequently, the State party is of the view that the return of the complainant to Sri Lanka would not amount to a violation of article 3 of the Convention. Moreover, if considered admissible, the claim of a violation of article 16 is ill-founded for the reasons set out above.

4.11 With regard to article 14 of the Convention, the State party argues that it has discretion over the way in which the goal of restoring the dignity of the victim is achieved.¹⁰ Neither the Convention nor the Committee's general comment No. 3 (2012) excludes, for example, cooperation between States parties. The most important thing is that torture victims should be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals.¹¹ The victim must, of course, be involved in the selection of the service provider but does not have the right to a specific service in his or her preferred institution in the State of his or her choice. Consequently, the State party is of the view that it has not violated article 14 of the Convention.

Complainant's comments on the State party's observations

5.1 On 4 May 2020, the complainant submitted his comments on the State party's observations. He argues that he would face a foreseeable, present, personal and real risk of being subjected to torture or ill-treatment if he were deported to his country of origin.

5.2 With regard to his claims under article 16 of the Convention, the complainant refers to the Committee's general comment No. 2 (2007), according to which the obligation to prevent torture under article 2 and the obligation to prevent cruel, inhuman or degrading treatment or punishment are indivisible, interdependent and interrelated, and that experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and the measures required to prevent torture must be applied to prevent ill-treatment.¹² The complainant concludes that, in the present case, it is appropriate to claim a violation of both article 3 and article 16 and that it is hard to see how his claim under article 16 of the Convention could justifiably be ruled inadmissible.

5.3 The complainant submits that the State party failed to conduct a thorough examination of the human rights situation in Sri Lanka and the individual factors related to his situation. The complainant claims that the situation in Sri Lanka has changed significantly, especially since the 2019 presidential elections.¹³ He explains that, after these elections, the political situation changed dramatically and that the negative consequences in terms of the human rights situation in the country are already beginning to be seen. In this regard, he refers to a report by the Swiss Refugee Council,¹⁴ according to which Tamil persons returning to Sri Lanka from the West are closely surveilled by the law enforcement authorities, which regard such persons with a high degree of suspicion. All such individuals are reportedly questioned upon arrival at the airport in order to establish whether they had any connection to the Tamil Tigers before leaving the country. Afterwards, the police reportedly visit them at their homes. According to the complainant, the Sri Lankan Government is slipping towards authoritarianism and a new culture of impunity for the security forces has taken root.¹⁵

5.4 With regard to his own situation, the complainant emphasizes that the State party has not challenged his allegations concerning the torture he suffered in 2000, 2005 and 2012 and claims that there is a causal link between these events and his departure from his country of origin. The complainant considers that the State party's authorities have not undertaken the necessary investigative measures to arrive at an accurate and complete determination of what pushed him to flee his country of origin. He states that the events that took place in 2000, 2005 and 2012 are fundamental to an understanding of his reasons for fleeing and his present fear of persecution. The State party claims that it was not necessary to examine these events in depth, despite the fact that the complainant presented numerous elements and pieces of evidence that clarified the nature of the unbearable psychological pressure exerted upon him by agents of the Sri Lankan Government. For this reason, the complainant underwent a

¹⁰ Committee against Torture, general comment No. 3 (2012), para. 4.

¹¹ Ibid., para. 15.

¹² Committee against Torture, general comment No. 2 (2007), para. 3.

¹³ These elections were won by Gotabaya Rajapaksa, who served as Minister of Defence at the end of the civil war and is the brother of the President at the time. The complainant claims that it is well known that President Rajapaksa was involved in atrocities committed during the war.

¹⁴ Swiss Refugee Council, "Sri Lanka: Situation des membres du LTTE et impact de l'élection présidentielle du 16 novembre 2019", 19 December 2019.

¹⁵ See Swiss Refugee Council, "Sri Lanka: situation politique actuelle, surveillance de la diaspora, collecte de fonds à l'étranger pour les victimes de la guerre", 10 April 2020.

forensic medical examination conducted according to the standards established in the Istanbul Protocol.¹⁶ The complainant argues that the report written on the basis of this examination constitutes independent medical evidence within the meaning of paragraph 49 (c) of the Committee's general comment No. 4 (2017).

5.5 The complainant notes that the report confirms that his allegations of torture and ill-treatment are consistent with the results of the physical and psychological examinations performed on him. Moreover, he argues that the report confirms his allegation that he was unable to leave the country promptly due to pressure from agents of the Criminal Investigation Department, who, as of 2012, forced him to cooperate with them and threatened to kill members of his family if he did not do so. Furthermore, the complainant claims that the State party's authorities did not duly take into consideration the consequences of his younger brother's death, which, according to him, are confirmed by the report that indicates that the complainant's feelings of guilt regarding his brother's murder should be interpreted as a symptom of post-traumatic stress disorder. The complainant indicates that his brother's death weighs heavily on him, since he is convinced that his brother was killed because he had stopped cooperating with the Criminal Investigation Department, which had therefore decided to act on the threat that it had made when torturing him in 2012. The complainant reiterates his arguments concerning the conduct of the interview at the State Secretariat for Migration and adds that the report confirms that, while he may not have answered the official's questions in a way that was satisfactory to the latter, this was because the acts of torture and ill-treatment suffered by him had a negative effect on his ability to recount events,¹⁷ a phenomenon that has been recognized by the Committee.¹⁸ The recognition of the complainant as a victim of torture would have allowed for the interview to be conducted in a manner suitable to the complainant's capacity to tell his story, in accordance with the Istanbul Protocol.

5.6 In addition, the complainant indicates that the possibility that he has been placed on a watch list cannot be ruled out, since he was tortured because of his family (his older brother has been granted refugee status in Switzerland) and economic (the flag-making) ties to the Tamil Tigers. This is also true for the period between 2012 and 2016, during which he collaborated with the Criminal Investigation Department. The complainant claims that the fact that his family has not had any trouble is because of the relatively young age of his sons. Moreover, he does not hold a valid passport. The complainant states that he told the Swiss authorities that the smuggler who had organized his escape had provided him with a false passport. He notes the State party's argument that he left Sri Lanka with his own passport and indicates that, even if this were true, the passport would have expired, as it was issued in 2009 and was valid for 10 years. In addition, the complainant has prominent scars on his arms and legs¹⁹ that would attract the attention of the Sri Lankan authorities.

5.7 The State party claims that the long period of time between the acts of torture and the complainant's departure from Sri Lanka and the long period of time during which the complainant went without psychiatric treatment in his country and in Switzerland justify its decision not to recognize him as a victim of torture, but this argument is irrelevant. The complainant states that the fact that the State party recognizes that he was a victim of torture and ill-treatment (events that occurred in 2000, 2005 and 2012) yet does not consider it necessary to take this fact into account in the context of the asylum procedure is contradictory, constitutes a violation of its international obligations and has had extremely negative consequences for him. It follows that the State party's determination of the facts and events relating to the period between 2012 and 2016 and to the personal situation of the complainant was inaccurate and incomplete. For this reason, the Swiss authorities wrongly ruled out the

¹⁶ The complainant provided a copy of the examination report in English, dated 30 December 2020 and signed by Dr. O.O., a university professor and forensic medical examiner, and Dr. M.S., a specialist in psychiatry and psychotherapy and the Deputy Director of the clinic attached to the University Hospital of Zurich.

¹⁷ The report indicates that the complainant demonstrates a reduced ability to focus and that his thoughts are restricted to certain subjects which play in his mind like a loop that he has is unable to stop. As a result, it is very difficult for him to relay a linear and coherent story.

¹⁸ Committee against Torture, general comment No. 4 (2017), para. 42.

¹⁹ The complainant referred to the photos attached to the medical report of 30 December 2020.

possibility of the existence of a risk that the complainant would be subjected to torture and ill-treatment if deported.

5.8 Furthermore, the complainant states that criticizing him for not having brought up his psychological problems earlier in the asylum procedure and for not having sought psychiatric treatment earlier reflects a misunderstanding of what it is like to be a victim of torture and of the difficulties that such victims face. The complainant reiterates that he had no opportunity to seek psychiatric support in his home country, as he was being monitored by the Criminal Investigation Department. Regarding his stay in Switzerland, the complainant states that he made the State Secretariat for Migration aware that he was suffering from psychological problems and that, during the interviews, he explained that he had been tortured and gave indications of his poor health. He therefore considers that he has fulfilled his duty to sufficiently substantiate his health problems and that it was up to the State party to establish the medical facts of his case, as required by the jurisprudence of the Federal Administrative Court. Despite this, he was not asked to produce a medical certificate. The complainant adds that he could not have been expected to provide such a certificate of his own accord, as he was unfamiliar with the asylum procedure and did not speak the language in which it was to be conducted. Regarding the State party's argument that he did not receive psychiatric treatment for a long period of time in Switzerland, the complainant indicates that gaining access to such treatment was no easy task given the linguistic, financial and logistical obstacles he faced.²⁰

5.9 As for the State party's argument that the complainant could be treated in Sri Lanka and that the treatment would be paid for by the State, the complainant argues that the Swiss authorities should have sought to establish precisely what treatment he would require, rather than referring to general information on the availability of psychiatric treatment in Sri Lanka. In this regard, he refers to the medical report of 30 December 2020, according to which, in his case, it would be advisable first to undergo stabilizing treatment and only afterwards, if he manages to achieve stable and safe living conditions, to undergo therapy focused on his traumatic experiences. The complainant argues that such conditions cannot be achieved in Sri Lanka. He cites a 2019 report of the Swiss Refugee Council according to which treatment in Sri Lanka focuses on drug therapy, consultations sometimes last only five minutes per patient and long-term follow-up is not possible.²¹ In addition, according to the same report, health-care personnel are reluctant to treat victims of torture for fear of becoming targets of the Sri Lankan authorities themselves.²²

5.10 With regard to the allegations concerning article 14 of the Convention, the complainant reiterates the arguments set forth in his initial complaint.

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 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it 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

²⁰ See the medical report of 30 December 2020, in which it is stated that: "Without an interpreter, he could not communicate with his doctors, and he did not know to whom to turn. Eventually, he found a psychiatrist in a specialized treatment centre in St. Gallen, but his superiors in the camp refused to pay the travel expenses."

²¹ Swiss Refugee Council, "Sri Lanka: accès aux traitements de réhabilitation pour les victimes de la torture", August 2019, p. 6.

²² Ibid., p. 4.

domestic remedies. The Committee therefore finds that it is not precluded from considering the present communication under article 22 (5) (b) of the Convention.

6.3 The Committee notes the complainant's argument that the State party's authorities did not properly take into account the information he provided on his state of health and that, given his frailty and the current conditions in Sri Lanka, the threshold of severity established by article 16 of the Convention has been reached. The Committee also notes the State party's argument that the complainant has not demonstrated that the facts of the case raise separate issues under article 16 of the Convention, since the allegations he makes under that article form part of the allegations regarding his personal situation which he puts forward to support his claim under article 3 of the Convention.

6.4 The Committee notes the complainant's argument that in Sri Lanka he would not have access to the specialized medical care he needs, which would constitute a violation of article 14 of the Convention, as he would not have access to rehabilitation services. The Committee also notes the State party's argument that it is essential that victims be provided access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals, and that these conditions can be met in the complainant's country of origin.

6.5 The Committee observes that the goal of the complainant in submitting the present complaint is to avoid being deported to Sri Lanka and that, to this end, he claims that the State party would be in breach of its obligations under article 3 of the Convention if deportation took place. The Committee considers that the complainant's claims under articles 14 and 16 of the Convention are not autonomous claims but rather ones forming part of his allegations regarding his personal situation in support of his claim under article 3.²³ It is also of the view that the complainant has not demonstrated that the facts that he has presented raise separate issues under articles 14 and 16 and proceeds to consider the allegations under article 3 of the Convention.

6.6 The Committee notes the State party's argument that the complaint should be found to be inadmissible on the ground that it is manifestly ill-founded, because the complainant has not substantiated the existence of grounds for believing that he would personally face a foreseeable, real and present risk of persecution if he were returned to Sri Lanka. It notes the complainant's claims that he has previously been subjected to acts of torture and ill-treatment in Sri Lanka and that he would face the risk of being subjected to persecution because of his perceived links to the Liberation Tigers of Tamil Eelam if deported to his country of origin. The Committee is of the view that the complainant has sufficiently substantiated these claims under article 3 of the Convention for the purposes of admissibility.

6.7 In the absence of any further obstacles to admissibility, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

7.2 In the present case, the issue before the Committee is whether the deportation of the complainant to Sri Lanka constitutes a violation of the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the existence of a pattern of gross, flagrant or mass violations of human rights in a country does

²³ *Harun v. Switzerland*, para. 8.3.

not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.²⁴ Moreover, although past events may be of relevance, the principal question before the Committee is whether the complainant would currently run the risk of torture if he were returned to Sri Lanka.

7.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include but are not limited to: (a) the complainant’s ethnic background; (b) the political affiliation or political activities of the complainant or members of the complainant’s family; (c) arrest or detention without guarantee of a fair treatment and trial; (d) previous torture; (e) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; and (f) clandestine escape from the country of origin following threats of torture (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38).²⁵ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; 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 of the circumstances relevant to each case (para. 50).

7.5 The Committee notes the complainant’s claims that he would be at risk of treatment contrary to article 3 of the Convention if returned to Sri Lanka because he would be at risk of detention, acts of torture and ill-treatment because of his perceived connections to the Liberation Tigers of Tamil Eelam. It also notes the complainant’s assertion that he was detained, interrogated and tortured on three occasions: in 2000, following the arrest of his older brother; in 2005, when the authorities discovered that he was making flags for the Pongu Tamil; and in 2012, following an incident in his sewing shop, when the leader of a group of student supporters of the Tamil Tigers hid from the police there. It further notes the complainant’s assertion that, after this last incident, he was forced to become an informant for the Criminal Investigation Department and report on the activities of student supporters of the Tamil Tigers. The Committee also takes note of the complainant’s allegation that, starting in 2015, the Criminal Investigation Department intensified its surveillance of him and began interrogating him systematically, which prompted him to step up his efforts to escape from the country. The Committee further notes the complainant’s allegation that his younger brother was killed by the Sri Lankan authorities in July 2016 because the complainant had stopped collaborating with the Criminal Investigation Department upon his departure from the country.

7.6 The Committee notes that, according to the State party, the complainant’s claims have been thoroughly considered by the authorities responsible for considering asylum applications, namely the State Secretariat for Migration and the Federal Administrative Court. The Committee also notes the State party’s argument that both the State Secretariat for Migration and the Federal Administrative Court have concluded that the complainant has not demonstrated that there were substantial grounds for believing that he would be of interest to the Sri Lankan authorities or that he would be likely to be detained and questioned by those authorities upon his return. It also notes the conclusions of the Federal Administrative Court, which observed that the complainant was not a member of the Tamil Tigers and that his activity in connection with this organization was limited to making flags for it in 2004 and 2005, which led it to draw the conclusion that the complainant did not have a close connection to that organization. Furthermore, it notes that the complainant has not provided any specific

²⁴ See, e.g. *S.P.A. v. Canada* (CAT/C/37/D/282/2005), para. 7.1; *T.I. v. Canada* (CAT/C/45/D/333/2007), para. 7.3; and *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008), para. 7.2.

²⁵ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

information explaining why the Sri Lankan authorities would be interested in him, considering that he does not claim to have been a member or supporter of the Tamil Tigers and has not raised any other claim of involvement in political activities. Furthermore, the Committee notes that the State Secretariat for Migration and the Federal Administrative Court found that the complainant's allegations that the Sri Lankan authorities had killed his younger brother were unfounded because the autopsy report indicated that the brother had died in an accident.

7.7 In addition, the Committee notes the State party's assertion that, although the State Secretariat for Migration and the Federal Administrative Court did not question the credibility of the complainant's claims concerning the incidents in 2000, 2005 and 2012, they found that, in the absence of a temporal causal link between these incidents and the complainant's departure from Sri Lanka, it was impossible to conclude that he would be at risk of torture or ill-treatment in the event of his return to the country. The Committee further notes the State party's assertion that the complainant remained in his country of origin until 2016, four years after the last of the alleged incidents, and that he had merely stated that, from 2012 onward, he was questioned several times by the Criminal Investigation Department. The Committee notes the State party's argument that the State Secretariat for Migration and the Federal Administrative Court found that these interrogations were not sufficiently intense to support the conclusion that the complainant would be at risk of serious harm if he were to be returned to his country of origin. The Committee also notes the State party's assertion that if the Sri Lankan authorities had a particular interest in the complainant, they would have taken tangible action against him in the period before his departure. In this regard, it notes the conclusion of the Federal Administrative Court that the fact that the complainant had been able to run his workshop until his departure was an indication that the Sri Lankan authorities were not interested in him, given that they knew where the workshop was located and could have arrested him at any time. The Committee also notes that the complainant confirmed during his interview at the State Secretariat for Migration that nothing had happened to him after 2012 and that, while he mentioned his interrogations by agents of the Criminal Investigation Department, he focused his account on the incidents that had occurred in 2000, 2005 and 2012 and on the general situation in Sri Lanka.

7.8 The Committee takes note of the complainant's allegations that the official of the State Secretariat for Migration who conducted the interview concerning his reasons for seeking asylum did not allow him to substantiate his claims regarding the pressure exerted on him between 2012 and 2016 because the official repeatedly interrupted him, which made him very nervous. The Committee also notes that, according to the State party, the complainant was asked several times about the reasons for his departure and was made aware that the link between the alleged events and his departure was unclear. The Committee observes that, according to the interview report provided by the complainant, the State official tried to make the complainant understand, on several occasions, that he had not answered the questions put to him regarding the reasons for his departure from his country in 2016. It notes that the complainant continued to refer only to his alleged torture in 2000, 2005 and 2012. It observes that the official of the State Secretariat for Migration was trying to conduct the interview in such a way as to determine what prompted the complainant to flee his country in 2016 and that his questions were relevant to that goal. Furthermore, it notes that the questions were clear and asked in a respectful manner.

7.9 The Committee notes that, following the rejection of his initial application for asylum in 2018, the complainant submitted a request for reconsideration on the basis of a new medical report, according to which he suffered from multiple forms of physical and psychological trauma as a result of the torture inflicted on him and the psychological pressure exerted on him by agents of the Criminal Investigation Department between 2012 and 2016. It also notes that, in its decision of 27 June 2019 on the appeal filed by the complainant against the State Secretariat for Migration's decision to reject his request for reconsideration, the Federal Administrative Court observed that the evidence presented, namely the medical certificate, was submitted belatedly, but that it nevertheless decided to consider it. The Committee further notes that the Federal Administrative Court found that the medical certificate did not indicate that the complainant had been subjected to psychological pressure as a result of forced collaboration with the Criminal Investigation Department during the

years preceding his departure and ruled that the certificate did not call into question the conclusion that the Sri Lankan authorities had no interest in him.

7.10 With regard to the complainant's claim regarding his mental health and his claim that the State party's authorities merely indicated that he would have access to the necessary psychiatric treatment in Sri Lanka, without making any attempt to establish precisely what sort of treatment he would need, the Committee notes that the Federal Administrative Court found that the complainant had claimed to suffer from psychological problems of the alleged magnitude only once he had reached the stage of the review procedure, that he had not sought psychiatric treatment until 2019, three years after his arrival in Switzerland, and that his health problems could be treated in Sri Lanka, either through outpatient therapy, which was offered by several hospitals in the Jaffna region, or through programmes offered by NGOs. The Committee observes that the State party's authorities assessed the evidence presented, albeit belatedly, by the complainant and concluded that he would not be exposed to any health-related risks if he were deported. It notes that the Federal Administrative Court even listed the treatment available in the complainant's region and confirmed the availability of the medication he would need in Sri Lanka. The Committee also notes that the report of 30 December 2020, which was prepared in accordance with the Istanbul Protocol, was not submitted to the State party's authorities during the asylum procedure.

7.11 With regard to the complainant's claims concerning the worsening human rights situation in Sri Lanka since the election of Gotabaya Rajapaksa in November 2019, the Committee notes the fact that the parties have not provided any information in relation to the current situation of Tamils in Sri Lanka after the recent crisis, which resulted in the swearing in of Ranil Wickremesinghe as President. The Committee takes note, however, of the latest report of the United Nations High Commissioner for Human Rights on the human rights situation in Sri Lanka, according to which the military presence remains significant in terms of personnel, checkpoints and military involvement in drug control, agriculture and development activities, particularly in the north and east of Sri Lanka.²⁶ Moreover, the Committee notes the indication in the aforementioned report that the intelligence services, the military and the police continue to surveil, intimidate and harass journalists, human rights defenders, the families of disappeared persons and persons involved in memorialization initiatives, particularly in the north and east of the country.²⁷ The Committee refers to its concluding observations on the fifth periodic report of Sri Lanka, in which it voiced serious concerns about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including by the police, had continued in many parts of the country after the conflict with the Tamil Tigers had ended in May 2009.²⁸ It also refers to reports by NGOs concerning the ill-treatment of returnees by the authorities in Sri Lanka.²⁹ However, the Committee reiterates that the existence of a general risk of violence in a country does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.³⁰

8. On the basis of the above, and in the light of the material before it, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his forcible removal to his country of origin would personally expose him to a real, foreseeable and present risk of being subjected to treatment contrary to article 3 of the Convention.

9. The Committee, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

²⁶ [A/HRC/51/5](#), para. 25.

²⁷ *Ibid.*, para. 30.

²⁸ [CAT/C/LKA/CO/5](#), paras. 9–12; see also [CAT/C/LKA/CO/3-4](#), para. 6.

²⁹ Freedom from Torture, "Tainted Peace: Torture in Sri Lanka since May 2009", August 2015, and Human Rights Watch, *World Report 2019: Events of 2018, 2019*, pp. 543–548.

³⁰ *H.M.H.I v. Australia* ([CAT/C/28/D/177/2001](#)), para. 6.5.