



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. 1018/2020*, **

<i>Communication submitted by:</i>	K.R. (represented by counsel, Bernhard Jüsi, of Advokatur Kanonengasse)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	23 July 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 27 July 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	9 May 2023
<i>Subject matter:</i>	Risk of torture or other ill-treatment in case of deportation to Sri Lanka (non-refoulement)
<i>Procedural issue:</i>	None
<i>Substantive issues:</i>	Torture and other cruel, inhuman or degrading treatment or punishment; right to rehabilitation
<i>Articles of the Convention:</i>	3, 14 and 16

1.1 The complainant is K.R., a national of Sri Lanka born on 8 October 1983. He claims that his forcible removal to Sri Lanka would amount to a violation by Switzerland of articles 3, 14 and 16 of the Convention. To avoid irreparable harm, the complainant urged the Committee to issue interim measures requesting the State party to refrain from removing him to Sri Lanka while his communication was being considered by the Committee.¹ The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 2 December 1986. The complainant is represented by counsel.

1.2 On 27 July 2020, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Sri Lanka while the complaint was being considered by the Committee.

* Adopted by the Committee at its seventy-sixth session (17 April–12 May 2023).

** 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 was to leave Switzerland before 31 July 2020.



Facts as submitted by the complainant

2.1 The complainant is a national of Sri Lanka and of Tamil ethnicity. He is originally from Kurumbaikaddy, Jaffna District, where he lived until 1995. He then fled with his family to Manthuvil and, subsequently, to Puthukkudiyiruppu, in the Northern Province.

2.2 From 2005 until May 2009, he worked as a driver for the Liberation Tigers of Tamil Eelam (LTTE), until he was heavily wounded during the last stage of the civil war.² He transported fighters and weapons to and from the front line for LTTE, and he also brought back the bodies of the dead and injured. On 14 May 2009, the complainant was severely injured and hospitalized for three months in a hospital in Vavuniya. From the hospital, Sri Lankan security forces transferred him to a detention centre (the so-called Camp Joseph). The complainant was removed from the hospital blindfolded in a car. The men taking him away were drunk, and abused and humiliated him. His pants were taken off in the car, a nylon thread was tied to his penis and they pulled on it. He was also kicked and spat on. This was only the beginning of severe torture suffered over a period of six months while in the camp. During his detention, the complainant was not, however, questioned by the Sri Lankan authorities.

2.3 He submits that in the camp (prison), when he refused the orders of the guards to rape female inmates from among LTTE rebels imprisoned in the same facility, he was anally raped by several male guards, and his genitals were beaten and squeezed. All of his toenails were pulled out. He was burned with red-hot irons on his back and arm, and dragged around and suspended on metal hooks. The guards poured petrol on his injuries. While he was hanging, the guards poured gasoline into his anus. He was beaten severely on a regular basis. He still bears the scars of torture all over his body.³ He suffers from both physical and psychological consequences and is in a poor state of health.⁴ Owing to the mistreatment, especially of his genitals and anal area, he is unable to sit for long periods of time. He is massively traumatized, has nightmares and has difficulty sleeping.⁵ After his family facilitated his release from prison by bribing an officer of the Criminal Investigation Department, he could not go to the

² Additional information on the injuries sustained has not been made available.

³ A medical report with images of scars is on file.

⁴ Two medical reports have been submitted to attest to the complainant's claims of torture, and one psychological report on his mental health. He has been undergoing psychological treatment since 19 July 2017. It is submitted that the complainant has the following health issues: chronic pain in the left ankle and in the right calf as a result of blows and a projectile wound; pain in the left side of his neck as a result of blows suffered; pain during defecation as a result of rape; parasternal pain on his left side when lifting heavy objects as a result of blows to the thorax; intermittent paraesthesia in the fourth and fifth fingers of his left hand; and post-traumatic stress disorder and depression. In the medical report it is noted that the complainant is undergoing psychiatric treatment with an accredited therapist as a result of psychological symptoms (depression, sleep disorders with nightmares, circling thoughts and flashbacks). The report concludes that the physical and psychological symptoms and physical findings clearly correspond to the medical history and torture suffered and are therefore plausible. The continuation of psychotherapeutic and pharmacological therapy is essential for the complainant. The report also states that the somatic complaints will probably persist in the long term and are not easily treatable.

⁵ The complainant has been undergoing psychological treatment with the reporting psychologists since 19 July 2017. In their report, they describe the complainant's symptoms as at 1 July 2020, attesting to severely depressive states and suicidal thoughts as a result of torture suffered, and persistence of a fundamental fear of having to return to Sri Lanka. The smallest incidents in an asylum centre led to an exacerbation of the post-traumatic symptoms. His mental state has not improved since May 2019. The negative asylum decision at the end of 2019 once again triggered the original strong post-traumatic symptoms and intense depression, including suicidal thoughts, as a result of the persecution, incarceration and torture suffered in Sri Lanka. The psychologists reached the conclusion that the complainant was severely restricted on a functional level. The specialists stated that the continuation of psychopharmacological and psychiatric-psychotherapeutic treatment was medically urgently indicated; that a complete remission of the symptoms in the long term would be possible only when the patient felt safe; that an interruption of the therapy would in all probability cause an abrupt increase in post-traumatic and depressive symptoms; and that a return to Sri Lanka would almost certainly retraumatize the complainant and result in the exacerbation of the symptoms. The statement of truthfulness submitted with the complaint confirms that all the information in the report is correct.

hospital to have his injuries treated, as he feared that he would be arrested again. Instead, his mother nursed him with the means at her disposal.

2.4 Following his release from prison, persons presumed to be members of the Sri Lankan military or the Criminal Investigation Department repeatedly searched for the complainant at his home.⁶ As a result of these persistent problems, the complainant went to Batticaloa, where he was able to hide out with a priest. The complainant got married in 2012, with the hope that he could live a peaceful life. This, however, did not happen and, owing to the persistent persecution that the complainant experienced as a result of the regular searches for him at his home,⁷ he was on the run for several years. When he returned to Kurumbaikaddy at one point, he was caught by his pursuers and questioned for a day with a pistol pointed at his head. After being temporarily released, he immediately left home with his wife.⁸ The complainant left Sri Lanka on 26 September 2016 with the help of a smuggler. He took a flight to the Russian Federation, and from there he continued his journey by land. He arrived in Switzerland on 20 December 2016.

2.5 The complainant applied for asylum in Switzerland on 21 December 2016. He had a summary interview on 29 December 2016. By a decision of 13 February 2017, the State Secretariat for Migration did not consider the substance of the matter and declined to grant the complainant's application for asylum. He was expelled to Hungary, in accordance with regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person (Dublin III Regulation), which provides for consideration of asylum applications in the first country of asylum. On 15 June 2017, the Federal Administrative Court annulled the decision of the State Secretariat and referred the case back to the court of lower instance for further clarification and a new decision. In a letter dated 5 April 2018, the State Secretariat informed the complainant that the Dublin procedure would be terminated and that his asylum application would be examined in Switzerland.

2.6 The State Secretariat for Migration opened the asylum procedure and heard the author on 12 October 2018. The State Secretariat rejected his application on 13 December 2019. The Federal Administrative Court confirmed the negative decision and rejected the complainant's asylum application on 18 May 2020. In that regard, the complainant submits that the Court essentially found the facts of his case, which concerned his activities on behalf of LTTE between 2005 and the end of the Sri Lankan civil war, credible. The Court also acknowledged that the complainant had been seriously wounded during the final stages of the Sri Lankan civil war in early May 2009 and that he had been arrested in 2009 and subjected to serious torture for approximately six months. Subsequently, the Court also acknowledged that, after his detention, he was apprehended once, detained and questioned. The Court also recognized the massive and still existing post-traumatic symptoms of the complainant and his need for regular treatment. Nevertheless, the Court came to the conclusion that the facts of the case did not indicate a real risk of the complainant being subjected to torture or inhumane treatment at present, upon his return to Sri Lanka. The Court found it peculiar that the complainant had departed only six years after his release from detention; considering the fact that he was not apprehended again except for one occasion, which lasted for a day, it could not be established that he would have been of special interest to the authorities at that date, as the temporal causal nexus had been broken. The Court also observed, based on the copy of his identity card and his marriage certificate, that he had been in contact with the civil authorities of Sri Lanka without having any conflicts with them. The Court hence considered that he would not have been subjected to systematic search by the authorities, even if sporadic inquiries might have taken place.

⁶ The complainant was on the move between Vavuniya, Kurumbaikaddy, Navarkiri and Batticaloa, and was in hiding.

⁷ During one of the above-mentioned incidents, the mother of the complainant was pushed by one of the pursuers and broke her hip. She has been bedridden ever since.

⁸ Up to the date of submission of the initial complaint, the family of the complainant had been obligated to move continually between different places in Sri Lanka to avoid being arrested by their pursuers.

2.7 The complainant claims that he has exhausted all available domestic remedies and that the same matter is not pending before any other international mechanism.

Complaint

3.1 The complainant claims that the State party would violate article 3 of the Convention if it forcibly removed him to Sri Lanka. There are substantial grounds to believe that he would face a risk of torture or persecution by the Sri Lankan authorities, if deported.

3.2 The complainant claims that, to date, torture has been widespread and systematic in Sri Lanka, mainly against Tamil individuals meeting specific risk factors, in particular when they are perceived as past or present supporters of LTTE. The situation was exacerbated with the election of Gotabaya Rajapaksa as President in November 2019.

3.3 The complainant argues that, in the past, he was detained and intensively tortured by the Sri Lankan authorities for his association with LTTE. He was sought by the Sri Lankan security apparatus up until his departure in 2016. His family has been subjected to harassment, and his wife and children still live on the move. He left the country illegally and has undergone the asylum procedure in Switzerland. Contrary to the finding of the Federal Administrative Court, he is at a high risk of being apprehended by the Sri Lankan security apparatus upon his return to the country. His known association with LTTE, the visible scars, his Tamil ethnicity, his clandestine departure, his long stay and request for asylum abroad and the lack of identity documents will give rise to suspicions, and will most likely lead to accusations of continuing support of LTTE.

3.4 In addition, his forcible return would lead to an imminent and massive deterioration of his already poor mental health. The complainant suffers, as a direct consequence of torture he experienced in Sri Lanka, from post-traumatic stress disorder and heavy depression. The attending psychologists state in their report that an interruption of his treatment would in all probability cause an abrupt increase in post-traumatic and depressive symptoms, and that a return to Sri Lanka, the country where he was tortured by security forces, would almost certainly retraumatize the complainant and result in further exacerbation of his symptoms. His removal to Sri Lanka would therefore also violate his rights under articles 14 and 16 of the Convention.

State party's observations on the merits

4.1 On 22 March 2021, the State party submitted its observations on the merits, recalling the main facts of the case and the complainant's allegations before the Committee that his removal to Sri Lanka would amount to a violation of his rights under articles 3, 14 and 16 of the Convention.

4.2 The State party stated that the State Secretariat for Migration had rejected the complainant's asylum application on 13 December 2019, owing to the absence of a causal link between the persecutions and the complainant's escape from the country, and of any indications or concrete evidence that would substantiate the existence of a real and present risk of persecution for the complainant, if removed. In addition, the complainant did not appear to be someone whom the authorities suspected of having close ties to LTTE.

4.3 The Federal Administrative Court considered the complainant's appeal against the State Secretariat for Migration decision in detail. In its decision of 18 May 2020, the Court considered the complainant's accounts credible as to his activities in support of LTTE and the treatment he received during his detention in 2009. However, his statements on the subsequent searches by the security forces were considered vague, taking into account that he was apprehended once and was easily released. The Court considered that the intensity of the alleged search for the complainant did not demonstrate that the security forces would be particularly interested in him. In addition, the complainant was not questioned at any point during his detention in 2009. In the view of the Court, the complainant was not perceived as a person who would have important information for the authorities. The ill-treatment suffered by the complainant was not attributable to the allegedly perceived affiliation with LTTE, but was rather caused by the security agents exceeding their capacity.

4.4 In his communication to the Committee, the complainant essentially repeats the claims presented in his asylum application. He affirms that torture is widespread and systematically applied in Sri Lanka, and that there has been an increased risk, including for individuals perceived as supporters of LTTE. The complainant remains traumatized by past ill-treatment. As he continued to be sought by the security forces, he left Sri Lanka clandestinely in 2016. Contrary to the views of the Federal Administrative Court, the complainant claims that he would face an increased risk of arrest if removed. The complainant's links to LTTE, which are known to the authorities, the traces of torture still visible on his body, his Tamil ethnicity, his illegal departure from Sri Lanka and long stay abroad, including his status as a rejected asylum-seeker, and his lack of identity documents would raise suspicions on the part of the Sri Lankan authorities, who would be inclined to accuse him of continued support of LTTE.

4.5 In addition, the complainant claims that his removal would cause him new trauma and would cause his health to deteriorate further.

4.6 In respect of the claims under articles 3 and 16 of the Convention, the State party argues that the complainant has not substantiated on the basis of credible facts that he would face a foreseeable, present, personal and real risk of torture if removed.⁹ The existence of such risk has to be serious. While the burden of proof rests on the complainant, no such evidence of a personal risk has been submitted.

4.7 The State party refers to various risk factors enumerated in the Committee's jurisprudence.¹⁰ With regard to the alleged existence of systematic violations in the country of removal, in the context of article 3 (2) of the Convention, the State party reiterates that the Committee has to ascertain whether the complainant would personally risk being subjected to torture in the country of removal.¹¹ The existence of systematic violations does not represent a sufficient reason to conclude that a person would risk becoming a victim of torture if removed to the country of origin. The existence of such risk has to be foreseeable, present, personal and real.¹² The State party admits that the situation of human rights in Sri Lanka is serious, for multiple reasons. In its recent decisions under article 22 of the Convention concerning removals to Sri Lanka, the Committee referred to its concluding observations on the most recent periodic report by Sri Lanka,¹³ in which the Committee expressed concern at the abductions, acts of torture and other ill-treatment that the security forces, including the police, had continued to perpetrate following the end of the conflict with LTTE in 2009. In those decisions, however, the Committee recalled that the objective, in considering individual complaints, was to establish whether the person concerned faced a personal and foreseeable risk of torture if removed. The complainant would have to present additional grounds to substantiate that he would face such risk of torture.¹⁴

4.8 As to the exposure to torture in the past, and evidence thereof, the State party submits that the torture or other ill-treatment that the author has suffered together constitute one of the elements that have to be taken into account when assessing the risk of possible torture or ill-treatment if removed.¹⁵ The Government submits that the author's claim of torture and ill-treatment during his detention in 2009 has not been in any way questioned by the asylum authorities.

4.9 Political activities exercised inside the country of origin or abroad can be seen as another risk factor. However, the complainant does not claim that he has participated in political activities. As established during his asylum interviews, the complainant's activities in support of LTTE, of which he was not a member, were limited, as evidenced by the fact

⁹ General comment No. 4 (2017), para. 38.

¹⁰ *Ibid.*, para. 49 (a)–(d), (f), (h) and (i).

¹¹ *M.D.T. v. Switzerland* (CAT/C/48/D/382/2009), para. 7.2; and *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

¹² General comment No. 4 (2017), paras. 11 and 38; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.2; and *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.3.

¹³ CAT/C/LKA/CO/5.

¹⁴ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.3; and *Susith Wasitha Ranawaka v. Australia* (CAT/C/68/D/855/2017), para. 9.3.

¹⁵ General comment No. 4 (2017), para. 49 (b)–(d).

that he was not even interrogated on that point during his detention in 2009. The accounts of the search for him by the security forces were rather general and did not establish the authorities' specific interest in the complainant as he could escape following his apprehension in 2012 by the security agents. The State party therefore supports the conclusion by the Federal Administrative Court that the complainant's profile was not such that the authorities would look for him.

4.10 If, on an essential point, the individual concerned cannot submit specific supporting evidence for an allegation, or if allegations are conflicting, they are perceived in general as insufficiently substantiated or contradictory. While the State Secretariat for Migration and the Federal Administrative Court have not questioned in any way the fact that the complainant suffered torture and ill-treatment in 2009, they have nevertheless observed that the complainant left Sri Lanka illegally only in 2016, some six years after his liberation. The asylum authorities considered the complainant's allegations that the security forces had been looking for him during that period of six years as vague and incomprehensible. The complainant does not present any new allegations or evidence in that regard.

4.11 The complainant claims to suffer from serious health problems that relate, according to the medical certificates submitted, to the torture and ill-treatment that he suffered in 2009. However, the complainant married in 2012, established a family in Sri Lanka and worked for a certain period. During that time, he obtained an identity card and was in contact with the Sri Lankan civil authorities. It can be presumed that the complainant was not being pursued by the authorities, as he could contact them as necessary. In its decision of 18 May 2020, the Federal Administrative Court stated that it could not be concluded that the Sri Lankan authorities had in reality been looking for the complainant during the six-year period. The Court found an absence of a causal temporal link between the incidents of 2009 and the complainant's departure from Sri Lanka in 2016. Apart from the acts of torture suffered in 2009, the complainant refers to numerous background reports on the prevalence of torture in Sri Lanka. However, they do not relate to his personal situation. There is no concrete evidence that the complainant was systematically being sought at the time of his departure from Sri Lanka or that he would be of interest to the security forces following his removal. The fact that he was exposed to torture in the past does not mean that he could be subject to it at any point and, in particular, in the event of his return. He continued to live in Sri Lanka for six years after the incidents of 2009 without facing any disadvantage that could be considered as grave or intensive. Since the complainant has not been sought, nor has he exercised any political activity, there is no reason to believe that he would face a real and foreseeable risk of being subjected to torture if removed. The alleged risk of a violation of the complainant's rights under articles 3 and 16 of the Convention has not therefore been substantiated.

4.12 With regard to the claims of a lack of reparation and compensation for the complainant, as a torture victim, the State party refers to the Committee's general comment No. 3 (2012). The complainant has claimed, given his health status, that his removal would also violate his rights under article 14 of the Convention. He has suffered from depression and post-traumatic stress disorder, accompanied by suicidal thoughts. His removal would contribute to the recurrence of trauma, accentuating the stress on his mental health and possibly leading to suicide. The specialized care and treatment that he would be able to receive if removed would not be sufficient to meet his needs, making it difficult for him to adapt. The complainant requires an environment in which he feels secure, which is not the case in Sri Lanka. In addition, so far he has been able to speak only to the psychologists in Switzerland. His removal to Sri Lanka, even to a secure environment, would aggravate his fragile health condition. He refers to the Committee's decision in *A.N. v. Switzerland*¹⁶ to support this part of his claim.

4.13 In respect of article 16 of the Convention, the Committee has rejected numerous communications by complainants who suffered from post-traumatic stress disorder that resulted in some instances from acts of torture suffered. The Committee has found that removal can amount to cruel, inhuman or degrading treatment per se only in very specific circumstances.¹⁷ The Committee has also considered that aggravation of the physical or

¹⁶ CAT/C//64/D/742/2016.

¹⁷ *M.M.K. v. Sweden* (CAT/C/34/D/221/2002), para. 7.3.

mental health condition of the person to be deported is generally insufficient to constitute, in the absence of other factors, a degrading treatment in violation of article 16 of the Convention.¹⁸ The Committee has not further specified the notion of “other factors”. At times, it has taken into consideration whether the complainant would have access to medical treatment in the country of destination.¹⁹

4.14 The State party notes that the decision in *A.N. v. Switzerland* concerned a removal to Italy in the context of the Dublin III Regulation. The national asylum authorities did not seek individual assurances as to the medical treatment that was necessary for the complainant in that case and did not indicate in the transfer form that he was a victim of torture in the past. The State party argues that a transfer in the context of the Dublin III Regulation is substantially different from removal to the country of origin. Removals under the Dublin III Regulation take place prior to initiation of the asylum procedure, and therefore at the moment when the concerned individual is entitled to a temporary stay in the country in question and in which that person should potentially be able to benefit from the protection conferred by the asylum law. In addition, as in the case of *A.N. v. Switzerland*, such removals generally take place to countries in which the concerned individual has no ties or support network. In contrast, removals to the country of origin following a negative decision on an asylum application are carried out once the authorities have ascertained that the person concerned would not be exposed to a risk of treatment contrary to the Convention in that State. The concerned individual is no longer entitled to protection on the basis of the asylum law and that person’s stay in the removing State becomes illegal. In such instances, the concerned individual is removed into a State that he or she is familiar with and in which he or she can benefit from, most of the time, a support network.

4.15 The State party recalls that the asylum authorities concluded, following a thorough review, that the complainant’s allegations concerning the risk of foreseeable and real persecution had not been substantiated. In addition, the Federal Administrative Court considered, in its decision of 18 May 2020 (para. 9 (4) (3)), that psychiatric treatment was accessible in Sri Lanka. The health issues that the complainant faces, in particular the psychological problems, can be treated in Jaffna in the Northern Province,²⁰ where he has family. The district of Jaffna is categorized as offering complete mental health services, according to a health-care and nutrition survey conducted by the World Health Organization. It should be recalled that the medical care at public service locations is free of charge.

4.16 In addition, a non-governmental organization based in Jaffna, Shanthiham (Association for Health and Counselling), offers, in particular, psychological support to persons suffering from post-traumatic stress disorder linked to tsunamis and to armed conflicts. The organization offers counselling, therapy groups and psychological support in situations of anxiety, depression and post-traumatic stress. It operates mainly through volunteers, education and knowledge-sharing.²¹

4.17 With regard to the risk of the reactivation of trauma, the State party reiterates that the author can benefit from a family network in Sri Lanka where, following the traumatizing events of 2009, he continued to live for several years, pursuing economic activities and founding a family. While the complainant has been undergoing psychological treatment in Switzerland since September 2017, it is also possible for him to obtain appropriate treatment in Sri Lanka. The risk for his health and the risk of suicide can be addressed by offering adequate medical support during the preparation for his departure or when actually deporting him.

4.18 In view of the above, the claim of a risk of a violation of article 14 alone, or in conjunction with articles 3 and 16 of the Convention, has not been sufficiently substantiated.

¹⁸ *Y.G.H. et. al. v. Australia* (CAT/C/51/D/434/2010), para. 7.4.

¹⁹ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.7; and *N.B.M. v. Switzerland* (CAT/CC/47/D/347/2008), para. 9.8.

²⁰ The State party referred, in particular, to the Teaching Hospital of Jaffna, the Base Hospital in Chavakachcheri and the Base Hospital in Point Pedro.

²¹ See <https://shanthiham.org/>.

4.19 In conclusion, the State party reiterates that there has been no evidence of substantial grounds to believe that the complainant would face a foreseeable, personal, present or real risk of torture or other ill-treatment in the event of his removal to Sri Lanka. The State party requests the Committee to conclude that the removal of the complainant would not amount to a violation of his rights under articles 3, 14 and 16 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any complaint contained 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.

5.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. Nevertheless, this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief.²² The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies in the context of his application for asylum.

5.3 In the absence of any other question relating to the admissibility of the complaint, the Committee declares the communication admissible under articles 3, 14 and 16 of the Convention, as the facts and basis of the complainant's claims have been duly substantiated, and proceeds to its consideration on the merits.

Consideration of the merits

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

6.2 In the present case, the issue before the Committee is whether the forcible removal of the complainant to Sri Lanka would constitute a violation of the State party's obligations under articles 3, 14 and 16 of the Convention.

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture or other ill-treatment upon 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.²³ However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.²⁴ It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does 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.²⁵ Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.²⁶

6.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at

²² General comment No. 4 (2017), para. 34.

²³ See, for example, *X and Y v. Switzerland* (CAT/C/66/D/776/2016), para. 7.3.

²⁴ *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.

²⁵ *Y.G. v. Switzerland* (CAT/C/65/D/822/2017), para. 7.2.

²⁶ *Ibid.*, para. 7.3.

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 and religious affiliation; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of fair treatment and trial; (d) sentence in absentia; and (e) previous torture (para. 45). 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, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

6.5 The Committee recalls that 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, unless the complainant is in a situation where he or she cannot elaborate on his or her case.²⁷

6.6 In assessing the risk of torture as it relates to the present communication, the Committee notes the complainant's claims that, since he was supporting LTTE between 2005 and 2009, he was detained and tortured by the Sri Lankan security forces for a period of six months in 2009. The Committee also notes the complainant's claim that he fears being arrested as a perceived supporter of LTTE, if removed to Sri Lanka, owing to his known association with LTTE, the visible scars, his Tamil ethnicity, his clandestine departure, his long stay and request for asylum abroad and his lack of identity documents. The Committee further notes the complainant's claim that he is traumatized by the idea of returning as he suffers from post-traumatic stress disorder and heavy depression, due to the acts of torture suffered.

6.7 The Committee observes that the State party's authorities, while not disputing the complainant's accounts of torture suffered in 2009, considered that he had not sufficiently substantiated the claim that he would face a foreseeable, present, personal and real risk of torture, as the allegation that the authorities in the country continue to search for him is not plausible. The Committee notes that the Federal Administrative Court found that the complainant did not depart Sri Lanka until six years after his release from detention, and that he was not apprehended again except for one occasion, which lasted for a day. In the view of the Court, it could not be established that he would have been of special interest to the authorities to date, as the temporal causal nexus had been broken. The Court also observed, based on the copy of the complainant's identity card and his marriage certificate, that he had been in contact with the civil authorities without having any conflicts with them. The Court hence considered that he could not have been subjected to systematic searches by the authorities, even if sporadic inquiries might have taken place. The State party concluded that a present risk of torture was absent for the complainant, if removed, pointing to a lack of a temporal causal link between the complainant's past torture and his departure, and a lack of corroboration of the allegation that the security forces had been searching for the complainant prior to his departure and were continuing to do so.

6.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture, if removed to Sri Lanka.²⁸ The Committee notes that the complainant had the opportunity to provide additional supporting evidence of his claims to the domestic authorities, and that the complainant's claims have been considered by the State Secretariat for Migration and the Federal Administrative Court. However, the authorities concluded that the complainant had not substantiated the claim that he would face a foreseeable, present, personal and real risk of torture if returned to Sri Lanka. The Committee notes in particular the State party's argument that the complainant has not provided any information credibly indicating that he would be of interest at present to the Sri Lankan authorities, although the State party's asylum authorities acknowledged that the complainant continued to be sought by the Sri Lankan authorities after his detention, and that they had linked him to LTTE.²⁹ The information made available to the Committee does not indicate that, seven years after he fled Sri Lanka, the complainant would be at risk of being

²⁷ General comment No. 4 (2017), para. 38.

²⁸ *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

²⁹ *H.R.E.S. v. Switzerland* (CAT/C/64/D/783/2016), para. 8.9.

subjected to torture if returned to his country of origin.³⁰ The Committee recalls that complete accuracy is seldom to be expected from victims of torture,³¹ and observes that the complainant has provided documentation indicating that he was suffering from post-traumatic stress disorder and heavy depression, for which he has been receiving treatment since July 2017. While observing that the complainant's state of mental health may account for some insufficiencies in his account to the asylum authorities, the Committee considers that it does not provide a satisfactory explanation for the aforementioned lack of adequate substantiation of the core elements of his account.

6.9 While recalling that the burden of proof is on the complainant, the Committee notes that the complainant was subjected to torture some 14 years ago, and that he has failed to make a plausible case that the security forces have had any interest in him in the recent past or would have any interest in him at present. In the light of the above considerations and on the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Sri Lanka, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that his removal to Sri Lanka would expose him to a foreseeable, present, personal and real risk of torture owing to his perceived affiliation with and support of LTTE.

6.10 In reference to the complainant's claims under article 14 and article 16, the Committee takes note of his allegation that, if removed to Sri Lanka, he would likely have no access to specialized medical and psychiatric treatment or emotional support from his family, which he requires as a victim of torture. The complainant has provided detailed medical reports and a report on the psychological and psychiatric treatment undertaken in Switzerland since July 2017, which is enabling his rehabilitation, and on the risks of retraumatization and limited access to medical and specialized psychiatric treatment for him if removed to Sri Lanka, compounded by the lack of adequate procedures to systematically identify victims of torture. The Committee observes that the State Secretariat for Migration, in its decision of 13 December 2019, found it reasonable to assume that the complainant could sustain himself within a reasonable period of time upon his return, since he could rely on his extensive family for support. The State Secretariat took note that the complainant was in a state of poor mental health and that he suffered from post-traumatic stress disorder, for which he was undergoing treatment at the time of the decision. However, the State Secretariat considered that there were no indications in the medical files that the necessary treatment was unavailable in Sri Lanka or that the return would lead to an imminent and life-threatening situation. Rather, the State Secretariat concluded that Sri Lanka had a relatively well-functioning health system and that medication for the treatment of psychological issues was available. The State Secretariat held that the health issues of the complainant could be treated in Sri Lanka and did not constitute a hindrance to his expulsion, finding no medical emergency. The State Secretariat stated that the complainant had received treatment during the extended period of his asylum procedure, which had already given him some relief and would constitute an advantage if he needed more treatment upon returning to Sri Lanka. Those findings were upheld by the Federal Administrative Court. The Committee considers that it was incumbent upon the State party to undertake an individualized assessment of the personal and real risk that the complainant would face in Sri Lanka, considering his specific vulnerability and rehabilitation needs as a former victim of torture, instead of relying on country background reports as evidence that the complainant would be able to obtain adequate medical treatment in the country of origin.

6.11 The Committee notes the State party's claims that there are no reasons to think that the complainant's health problems are exceptionally serious, as it found no medical emergency, asserting that they could be treated in Sri Lanka where the complainant has a family. However, the Committee also notes that the complainant has provided medical reports with very detailed information regarding his serious vulnerability as a victim of torture and his specific needs, including the need for him to continue his treatment in Switzerland, without exposing him to retraumatization upon return to Sri Lanka. The validity

³⁰ *X. and Y. v. Switzerland* (CAT/C/71/D/807/2017), para. 9.8; and *V.M. et al. v. Sweden* (CAT/C/71/D/883/2018), para. 8.8.

³¹ *G.E. v. Australia* (CAT/C/61/D/725/2016), para. 7.6.

of the medical and psychological reports has not been challenged by the State party. The Committee notes the complainant's statement that the lack of specialized medical and psychiatric treatment would prevent his full rehabilitation as a victim of torture. The Committee observes that the complainant has been receiving specialized psychiatric treatment for victims of torture in Switzerland, and that the continuation of the treatment is necessary for his rehabilitation. The Committee recalls the comprehensive reparative concept, that the provision of reparation has an inherent preventive and deterrent effect in relation to future violations, and the need to prevent a risk of retraumatization and create a context of confidence and trust in which assistance can be provided.³² According to the medical reports, interruption of the specialized treatment and removal from the stable social environment would put the complainant at risk of irreparable harm, as his depressive state would worsen to such an extent that he would be likely to commit suicide, if removed to the area in the country of origin where he faced serious and protracted torture in the past. The Committee notes that this precarious situation would possibly endanger the life of the complainant.

6.12 The Committee observes the State party's argument that the protection needs of the complainant have been duly assessed by the asylum authorities of Switzerland, and that the complainant's reference to the decision in *A.N. v. Switzerland* concerns different circumstances. The Committee considers that the State party's asylum authorities should have ascertained whether appropriate rehabilitation services in Sri Lanka were actually available and accessible to the complainant in order to satisfy his right to rehabilitation as a victim of torture, instead of relying on expert reports to provide the burden of proof (see para. 6.10), and should have made sure that the complainant would have immediate and continuing access to such treatments until such time as he no longer needed them.³³ In the absence of information from the State party suggesting that such an assessment took place in the present case, and in view of the complainant's health situation, the Committee considers that the State party failed to sufficiently and individually assess the complainant's personal experience as a victim of torture and the foreseeable consequences of forcibly returning him to Sri Lanka.³⁴ The Committee also considers that the serious sequels of torture experienced by the complainant and their grave impact on his mental health, as well as the risks of retraumatization and possible suicide have not been properly taken into account in the asylum decisions by the State Secretariat for Migration and the Federal Administrative Court, which concluded no medical emergency. By deporting the complainant to Sri Lanka, the State party would deprive him of his right to rehabilitation, and that situation would by itself amount, in the circumstances of the complainant, to ill-treatment.³⁵ Accordingly, forcibly returning the complainant to Sri Lanka would constitute a violation of articles 14 and 16 of the Convention.

6.13 The Committee recalls that States parties should consider whether other forms of ill-treatment that a person facing deportation is at risk of experiencing might change so as to constitute torture before making a non-refoulement assessment. In relation to assessment of the gravity of a risk faced, the Committee recalls that severe pain or suffering cannot always be objectively assessed and that it depends on the negative physical and/or mental repercussions of violent or abusive acts for each individual, taking into account the relevant circumstances of each case, including the nature of the treatment, the sex, age and state of health and vulnerability of the victim and any other status or factors.³⁶ The Committee observes that, in the complainant's case, the ill-treatment he would face if removed to Sri Lanka, owing to the risk of his depressive state worsening to the extent that he would be likely to commit suicide, could reach a level comparable to torture.³⁷ The Committee is therefore of the view that the deportation of the complainant to Sri Lanka before completion of his rehabilitation would also constitute a violation of article 3 of the Convention.

³² General comment No. 3 (2012), paras. 2, 6 and 13.

³³ See, for example, *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 8.8.

³⁴ See, for example, *Harun v. Switzerland* (CAT/C/65/D/758/2016), paras. 9.9–9.11.

³⁵ *A.N. v. Switzerland*, para. 8.8; and general comment No. 3 (2012), paras. 3, 25 and 27.

³⁶ General comment No. 4 (2017), paras. 15–17; and general comment No. 2 (2007), paras. 3 and 21.

³⁷ General comment No. 4 (2017), para. 16.

7. The Committee, acting under article 22 (7) of the Convention, concludes that the removal of the complainant to Sri Lanka by the State party would constitute a violation of articles 3, 14 and 16 of the Convention.

8. The Committee is of the view that, in accordance with articles 3, 14 and 16 of the Convention, the State party has an obligation to refrain from forcibly removing the complainant to Sri Lanka and to continue complying with its obligation to provide the complainant, in full consultation with him, with rehabilitation through medical and psychological treatment. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken to respond to the above observations.
