



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2276/2013\*, \*\*

<i>Communication submitted by:</i>	D.N. (represented by counsel, Viken Artinian)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	20 July 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 23 July 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	24 October 2019
<i>Subject matter:</i>	Deportation from Canada to Sri Lanka
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims; incompatibility <i>ratione materiae</i> with the provisions of the Covenant
<i>Substantive issues:</i>	Right to life; risk of torture or ill-treatment; right to liberty and security of person; right to family life; protection of a child
<i>Articles of the Covenant:</i>	6, 7, 9, 23 and 24
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the communication is D.N., a national of Sri Lanka born in 1992. The author's application for asylum has been denied by the State party. He claims that his removal to Sri Lanka would amount to a violation by Canada of his rights under articles 6, 7, 9, 23 and 24 of the Covenant. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by counsel.

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

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi. In accordance with rule 108, paragraph 1 (a), of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.



1.2 On 23 July 2013, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from removing the author to Sri Lanka pending the examination of the communication.

1.3 The communication was suspended from 30 April 2014 to 22 July 2015, pending the determination of the author's application for a pre-removal risk assessment, and from 1 July 2016 to 25 February 2019, pending a second risk assessment application and subsequent application for judicial review.

#### **The facts as submitted by the author**

2.1 The author of the communication is of Tamil ethnicity and Hindu faith. In Sri Lanka he lived with other family members in a village in the Kilinochchi district, in the northern province of Sri Lanka, close to an army camp. In December 2008, there was heavy fighting in the area between the army and the Liberation Tigers of Tamil Eelam (LTTE), such that the villagers were displaced to another village. In July 2009, because of the ongoing fighting, the villagers were taken to a displaced persons camp, where they remained until January 2010. In November 2009 and January 2010, while in the camp, the author was questioned by the Criminal Investigation Department concerning his alleged membership or support of LTTE. During the interrogation he was beaten, but was released after the questioning.

2.2 In February 2010, after the author's return to his home village, three Criminal Investigation Department officers detained him and his sister. They were taken to a military camp, where they were subjected to beatings and were questioned about their alleged involvement with LTTE, after which they were released. In March 2010, the author and his sister moved to Nelliady in the Jaffna district, where the author found a job as a storekeeper. In April 2010, agents of the Criminal Investigation Department came to the shop and detained the author for one day. He was again subjected to beatings and was questioned.

2.3 In January 2011, the author moved to Colombo, where he stayed until his departure for Canada. In April 2011, members of the Eelam People's Democratic Party detained him for five days, demanding money in return for his release. The author was targeted because he had family members living abroad. He was released against the payment of 500,000 Sri Lanka rupees (approximately \$4,500) by his family.

2.4 On 13 June 2011, the author left Sri Lanka intending to go to Canada, where he had three siblings. He transited through the United Arab Emirates, Brazil, Panama and Haiti, and he was finally smuggled to the United States of America by boat, where he arrived on 13 August 2011 and was detained as an irregular migrant. He filed an application for refugee protection in the United States. However, upon release from detention he made his way to the Canadian border. On 3 October 2011, he applied for asylum in Canada, stating that he feared persecution in Sri Lanka as a young male Tamil from a northern part of the country. He also stated that on an unspecified date, he had been wounded in a shelling attack that had left scars on his body, and he argued that individuals with such scars are often accused of being LTTE members by authorities of Sri Lanka.

2.5 On 15 November 2012, the Refugee Protection Division of the Immigration and Refugee Board rejected the author's application for asylum. The Division noted that, in his application for asylum in the United States, the author had stated that he had fled Sri Lanka because he was at risk of extortion by the authorities, since his family owned land and businesses. When asked by the United States immigration authorities if he had ever been arrested, the author had answered in the negative, but clarified that he had been held in a government camp for six months because of the war. The Refugee Protection Division, however, noted that in statements made in his application for asylum in Canada, the author had indicated that he had been detained by the Sri Lanka Criminal Investigation Department on several occasions, the last one being in April 2010. The Division concluded that the author's claims as to what had allegedly occurred between February 2010 and April 2011 were not credible, as the author had not mentioned the alleged incidents in his application for asylum in the United States and had been unable to provide plausible explanations for the inconsistencies. The Division concluded that the author would not be at

risk of persecution upon return to Sri Lanka. The author argues that the Division erred in focusing on the claims made in his application for asylum in the United States. He claims that the inconsistencies between the statements made in the United States and those made in Canada were the result of errors made by the interpreter. The author applied to the Federal Court for leave to seek judicial review of the decision of the Refugee Protection Division. On 10 June 2013, the Federal Court rejected his application for a judicial review. The author argues that he was not afforded a fair opportunity to contest the merits of the negative decision of the Division, as judicial review of such a decision is conducted on a “reasonableness” standard rather than a “correctness” standard; according to statistics from 2006, leave is only granted by the Federal Court in 10 per cent of applications.

### **The complaint**

3. The author submits that his deportation to Sri Lanka would amount to a violation of his rights under articles 6, 7, 9 (1), 23 (1) and 24 (1) of the Covenant. He claims that if he were to be returned to Sri Lanka he would be arrested, detained and tortured by the security forces of Sri Lanka or paramilitary groups working with the Government because he is a young Tamil male from the north of the country; he has scars on his body and scars are indicators used by the authorities to accuse young Tamils of being LTTE members or supporters;<sup>1</sup> he has already been detained and ill-treated in a camp for internally displaced persons in the past; and he would be returned as a failed asylum seeker. The author claims that these factors put him at serious risk of being subjected to persecution in Sri Lanka as the authorities would perceive him to be an LTTE member or supporter. He argues that his life would therefore be at serious risk if he were to be returned to Sri Lanka.

### **State party’s observations on admissibility and the merits**

4.1 On 14 February 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party submits that the communication should be found to be inadmissible for failure to exhaust domestic remedies. It notes that on 21 November 2013, the author became eligible to apply for a pre-removal risk assessment and to apply for permanent residence on the basis of humanitarian and compassionate grounds. The author submitted an application on humanitarian and compassionate grounds on 23 December 2013, which at the time of the State party’s submission of its observations was still pending, but he had not submitted a pre-removal risk assessment application. The State party recognizes that these remedies were not available to the author at the time of the filing of the communication before the Committee but it submits that the commencement of a new remedial process by the author subsequent to the filing of a communication can render that communication inadmissible.

4.2 The State party further submits that the author’s claims under article 9 (1) of the Covenant are inadmissible owing to incompatibility with the scope of that provision. It argues that the provision does not impose an obligation on States parties to refrain from removing individuals who face a risk of arbitrary detention in the receiving State. It argues that a risk of arbitrary detention in the receiving State may form part of the factual context for allegations of irreparable harm contrary to articles 6 or 7 of the Covenant, but it submits that it does not engage the State party’s obligations under article 9 of the Covenant.

4.3 The State party finally submits that the author’s claims are inadmissible in their entirety as being manifestly unfounded. It notes that the State party’s authorities determined that none of the alleged incidents of detention and ill-treatment after January 2010 were credible. Moreover, country reports on conditions in Sri Lanka do not support the notion that any aspect of the author’s profile – including his scars – could give rise to a real risk of irreparable harm upon return to Sri Lanka. The State party therefore argues that the author has not substantiated his claim that his removal would constitute a violation of the State party’s obligations under articles 6, 7 or 9 (1) of the Covenant. It further notes that the author has made no arguments and provided no evidence to support an alleged violation of

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<sup>1</sup> The author refers to a report by Freedom from Torture, “Out of the silence: new evidence of ongoing torture in Sri Lanka – 2009–2011”.

his rights under articles 23 (1) and 24 (1) of the Covenant, and it additionally notes that the author has no spouse or partner and no children – either in Canada or in Sri Lanka.

4.4 The State party notes that the author arrived in the United States on 13 August 2011. He was released from detention on or about 15 September 2011, in order to await a formal asylum hearing before an immigration judge. However, the author chose not to remain in the United States. Instead, he entered Canada by a land border crossing on 3 October 2011. The author has stated that he wanted to join his siblings who live in Canada. The author's claim for protection was heard by the Refugee Protection Division on 2 November 2012. At the hearing, the author was represented by legal counsel and had the right to adduce evidence and make submissions. By a decision of 15 November 2012, the Division determined that the author did not have a well-founded fear of persecution. It noted that the author's account had been inconsistent and contradictory on crucial elements, and therefore not credible. In his initial interview with United States immigration authorities, the author only mentioned the alleged threat of extortion in Sri Lanka. He also stated that he had never been arrested in Sri Lanka, only that he had been in a camp for internally displaced persons for several months. The Division noted that the account the author had given to United States authorities differed from the account he had provided to Canadian officials. First, the author had not informed United States authorities that he had been detained by the Eelam People's Democratic Party; this alleged incident was only mentioned when the author filed his application in Canada. Second, the Refugee Protection Division noted that the author did not even mention the Eelam People's Democratic Party in the account he initially provided to Canadian border officials immediately upon arrival. At that time, the account provided by the author had focused on the four alleged incidents of detention by the Criminal Investigation Department, the most recent of which had occurred in April 2010. When asked about the discrepancies, the author stated that he had initially forgotten to mention the incidents. The Refugee Protection Division determined that that explanation was not credible. Third, the Division noted that there were also discrepancies between the account submitted by the author in his asylum application and the account he provided during the asylum hearing. At the hearing, the author testified that he had moved from Nelliady in the Jaffna district to Colombo in January 2011. However, in his application he indicated that he had moved to Colombo in late April 2011, and that he had been detained in Nelliady by the Eelam People's Democratic Party for five days in April 2011. When asked about this discrepancy at the hearing, the author indicated that as of January 2011, he was moving back and forth between Nelliady and Colombo. These discrepancies led the Division to determine that the claimant suffered no questioning, detainment or physical aggression after he was released from the internally displaced persons camp in January 2010. The claims made by the author regarding what had allegedly occurred between February 2010 and April 2011, namely that he had been detained by the Criminal Investigation Department in February and April 2010 and that he had been subjected to extortion and detention by the Eelam People's Democratic Party in April 2011, were not found to be credible by the Refugee Protection Division.

4.5 The State party further notes that the Refugee Protection Division considered the author's claim for protection in the light of the remaining aspects of his account and the other risk factors identified by him. Specifically, it considered whether returning to Sri Lanka as a Tamil male who had unsuccessfully sought protection in Canada would put the author at risk of being detained or tortured. The Refugee Protection Division examined country reports to determine what personal factors might draw the attention of the authorities of Sri Lanka to an individual returning to that country after unsuccessfully seeking asylum elsewhere. It noted that, according to a report from the border control agency of the United Kingdom of Great Britain and Northern Ireland, the factors that would increase the risk of difficulties with the authorities, including possible detention, were an outstanding arrest warrant, a criminal record, a connection with LTTE, an illegal departure from Sri Lanka, an involvement with media or non-governmental organizations, and a lack of ID card or other documentation.<sup>2</sup> The Refugee Protection Division also reviewed information that had been compiled by the Immigration and Refugee Board of the Research

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<sup>2</sup> United Kingdom Border Agency, "Country of origin information report: Sri Lanka", 4 July 2011, p. 146.

Directorate of Canada on the processes generally followed when Tamil males return to Sri Lanka after unsuccessfully seeking asylum elsewhere. That information indicated that they would likely be interviewed by the Criminal Investigation Department and the State Intelligence Service, to determine whether they had left the country illegally. The Refugee Protection Division observed that none of the special risk factors identified in country reports applied to the author as he had left Sri Lanka legally on his own passport and was in possession of his national identity card and birth certificate. In addition, he had no criminal record, there was no evidence that he had been connected to LTTE, and there was no outstanding arrest warrant. Therefore, the Refugee Protection Division found that his profile together with the documentation in his possession most likely would result in him being detained for no more than a few hours. The Division noted that, considering his profile, the scarring he had received following a shelling attack would not draw the attention of the authorities of Sri Lanka and concluded that there was no reasonable chance or serious possibility that the author would be persecuted if he were to return to Sri Lanka.

4.6 The State party notes that in his complaint the author claimed that he had not been afforded a fair opportunity to contest the merits of the negative Refugee Protection Division decision. The State party submits that the author's claim is incompatible with the scope of the Covenant and the Optional Protocol as it does not fall within the scope of the Committee's review under an individual complaint to consider the general effectiveness of the Canadian immigration and protection system. The State party further argues that the author's claims are also manifestly unfounded. It argues that the author has not provided any evidence to substantiate that this domestic remedial avenue was ineffective or unfair in his particular case. With the assistance of counsel, the author applied for leave to seek judicial review of the Refugee Protection Division decision. It notes that an application to the Federal Court for leave to seek judicial review, including with respect to Division decisions, has consistently been recognized by the Human Rights Committee as a procedure that must be exhausted for the purposes of admissibility and that the Committee against Torture has taken the same approach. It argues that the current system of judicial review by the Federal Court provides for an examination on the merits in the sense that it allows for review of both the law and the facts.

4.7 As concerns the merits of the communication, the State party notes that the author claims that he would face risks of irreparable harm if returned to Sri Lanka as the Criminal Investigation Department or other State authorities would suspect him of having links to the LTTE and because the Eelam People's Democratic Party might continue its efforts to subject his family to extortion by detaining him. The State party argues that objective reports on current conditions in Sri Lanka indicate that simply being a Tamil male from the north of the country does not put a person at risk of irreparable harm from State actors.<sup>3</sup> The State party argues that, on the basis of country reports, the only potentially relevant risk profile in the author's case would be if he would risk being suspected of having significant and concrete links to LTTE.<sup>4</sup> The State party argues that the author would not fall under

<sup>3</sup> The State party refers to the following documents:

Office of the United Nations High Commissioner for Refugees, "UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka", 21 December 2012, according to which originating from an area that was previously controlled by LTTE does not in itself result in a need for international refugee protection in the sense of the Convention relating to the Status of Refugees and the 1967 Protocol thereto.

United Kingdom: Home Office, *Operational Guidance Note: Sri Lanka*, July 2013, OGN v.14, in which it was concluded that being of Tamil ethnicity would not in itself normally warrant international protection.

Australia Refugee Review Tribunal, RRT Case No. 1304427, [2013] RRTA 689, 11 October 2013, in which it was concluded that there was no longer any presumption of international protection needed on a collective basis for reason of being a Tamil, or being a Tamil from an area formerly under LTTE control.

<sup>4</sup> The State party refers to the "UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Sri Lanka", 21 December 2012, and the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in *GJ and others (post-civil war returnees), Sri Lanka CG v. Secretary of State for the Home Department*, [2013] UKUT 00319 (IAC), in which it was

this risk profile upon return to Sri Lanka. It argues that State authorities such as the Criminal Investigation Department do not appear to have ever seriously considered that the author has ties to LTTE. It notes that the author's account includes some incidents of detention by the Criminal Investigation Department in late 2009 and early 2010, but that State authorities determined that most of the author's account was not credible. Even the author's own account states that he continued to live in Sri Lanka for over a year after the last alleged incident involving the Criminal Investigation Department, without experiencing any harassment from State actors. The author left Sri Lanka legally in 2011, using his own recently issued passport, and there was no reason to believe that he would now be of interest to the authorities of Sri Lanka. The State party notes the author's claims that he was beaten by the Criminal Investigation Department while allegedly detained in 2009 and 2010, but notes that in his communication the author does not provide any further details on the nature of the alleged ill-treatment. It notes that the Refugee Protection Division determined, based on discrepancies in the author's account of events, that all incidents alleged by him to have occurred after he left the internally displaced persons camp in January 2010 were lacking in credibility. It notes that the author may have been briefly detained by the Criminal Investigation Department while in such a camp, but argues that the Department did not appear to have an individualized interest in him and that, if any of these alleged arbitrary detentions actually happened, then on the facts as alleged by the author the most plausible explanation was that they were part of broad sweeps carried out in the north by the Department to target Tamil individuals, and young male Tamils in particular, in the tumultuous period at the end of the civil war in 2009 and early in 2010.

4.8 The State party submits that the author's personal profile of a young Tamil male with scars on his body who is returning to the country after unsuccessfully claiming asylum abroad would not lead the authorities of Sri Lanka to form suspicions that he has links to LTTE. The State party notes that the author's scars are accidental injuries to his upper chest and arm incurred during a shelling attack and that the scars have no connections to the alleged incidents of detention and mistreatment by State authorities. It notes that country reports do not support the author's contention that these characteristics would draw the scrutiny of the authorities of Sri Lanka upon his return. These reports suggest that someone must be on a "stop" or "watch" list to attract special scrutiny from the State authorities. Since the author has not provided any reason to believe that he would be on such a list, the State party submits that he would be able to return to Sri Lanka without any special scrutiny.

4.9 With respect to the alleged incident by the local Eelam People's Democratic Party paramilitary forces in Nelliady, the State party notes that the domestic authorities concluded that the author's account in this regard was not credible. It further argues that there is no indication that the Criminal Investigation Department or other State authorities were involved in the alleged incident.

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

5.1 On 23 April 2014, the author submitted his comments on the State party's observations. He maintains that the communication is admissible. He notes that, at the time of his submission of the communication before the Committee, he was not eligible to submit a pre-removal risk assessment application or an application on humanitarian and compassionate grounds. He had consequently exhausted all available domestic remedies. He further notes that he applied for a pre-removal risk assessment on 4 March 2014. As concerns the merits of the communication, the author refers to his initial complaint of 20 July 2013.

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concluded that the current categories of persons in real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, were individuals who were, or were perceived to be, a threat to the integrity of Sri Lanka as a single State because they had, or were perceived to have, a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities in Sri Lanka. The State party also refers to the Human Rights Watch World Report 2013, in which it is stated that Tamils with alleged links to LTTE were increasingly at risk of arbitrary arrests and torture.

5.2 On 17 December 2015, the author submitted further comments on the State party's observations. He refers to country reports<sup>5</sup> and reiterates his claim that as a young Sri Lankan male of Tamil ethnicity with several visible scars and refused refugee status, he would be at risk of being detained, tortured or killed by the State authorities or other groups, if returned to Sri Lanka.

### **Additional observations**

#### *From the State party*

6.1 On 21 June 2016, the State party submitted further observations. It noted that the author had received a negative determination on his pre-removal risk assessment application on 8 June 2015. However, this decision was set aside by the Federal Court in an application for judicial review on 18 February 2016. The pre-removal risk assessment decision was set aside by the court as the pre-removal risk assessment officer had failed to consider the most recent evidence on country conditions, and as the officer had unreasonably rejected evidence from several human rights organizations. The application was therefore remitted for redetermination by a different assessment officer by the court.

#### *From the author*

6.2 On 14 July 2017, the author informed that he had received a negative determination on the remitted pre-removal risk assessment application on 31 May 2017. In the decision the pre-removal risk assessment officer noted that the application consisted mainly of the same claims as those presented during the Refugee Protection Division hearing. The officer noted that the author had submitted photographs of marks on his shoulder which he claimed had been sustained through torture. The officer noted that the photographs were unclear and demonstrating simply what appeared to be two circular marks on the author's left shoulder. The officer found that the author had not substantiated that the marks were consistent with torture, and additionally that the author had not explained how and when the marks had been obtained. In reviewing various country reports the pre-removal risk assessment officer noted that conditions in Sri Lanka had improved with the election of a new Government and President in 2015, but that nevertheless there continued to be serious problems of human rights abuses by the security forces in Sri Lanka. The pre-removal risk assessment officer noted that country reports referred to profiles of individuals most at risk, which could be summarized as: those with a real or perceived connection to LTTE; those who had been or continued to be active in promoting Tamil separatism; those who had been critical of the Government of Sri Lanka, such as journalists and human rights defenders; and those wanted for having committed crimes in Sri Lanka. The pre-removal risk assessment officer concluded that the author had not put forward any evidence substantiating that he would fall under such a risk category.

6.3 The author argues that the pre-removal risk assessment officer simply repeated the conclusions reached by the Refugee Protection Division. He reiterates his argument that country reports indicate that he would be at risk of persecution upon return to Sri Lanka, especially taking into account that his scarring would put him at risk of being perceived to

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<sup>5</sup> The author refers to the Human Rights Watch Report 2015, in which it is stated that the Government's treatment of Tamils forcibly returned to Sri Lanka after being denied asylum overseas continued to be a significant concern and that serious concerns remain about the forced return of nationals of Sri Lanka who seek asylum abroad, including the use of torture against people suspected of links to LTTE. The author also refers to a 2014/2015 Amnesty International report that contains references to continuing discrimination against ethnic, linguistic and religious minorities, including members of Tamil communities. In that report, it is noted that Tamils, particularly those from the north of the country, were harassed, threatened and arrested by security forces that suspected them of sympathy or links with LTTE. The author finally refers to the report "A still unfinished war: Sri Lanka's survivors of torture and sexual violence 2009–2015" by the International Truth and Justice Project – Sri Lanka (2015), in which it was stated that post-war violations by the security forces painted a chilling picture of the continuation of the three-decade-long conflict against the Tamil community, the purpose of which was to sow terror and destabilize those Tamil community members left behind.

be an LTTE supporter. As concerns the rest of the claims, the author refers to his initial submission of 20 July 2013.

*From the State party*

6.4 On 16 November 2018, the State party submitted further observations on the communication. It noted that on 29 January 2018, the Federal Court had dismissed the author's application for judicial review of the negative pre-removal risk assessment decision of 31 May 2017. It noted that in his application for judicial review, the author had argued that the pre-removal risk assessment officer had failed to assess his specific personal circumstances and profile in light of the most recent country evidence. The Court determined that the pre-removal risk assessment officer had examined the evidence submitted by the author, consulted the most recent documentary evidence available and come to the conclusion that the author did not have a profile that would indicate that he would be at risk upon return to Sri Lanka.

### **Issues and proceedings before the Committee**

*Consideration of admissibility*

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

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

7.3 The Committee notes that the State party has submitted that the communication should be declared inadmissible for failure to exhaust domestic remedies as the author made an application for a pre-removal risk assessment and applied for permanent residence on the basis of humanitarian and compassionate grounds after having submitted his communication before the Committee. However, the Committee also notes that the State party has acknowledged that these procedures were not available to the author at the time he submitted his communication before the Committee, at which point he was facing imminent removal to Sri Lanka. Additionally, the Committee notes that after the author became eligible to file a pre-removal risk assessment application, he made such an application, and also filed a subsequent request for review of the negative determination of this application. Accordingly, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes that the author has claimed that his removal to Sri Lanka would amount to a violation of his rights under articles 23 (1) and 24 (1) of the Covenant. The Committee notes that the author has not provided any information or substantiation as to why he considers that his rights under these provisions would be violated if he were to be removed to Sri Lanka. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

7.5 The Committee takes note of the author's allegations under article 9 (1) of the Covenant that he would be at risk of arbitrary detention upon return to Sri Lanka. The Committee also takes note of the State party's argument that its non-refoulement obligation does not extend to an obligation to refrain from removing individuals who face a risk of arbitrary detention in the receiving State. The Committee considers that the author has failed to substantiate, for the purpose of admissibility, how this claim would raise a separate issue from his claims under articles 6 (1) and 7 of the Covenant.<sup>6</sup> Accordingly, the Committee considers that he has failed to substantiate this claim for the purposes of admissibility and therefore considers this part of the communication inadmissible under article 2 of the Optional Protocol.

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<sup>6</sup> *Y. v. Canada* (CCPR/C/114/D/2280/2013), para. 6.5; *X. v. Canada* (CCPR/C/115/D/2366/2014), para. 8.5; and *Y. v. Canada* (CCPR/C/116/D/2314/2013), para. 6.5.



7.6 The Committee further takes note of the author's claims, for which he has not referred to any specific article of the Covenant, that he has not been afforded a fair opportunity to contest the merits of the negative decision of the Refugee Protection Division. The Committee also notes that the author availed himself of the opportunity to apply for a judicial review of the negative decision before the Federal Court, that he subsequently made a pre-removal risk assessment application and an application for judicial review of the negative pre-removal risk assessment decision before the Federal Court. It notes the State party's argument that the author has not provided any evidence to substantiate that this domestic remedial avenue was ineffective or unfair and also notes its argument that the system of judicial review by the Federal Court provides for a review by the Court of both the law and the facts. Accordingly, the Committee considers that the author has failed to substantiate these allegations for the purpose of admissibility and therefore considers this part of the communication inadmissible under article 2 of the Optional Protocol.

7.7 The Committee considers, however, that the author has sufficiently substantiated the claims that he would risk persecution in Sri Lanka owing to his past experience of ill-treatment, his profile as a young Tamil from the north of the country and the status of failed asylum seeker, under articles 6 (1) and 7 of the Covenant, for purposes of admissibility. It therefore declares the communication admissible under articles 6 and 7 of the Covenant, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee recalls its jurisprudence that the risk must be personal and also recalls that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.

8.3 The Committee further recalls its jurisprudence in which it has stated that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review or evaluate the facts and evidence of the case in order to determine whether a real risk of irreparable harm exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>7</sup>

8.4 In the present case, the Committee notes the author's claims that if he were returned to Sri Lanka, he would face a risk of persecution as a young Tamil from northern Sri Lanka with perceived links to LTTE, especially because of his scars, his previous ill-treatment by Sri Lankan security forces and his status as a failed asylum seeker. The Committee notes the State party's arguments that its authorities carried out a thorough review of the author's claims; that country reports indicate that not all young Tamil males from northern Sri Lanka face a real and personal risk of persecution by the authorities, but only those who are suspected of having links to LTTE; and that the author has not demonstrated that he is a person who would be suspected of having concrete links with LTTE or a person who would otherwise be of interest to the Sri Lankan authorities.

8.5 The Committee notes that the author's claims focus mainly on the assessment of the country reports carried out by the State party authorities, arguing that the authorities arrived at an erroneous conclusion based on those reports. The Committee observes that reports on the human rights situation in Sri Lanka indicate that despite the changes that have taken place, human rights violations, including torture, continue to exist; and that, inter alia,

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<sup>7</sup> See, for example, *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

certain individuals of Tamil ethnicity who are suspected of having links to LTTE may be in need of international protection.<sup>8</sup>

8.6 The Committee, however, notes that the author does not argue that he, or any family member, was ever a member of LTTE or that he has participated, supported or been involved in the activities of LTTE in any manner; rather, he submits that his Tamil ethnicity, his alleged detentions, his scars and his status as a failed asylum seeker constitute sufficient elements to conclude that he would be perceived as a person with links to LTTE. Against this background, the Committee notes that the Refugee Protection Division rejected the author's refugee application since it concluded that the author had failed to demonstrate that he had any connection to LTTE and would therefore be of no interest to the Sri Lankan authorities, nor did he fall under any other risk category that could indicate that he would be of interest to the Sri Lankan authorities. The Committee further notes that parts of the author's claims were also found to lack credibility owing to discrepancies in the account of events he presented to Canadian immigration authorities, compared with those he had previously presented to immigration authorities in the United States. Additionally, the Committee notes that there are also discrepancies in the author's account of events as to the scars on his body. He initially stated in his application for asylum in Canada that the scars had been inflicted in a shelling attack during the war. He later stated, in his pre-removal risk assessment application, that he had obtained scars as a result of torture. The Committee also finally notes the State party's argument that the author left Sri Lanka legally in 2011, travelling by air on his own passport, without having reported any problems faced in departing from Sri Lanka. While the author disagrees with the conclusions reached by the State party authorities, the Committee finds that the facts before it do not allow it to conclude that the authorities' assessment of the facts and evidence was clearly arbitrary or amounted to a manifest error or denial of justice. Accordingly, the Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to articles 6 (1) and 7 of the Covenant if he were to be removed to Sri Lanka.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Sri Lanka would not be a violation by the State party of articles 6 (1) and 7 of the Covenant.

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<sup>8</sup> *Y. v. Canada* (CCPR/C/114/D/2280/2013), para. 7.6.