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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, concerning communication No. 2948/2017*, **, ***

Submitted by:	H.S. et al. (represented by counsel, Alain Vallières)
Alleged victim:	The authors
State party:	Canada
Date of communication:	26 January 2017 (initial submission)
Document references:	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 7 February 2017 (not issued in document form)
Date of decision:	14 March 2019
Subject matter:	Deportation from Canada to India
Procedural issues:	Non-exhaustion of domestic remedies; insufficient substantiation of claims; incompatibility with the Covenant
Substantive issues:	Right to life; risk of torture or cruel, inhuman or degrading treatment; liberty and security of person; deprivation of liberty; right to privacy and family life; rights of the child; non-discrimination
Articles of the Covenant:	2, 6, 7, 9, 10, 17, 23, 24 and 26
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

* Adopted by the Committee at its 125th session (4–29 March 2019).

** The following members of the Committee participated in the consideration of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher 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. Pursuant to rule 108 of the Committee's rules of procedure, Committee member Marcia V.J. Kran did not participate in the consideration of the communication.

*** A joint opinion (dissenting) by José Manuel Santos Pais and Gentian Zyberi is appended to the present document.

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1.1 The authors of the communication, which was received on 31 January 2017, are Mr. H.S., born in 1978, and Ms. A.K., born in 1984. They are both Indian nationals. The authors are acting on their own behalf and on behalf of their minor children, J.S., born in 2009, and R.K., born in 2010, both of whom are Canadian citizens. The parents have been refused asylum in Canada and ordered to leave the country. Their return to India was scheduled for 19 February 2017. They claim that Canada would be violating its obligations under articles 2, 6, 7, 9, 10, 17, 23, 24 and 26 of the Covenant if it were to return the adult authors to India. The Optional Protocol to the Covenant entered into force for the State party on 19 May 1976. The authors are represented by counsel, Alain Vallières.

1.2 On 7 February 2017, the Human Rights Committee requested Canada to stay the removal of the adult authors while their complaint was examined. Canada granted this request and the authors remain in Canada for the moment. On 4 August 2017, the State party requested that the interim measures regarding this communication be lifted. On 19 December 2017, the Committee, acting through its Special Rapporteur on new communications and interim measures, rejected the request.

The facts as submitted by the authors

2.1 From 1997 to 1999, Mr. H.S. worked in Malaysia. In 1999, he returned to India to replace his lost passport. In January 2000, the police came to the family home to question him about political activists and his alleged role as a mediator between Indian and Pakistani activists. On that occasion, he was tortured to extract information from him and had to pay a bribe in order to be released.

2.2 Having taken refuge in his sister's home, which was in another location, he was informed that he was still wanted by the police. He therefore decided to flee to Malaysia on a fake passport. His family, who had stayed in India, continued to be harassed by the police until a bribe was paid in 2005.

2.3 In 2006, Mr. H.S. returned to India to marry Ms. A.K. During his stay in India, he tried to recover a debt from a man, R.S. In that context, he questioned R.S.'s father, who died a few days later. The brother of R.S. held the author responsible for the death of his father and retaliated by reporting Mr. H.S. to the Indian authorities as a people smuggler with a false passport.

2.4 Mr. H.S. was arrested on 27 October 2006 and was questioned again about his political affiliations while he was detained. He was released on 9 December 2006 and returned to Malaysia. His wife joined him in July 2007 but had to return to India in March 2008 for medical treatment. Having failed to appear before the court in India in connection with the events that had led to his arrest, he was declared a "proclaimed offender" and was sought by the police. His wife received threats.

2.5 Later, Mr. H.S.'s brother was arrested and tortured because of his links with the former, and has been missing since 2010.

2.6 On 9 November 2008, the authors arrived in Toronto, Canada, and applied for asylum.

2.7 On 10 June 2013, 28 April 2014 and 24 November 2014, the authors were heard by the Immigration and Refugee Board of Canada. Their application was rejected on 23 January 2015. On 9 February 2016, they applied for a pre-removal risk assessment; their application was rejected on 4 August 2016. They subsequently received an order to leave Canada.

2.8 On 13 October 2016, the authors applied for permanent residence on humanitarian and compassionate grounds, including in connection with the best interests of their children, who are both Canadian citizens. They had not received a response at the time of the initial submission of the communication, as the standard response time ranges from 30 to 42 months. This procedure does not prevent their deportation, however.

2.9 The authors state that although they were entitled to apply to the Federal Court of Canada for a judicial review of the decisions to reject their asylum application, their counsel at the time had advised them not to do so. The fact that they had entered Canada

illegally might have been brought to light and prompted the authorities to initiate deportation proceedings.

2.10 The Canadian authorities contacted the Indian authorities in order to obtain the travel documents required for the authors' deportation, including 180-day tourist visas for the two children. The authors were scheduled to leave for India on 19 February 2017.

The complaint

3.1 The authors claim, firstly, that their rights under articles 6 and 7 of the Covenant would be violated if they were deported by Canada. Mr. H.S. would likely be arrested on arrival because of the charges against him and he fears that he would face extrajudicial execution because of his alleged political activities. The authors mention the overall human rights situation in India. They also point out that Mr. H.S.'s brother is missing. With reference to article 6 of the Covenant, the authors add that their child, J.S., is asthmatic and would likely suffer from asthma attacks if deported to India, owing to the poor air quality and the lack of medical care in that country.

3.2 The authors argue, secondly, that deportation would entail a violation of Mr. H.S.'s rights under article 9 of the Covenant, and also a violation of article 10 on account of the circumstances and conditions in which he would be detained if he was arrested.

3.3 The authors claim that, if they were deported from Canada, their children would be forced to go with them to a country that they do not know and whose nationality they do not possess; this would constitute interference with their privacy and family life, in violation of article 17 of the Covenant. Furthermore, since the children have so far been granted only 180-day tourist visas for India, they are likely to face uncertainty as to their status after the expiration of that period. At that stage, they would have to either leave their parents behind and return to Canada, or remain in India illegally. The authors state that the family separation that could occur as an indirect result of the deportation could cause irreparable harm to the children. With that in mind, the authors argue that the Canadian authorities did not take into account the best interests of the children in their decisions. The deportation is therefore arbitrary and constitutes a violation of articles 17 (1) and 23 (1) of the Covenant.

3.4 The authors also maintain that the family's deportation would violate the rights of the children under article 24 of the Covenant, for they would not be protected as required by this provision. The authors claim, in particular, that the children's health would be at risk, owing to the poorer hygiene conditions faced by children in India and the limited access to health care. The authors also believe that the children would not receive the same standard of education in India, where they are not familiar with the system or the language, as they would in Canada.

3.5 The authors also state that deportation would violate the children's rights under article 26 of the Covenant, inasmuch as it would reflect discrimination based on the nationality of their parents.

State party's observations on admissibility and the merits

4.1 On 4 August 2017, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 According to the State party, Mr. H.S.'s claims, namely that he would be at risk of torture or death at the hands of the Indian authorities, that the expulsion of the adult authors would place their children, who have grown up abroad and without speaking Punjabi, in an unstable situation, and that J.S. needs medical care that he would be unable to obtain in India, should be declared inadmissible under articles 2 and 5 of the Optional Protocol and rule 96 of the Committee's rules of procedure for three reasons.

4.3 Firstly, the adult authors did not exhaust all available domestic remedies, for they did not apply for leave for a judicial review of the negative decision of the Refugee Protection Division or of the decision to reject their pre-removal risk assessment application, even though this option was available to them. Canada maintains that, if the adult authors were dissatisfied with those decisions or believed that the decision makers had

not properly considered the challenges that they would face if they were returned to India, they should have invoked the domestic remedy provided by Canada in order to support their claim. The adult authors did not do so, however. As the Committee has repeatedly acknowledged, a State party generally cannot be held accountable for the errors or omissions of an independent legal adviser.[1] Moreover, the authors subsequently applied for leave for a judicial review of the negative decision regarding their application for permanent residence on humanitarian and compassionate grounds but no decision had been handed down at the time of submission of the present communication. Furthermore, their claims based on article 24 (1) of the Covenant are inadmissible since they have not exhausted all available domestic remedies.

4.4 Secondly, the authors' claims of violations of articles 2, 6, 9, 10 and 24 of the Covenant are inadmissible because they are incompatible *ratione materiae* with these provisions, which have no extraterritorial application. Article 2 of the Covenant does not establish an independent right to reparation; therefore, allegations relating to this article but not to an article of the Covenant that confers a right on the author of a communication cannot, in themselves, serve as the basis for a claim in a communication submitted under the Optional Protocol.[2] J.S.'s rights under article 6 of the Covenant have not been violated, because he is not the subject of a removal order. Moreover, even if Canada was responsible for the removal of J.S., the Covenant places no obligation on Canada to refrain from deporting a person who would face less favourable conditions in his or her country of origin than in Canada. Since articles 9 and 10 of the Covenant do not involve a non-refoulement obligation, Canada bears no responsibility within the meaning of the Covenant. The rights of the authors' children under article 24 of the Covenant have not been violated, for the children are not the subject of a removal order. In addition, even if Canada was responsible for the children's removal, article 24 of the Covenant does not impose a non-refoulement obligation on the State party ordering the removal.

4.5 Thirdly, Canada maintains that the authors have not sufficiently substantiated their claims relating to articles 6, 7, 17, 23, 24 and 26 of the Covenant, which means that their communication is inadmissible under article 3 of the Optional Protocol and rule 96 of the Committee's rules of procedure. The allegations and evidence submitted by the authors have already been examined by the competent and impartial Canadian authorities, all of whom concluded that the authors' claims regarding the problems they might face in India lacked credibility. Canada stresses in particular that, as the Refugee Protection Division member pointed out, the adult authors did not arrive in Canada as persons in danger, since they could have stayed in Malaysia for approximately one year more, given that Mr. H.S. had a work permit. Furthermore, they applied for asylum in Canada only after they were challenged by border officers who ascertained that they were not "genuine visitors".[3]

4.6 The Canadian authorities who assessed the risks facing the adult authors concluded that their fears were not well founded, in view of the total lack of credible or objective evidence to support the claims that: (a) the Indian police believe Mr. H.S. to have collaborated with political movements, and questioned and tortured him twice; (b) Mr. H.S. would be arrested upon arrival in India; and (c) all persons who have been declared to be "proclaimed offenders" are at risk of torture or ill-treatment. Canada also maintains that the fact that the author faces criminal charges does not necessarily mean that he faces a foreseeable, real and personal risk of irreparable harm. The Indian Penal Code does not provide for the imposition of the death penalty.[4] The authors have not submitted any credible or objective evidence that all persons declared proclaimed offenders or who are charged with fraud (and not terrorism) are at risk of torture or ill-treatment. The authors base their claims of risk on general reports about the country, without showing that Mr. H.S.

[1] See, for example, *Edwards v. Jamaica* (CCPR/C/55/D/529/1993), para. 5.2, and *Henry v. Jamaica*, (CCPR/C/64/D/610/1995), para. 7.4.

[2] General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 3.

[3] Legal visitors.

[4] The Indian Penal Code does provide for the imposition of the death penalty in certain circumstances. It is nevertheless unlikely that the author would be at risk of being sentenced to death if he returned to India, because the offences that he supposedly committed are not punishable by the death penalty.

actually faces a real and personal risk. The State party also states that Mr. H.S. would have an internal flight alternative in India. The authors' claims and evidence, which have already been examined by the Canadian authorities, are too weak to give rise to a non-refoulement obligation.

4.7 As regards the alleged violations of articles 17 and 23 of the Covenant, the adult authors' deportation would not constitute interference, for it would not separate the family, and Canada would not be responsible for any separation of the family occurring in India. The State party also recalls that the Committee has confirmed that articles 17 and 23 of the Covenant allow States parties to exercise their discretion in cases where deportation would affect the family life of the person concerned. According to the Committee, the interference with family relations that would result from deportation cannot be regarded as either unlawful or arbitrary[5] when the deportation order was made under law in furtherance of a legitimate State interest and due consideration was given in the deportation proceedings to the deportee's family connections.[6] Canada also asserts that the authorities gave due consideration to the best interests of the children when deciding on the authors' application for permanent residence on humanitarian and compassionate grounds. The authors have not shown that article 26 of the Covenant has been violated, for the child authors are not the subject of a removal order and the fact of having parents with an uncertain immigration status is not one of the grounds of discrimination listed in the article. According to the State party, each of these reasons is sufficient, in itself, to establish the inadmissibility of the communication.

4.8 The State party notes that Mr. H.S. currently faces criminal charges in Canada for having threatened a person with death or bodily harm on 21 May 2016, in breach of article 264.1 (1) (a) of the Canadian Criminal Code. If found guilty of this offence, he could receive a sentence of up to 5 years' imprisonment; this would render him inadmissible to Canada on grounds of criminality.[7]

4.9 Should the Committee nevertheless find this communication admissible, Canada would like to assert, in the alternative, that it ought to be rejected on the merits. It is unfounded and fails to demonstrate any violation of articles 2, 6, 7, 9, 10, 17, 23, 24 or 26 of the Covenant.

4.10 The State party has requested that the Committee lift the interim measures regarding this communication because the adult authors have failed to establish a prima facie case. There is no real reason to believe that their deportation to India would expose them personally to a real and imminent risk of irreparable harm. Should the Committee decide not to lift the interim measures, Canada would like to request that the Committee reach a decision on the admissibility and the merits of this communication as soon as possible.

Authors' comments on the State party's observations

5.1 In their comments dated 6 December 2017, the authors maintain that the State party's arguments regarding the lifting of the interim measures are not based on any legal rule. They claim that the arguments put forward by the State party show that the communication is not inadmissible prima facie, since the State party raises issues relating to the merits of the case. They add that nothing has been proven as regards the children, meaning that, even if the Committee were to accept the prima facie inadmissibility of the parents' complaint (which they refute), the point raised about the children's situation in the event of deportation to India would remain valid.

5.2 The authors maintain that the act of sending children away to a country whose nationality they do not possess and where their fundamental rights might not be guaranteed justifies the continuation of the Committee's interim measures in order to avoid irreparable harm. Flouting of interim measures, especially by an irreversible act, undermines the

[5] General comment No. 16 on the right to privacy.

[6] *Stewart v. Canada* (CCPR/C/58/D/538/1993), para. 12.10.

[7] Canada, Immigration and Refugee Protection Act, S.C. 2001, c. 27, art. 36 (2). Available at https://laws.justice.gc.ca/eng/acts/i-2.5/FullText.html.

protection of Covenant rights.[8] They further maintain that it would be better to ensure the children's education and health and not to expose them to the risks that would arise from deportation to a country whose nationality they do not possess. As regards the adult authors, they maintain that, although their situation was assessed by the Canadian authorities, the Committee should verify the procedure. Although it is generally for the national authorities to review evidence, the Committee can nevertheless check whether their evaluation was clearly arbitrary or amounted to a denial of justice.[9] They add that deportation would violate the right to family life and justifies the application of interim measures.

5.3 The authors claim that the Canadian authorities did not consider the merits of the application and merely assessed the credibility of Mr. H.S. The authors' application was not properly examined inasmuch as the pre-removal risk assessment officer did not review the authors' situation, on the pretext that the facts had already been examined by a member of the Immigration and Refugee Board of Canada. In addition, Canada cannot claim to be unaware that detainees are highly likely to suffer ill-treatment. It should also be noted that all the arguments put forward by Canada concern only the application submitted by the adult authors, without taking into account the children. In this regard, the authors point out that they submitted an application for permanent residence on humanitarian and compassionate grounds to the Canadian authorities in order to assert the rights of the children, which had not been considered up to that point. The response to this application had not been expected until 2019 or 2020, yet the application was rejected on 8 March 2017. An application for a judicial review of this unreasonable decision was submitted to the Federal Court. An out-of-court settlement was reached on 7 November 2017 between the authors and the State party, which agreed to reconsider the application before a hearing was held before the Court. In doing so, the State party acknowledged that the case had not been properly examined.

5.4 The authors maintain that deportation would constitute interference with their family relations.[10] They argue that a decision by a State to deport the father of a family with two minor children forces the family to choose whether they should accompany him or stay in the territory of the State, and that such a decision should, therefore, be considered interference with the family.[11] The separation of a person from his or her family, in the context of deportation, could be regarded as arbitrary interference with the family if the effects of the separation are disproportionate to the objectives.[12] With reference to the Committee's jurisprudence, which states that the interference with family relations that is the inevitable outcome of deportation cannot be regarded as either unlawful or arbitrary when the deportation order was made under law in furtherance of a legitimate State interest and due consideration was given in the deportation proceedings to the deportee's family connections,[13] the authors argue that, in their case, the State party itself admits that the family situation has not yet been properly assessed. Deporting the parents, under any circumstances, would violate the right to family life. In cases where one part of a family must leave the territory of a State while the other part would be entitled to remain, the relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must take account of, on the one hand, the significance of the State's reasons for the removal of the person concerned and, on the other, the degree of hardship the family and its members would encounter as a consequence of such removal.[14] In this case, the catastrophic effects on family life and the family have already been shown in the comments submitted by the authors.

[8] *Shukurova v. Tajikistan* (CCPR/C/86/D/1044/2002), para. 6.3, and *Weiss v. Austria* (CCPR/C/77/D/1086/2002), para. 7.2.

[9] *Kurbonov v. Tajikistan* (CCPR/C/86/D/1208/2003), para. 6.3.

[10] *Stewart v. Canada*, para. 12.10.

[11] *Byahuranga v. Denmark* (CCPR/C/82/D/1222/2003), para. 11.5; *Madafferi et al. v. Australia* (CCPR/C/81/D/1011/2001), para. 9.7; and *Winata et al. v. Australia* (CCPR/C/72/D/930/2000), para. 7.1.

[12] *Canepa v. Canada* (CCPR/C/59/D/558/1993), para. 11.4.

[13] *Stewart v. Canada*, para. 12.10.

[14] *Madafferi et al. v. Australia*, para. 9.8, and *Byahuranga v. Denmark*, para. 11.7.

5.5 In cases of imminent deportation, the material point in time for assessing whether the family's rights have been violated must be that of the Committee's own consideration of the case. The deportation by a State of the parents of a minor child who holds the nationality of that State must be justified by additional factors that go beyond the mere enforcement of immigration law, if it is not to be considered arbitrary.[15] The only reason given by the State party is the proper application of the law, without any attempt to show or explain why removal is justified in this case. In view of the above, the Committee should not, according to the authors, simply dismiss the communication at this stage or decide that the interim measures ought to be lifted. If the family were to be returned to India, the harm caused would be irreparable. The authors therefore assert that the interim measures should remain in place.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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

6.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the authors.[16]

6.4 The Committee notes that the authors were heard by the Immigration and Refugee Board of Canada, which rejected their asylum application. They also submitted an application for a pre-removal risk assessment, which was rejected on 4 August 2016. On 13 October 2016, the authors applied for permanent residence on humanitarian and compassionate grounds, especially the best interests of their children, who are both Canadian citizens; that application was denied on 8 March 2017. That decision by the State party led the authors to submit an application for a judicial review by the Federal Court of Canada (see paras. 4.3 and 5.3). However, the authors have admitted that, although they were entitled to apply to the Federal Court of Canada for a judicial review of the decisions to reject their asylum application, their counsel at the time had advised them not to, on the grounds that the authorities might initiate deportation proceedings because they had entered Canada illegally. In this context, the Committee notes that the State party considers that the adult authors did not exhaust all available domestic remedies, for they did not apply for leave for a judicial review of the negative decision of the Refugee Protection Division or of the decision to reject their pre-removal risk assessment application, even though these options were available to them. According to the State party, this is a remedy that ought to be considered effective in the circumstances of this case.[17] As the Committee has repeatedly acknowledged, a State party generally cannot be held accountable for the errors or omissions of an independent legal adviser.[18] Accordingly, the Committee considers that it is precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

[15] *Winata et al. v. Australia*, para. 7.3.

[16] *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4, and *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5.

[17] *Choudhary et al. v. Canada* (CCPR/C/109/D/1898/2009), para. 8.3, and *Warsame v. Canada*, para. 7.4. See also *Shodeinde v. Canada* (CAT/C/63/D/621/2014), paras. 6.5 to 7, and *Nakawunde v. Canada* (CAT/C/64/D/615/2014), paras. 6.6 to 6.9.

[18] *Edwards v. Jamaica*, para. 5.2, and *Henry v. Jamaica*, para. 7.4.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be transmitted to the authors and to the State party.

Annex

Joint opinion (dissenting) of José Manuel Santos Pais and Gentian Zyberi

1. We regret that we are unable to support the Committee's decision to consider this communication inadmissible (see para. 7 of the decision), as the Canadian authorities have not given sufficient consideration to the best interests of the children in this case.

2. The authors of the communication are Mr. H.S. and Ms. A.K., both nationals of India who arrived in Canada in 2008. The authors are acting on their own behalf and on behalf of their minor children, J.S., born in 2009, and R.K., born in 2010, both of whom are Canadian citizens (para. 1.1).

3. The adult authors' asylum claim was rejected in 2015, and their application for a pre-removal risk assessment was rejected in 2016 (para. 2.7). Having been ordered to leave Canada, they would likely already have done so if the Committee had not requested that Canada stay their removal while their complaint was being considered (para. 1.2).

4. For the State party, the decision to expel the adult authors appears to have already been taken and consequently the situation of the children, who are Canadian citizens, has not been duly taken into account. The Canadian authorities contacted the Indian authorities in order to obtain the travel documents necessary for the deportation of the adult authors, as well as 180-day tourist visas for the children (para. 2.10).

5. In October 2016, the adult authors submitted an application for permanent residence on humanitarian and compassionate grounds, especially regarding the best interests of their children. However, this procedure, which normally takes between 30 and 42 months, would not prevent the authors' deportation (para. 2.8). Their application was processed unusually quickly, and was denied in March 2017.

6. The authors therefore submitted to the Federal Court an application for judicial review. That application remains pending, as acknowledged by Canada (paras. 4.3, 5.3 and 6.4). An out-of-court settlement was reached on 7 November 2017 between the authors and the State party, which agreed to reconsider the application before a hearing was held before the Court (para. 5.3). It therefore appears that Canada is prepared to continue consideration of this case.

7. It is true that, while the authors were entitled to apply to the Federal Court of Canada for a judicial review of the decisions to reject their asylum application, their counsel at the time had advised them not to do so (para. 2.9).

8. This led Canada to consider the claims of the adult authors inadmissible, since they had not exhausted all available domestic remedies (para. 4.3), and led to the Committee's inadmissibility decision (para. 7).

9. However, such reasoning is based exclusively on the behaviour of the adult authors. What about their children? Should they be victims of their parents' choices?

10. It appears that, for Canada (para. 4.7), the deportation of the adult authors would also entail the deportation of their children, even though, unlike their parents, they are Canadian citizens. Although they are minors, no measures appear to have been taken to ensure that they could remain in Canada, including under a guardianship or equivalent arrangement. In this regard, the State party merely states that the interests of the children have been taken into account, since they are not themselves subject to a removal order (paras. 4.4 and 4.7).

11. However, the State party does not explain how it would provide for the needs of the two children if they were to remain in Canada after the deportation of their parents, let alone how due consideration was given to the family relations of the adult authors during the proceedings, in connection with article 23 of the Covenant (para. 4.7).

12. If the adult authors were deported from Canada, their children would be forced to go with them to a country that they do not know and whose nationality they do not possess; this could constitute interference with their privacy and family life, in violation of articles 17 and 23 of the Covenant. Furthermore, since the children have been granted only 180-day tourist visas for India, they are likely to face uncertainty as to their status after the expiration of that period. At that stage, they would have to either leave their parents behind and return to Canada, or remain in India illegally. Family separation, as an indirect result of the deportation order, would therefore risk causing irreparable harm to the children (see para. 3.3) and could prove to be arbitrary.

13. The deportation of the family could also involve a violation of article 24 of the Covenant, in particular with regard to the health of the children, one of whom is asthmatic (para. 3.1) and requires specialist health care, and their education, which would not be provided under the same conditions as in Canada (para. 3.4). The children would leave behind the educational system to which they are accustomed, as well as their friends, and would be placed in an environment that is completely alien to them.

14. However, according to article 24 (1) of the Covenant, the protection of minors is the responsibility not only of parents, but also of States parties.

15. The separation of a person from his or her family, in the context of deportation, can be regarded as arbitrary interference with the family if the effects of the separation are disproportionate to the objectives.

16. In cases where one part of a family must leave the territory of a State while the other part would be entitled to remain, the relevant criteria for assessing whether or not that interference with family life can be objectively justified must take account of the significance of the State's reasons for the removal of the person concerned (see para. 4.8, where the State party seems to consider it almost certain that Mr. H.S. would be convicted of a criminal offence) and the degree of hardship the family and its members would encounter as a consequence of such removal (para. 5.4.)

17. In the present case, given that a procedure is still pending, that there has not yet been a definitive resolution of the matter of the adult authors' permanent residence, and that a family reunification procedure (the reunification of the parents with their children, who are Canadian citizens) remains a possibility, we would have decided to request that Canada stay the execution of the order for the adult authors' removal while their application remains under consideration,[1] in order to preserve the family unit and uphold the best interests of the children concerned.

[1] *Nakawunde v. Canada* (CAT/C/64/D/615/2014), para. 6.9.