

Geneva, July 29th, 2022

To  
Mrs Karin Keller-Sutter,  
Federal Councillor,  
Head of the Federal Department  
of Justice and Police (FDJP)

**Open Letter: Appeal for the suspension of deportations to Sri Lanka of medically vulnerable asylum seekers in need of medical care**

Madam Federal Councillor,

The World Organisation Against Torture (OMCT), the largest network of NGOs fighting against torture, summary executions, enforced disappearances, arbitrary detentions, and other cruel, inhuman or degrading treatment or punishment, while providing a comprehensive system of support and protection for human rights defenders in the world, is writing to you **to request the suspension of deportations to Sri Lanka of migrants and asylum seekers, at least with regard to any person in need of medical care, including of a psychiatric nature.**<sup>1</sup>

Since early 2022, Sri Lanka has been gripped by financial and economic collapse, which has led to mass civil unrest and political upheaval, culminating in the ousting of President Gotabaya Rajapaksa on 15<sup>th</sup> July 2022. The massive protests began in response to major shortages in food, fuel, medicines and other essential items,<sup>2</sup> as well as the prolonged lack of access to healthcare and food which acutely affected those with illnesses in need of medical care.<sup>3</sup> The Sri Lankan government was also condemned for failing to protect its citizens' rights to peaceful assembly and expression after numerous protestors were killed in instances of mob violence and clashes between opposing sides.<sup>4</sup> Although a new president has been installed, former six-time Prime Minister Ranil Wickremesinghe, the crisis situation is far from resolved as mass protests continue in the wake of the dire financial situation. On the 20<sup>th</sup> of July, a group of UN experts expressed alarm at the dire situation in Sri Lanka, which includes record-high inflation, rising commodity prices, power shortages and a crippling fuel crisis.<sup>5</sup>

This leads to concerns for Sri Lankan asylum seekers currently in Switzerland, a group that includes torture victims and other medically vulnerable persons, who are facing imminent deportation. Despite the crisis, there has been no indication that deportations will be suspended until the availability of medical treatment can be guaranteed or until the political situation stabilizes. The OMCT is concerned that this runs contrary to Switzerland's international obligations concerning non-refoulement under the Convention against Torture, namely: Article 3, Article 14 and Article 16.

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<sup>1</sup> Although the OMCT's present request mainly focuses on the current crisis situation, this by no means diminishes the imminent risk that persons deported to Sri Lanka may face of being subjected to torture, ill-treatment, arbitrary arrest or killing, upon return, due to political and/or racial reasons.

<sup>2</sup> <https://news.un.org/en/story/2022/07/1122902>

<sup>3</sup> "I'm on death row": Sri Lankans forced to choose either food or vital drugs", The Guardian, 26<sup>th</sup> July, 2021.

<sup>4</sup> <https://www.theguardian.com/global-development/2022/jul/26/sri-lankans-forced-to-choose-either-food-or-vital-drugs-acc>

<sup>4</sup> <https://www.ohchr.org/en/press-releases/2022/05/bachelet-urges-restraint-and-pathway-dialogue-violence-escalates-sri-lanka>

<sup>5</sup> <https://www.ohchr.org/en/press-releases/2022/07/sri-lanka-un-experts-sound-alarm-economic-crisis>

The OMCT has been informed that the State Secretariat for Migration (SEM) would only suspend planned deportations in the face of ‘concrete obstacles’ such as a lack of vital medicines. However, its duties to asylum seekers under international law extend beyond this, particularly for those that are victims of torture or medically vulnerable.

### **The obligation to provide rehabilitation services under Article 14 of the Convention against Torture:**

The OMCT is aware that Switzerland is currently fulfilling its obligations under Article 14 of the Convention, in providing the necessary specialist medical treatment to asylum seekers that it has correctly identified as victims of torture,<sup>6</sup> in order to obtain “as full a rehabilitation as possible” within Swiss territory. This is necessitated by the unique psychological and physical impact of torture which can require sustained specialized rehabilitation. However, the extraterritorial application of the non-refoulement principle which is implied in Art. 14 is often not respected. In the event that these persons would be deported to a country, in which they would not have access to any, or a similar level, of the medical care that they were receiving, Switzerland could be in breach of its obligations under the Convention regarding Art 14. This is specifically stated by the Committee against Torture (CAT) in its General Comment No. 4 (2017) which outlines that victims of torture and other ill-treatment “should not be removed to a State where adequate medical services for their rehabilitation are not available or guaranteed”.<sup>7</sup> This has been subsequently confirmed by the CAT in two decisions involving Switzerland, namely *A.N v Switzerland*<sup>8</sup> and *A.H. v Switzerland*<sup>9</sup>. Both cases attest to the general obligation not to return asylum seekers, who are victims of torture, to countries in which they would not be able to continue the necessary rehabilitation and treatment to which they had been in receipt of whilst in Switzerland. The OMCT has been informed by Elisa-Asile, a Swiss organisation providing legal aid to asylum seekers, of seven specific cases of Tamil individuals who were victims of torture and who, under international law, should continue benefiting from rehabilitation services in Switzerland. Two of these cases are currently pending before the CAT.

It should also be noted that there are elements specific to the situation of Sri Lankan Tamils, concerning medical rehabilitation, which should be taken into account by States. Sexual violence and torture have been widely documented as being strategically used against Tamils both throughout the civil war, and subsequently. Of note is that sexual violence against Tamil men was estimated to be roughly as common as sexual violence perpetrated against Tamil women. This has particularly negative consequences for male victims due to the fact that homosexuality is criminalised in Sri Lanka, which imposes social and legal barriers that impede victims from being able to access targeted medical rehabilitation services or other restitutive measures. This also raises questions about whether, in addition to the other currently massive obstacles to accessing treatment, victims who have been subject to sexual torture, particularly men, would even be able to obtain the necessary care in Sri Lanka.

### **The obligation of non-refoulement to countries with risks of ill-treatment under Article 16 of the Convention:**

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<sup>6</sup> These protective and rehabilitative measures cannot be put in place in the event that an asylum seeker’s experience of torture is not recognized in assessment.

<sup>7</sup> Para 22, General Comment No. 4 (2017)

<sup>8</sup> CAT/C/64/D/742/2016

<sup>9</sup> CAT/C/65/D/758/2016

The CAT has acknowledged that in international law, the non-refoulement obligations have expanded to apply to persons exposed to risks other than torture, such as grave, inhuman or degrading treatment.<sup>10</sup> The Human Rights Committee has also acknowledged that exposing an asylum seeker to destitution can amount to a violation of the prohibition against torture and other ill-treatment.<sup>11</sup> Due to the critical financial and economic situation in Sri Lanka, those deported face an increased risk of destitution. There are serious concerns that the economic crisis, and its resulting shortage of medicines and other necessities, could mean that medically vulnerable asylum seekers would be without access to urgently needed medical care, which could amount to grave, inhuman or degrading treatment.

In *Savran v. Denmark*<sup>12</sup>, the European Court of Human Rights outlined considerations which should be taken into account by a State before it proceeds with the deportation of someone suffering from significant psychiatric or physical illnesses. These include ‘(i) the cost of medication and treatment; (ii) the existence of a social and family network ; and (iii) the distance to be travelled in order to have access to the required care’.<sup>13</sup> Of particular relevance in this situation are the first and third considerations. Due to the current country-wide inflation rate of 54.6%, it is pertinent to consider whether persons deported will have the financial capacity to afford the necessary medications and treatments, especially in light of the medication shortage.<sup>14</sup> Furthermore, the severe fuel crisis raises questions about the affordability of travel costs for persons attempting to access medical care in hospitals.

Finally, the CAT has outlined that it is ‘incumbent upon the State to carry out individualised assessments of the personal and real risk’ that each asylum seeker would face if deported, ‘rather than relying on any assumption’ that they will be able to access adequate medical treatment.<sup>15</sup> For medically vulnerable persons, including victims of torture, this should include assessments of each person’s medical history and situation, and the specialized treatment and care which is required to rehabilitate or maintain the health of each person, as well as the feasibility of them being able to obtain this specific treatment in Sri Lanka, taking into account their circumstances regarding location, financial resources or other relevant factors.

Given that this situation concerns an undetermined number of people, a general suspension would serve as a preventive measure against irreparable harm, as noted by the CAT in *Flor Agustina Calfunao Paillalef v. Switzerland*.<sup>16</sup> On the 13<sup>th</sup> of July, the Swiss Refugee Council (OSAR) shared a thematic report on the current health and economic situation in Sri Lanka, which they described as ‘catastrophic’.<sup>17</sup> They called for a general suspension of deportations until the country's situation has stabilized.

Therefore, the OMCT strongly recommends that all deportations to Sri Lanka of medically vulnerable asylum seekers, including victims of torture, should be halted until the requisite assessments can be carried out, or until the current country-wide financial and political crisis is resolved. This is with the view of preventing violations of the rights of asylum seekers under

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<sup>10</sup> Para 8.6, A.H. v Switzerland CAT/C/65/D/758/2016

<sup>11</sup> *Jasin v. Denmark* (CCPR/C/114/D/2360/2014).

<sup>12</sup> No. 57467/15

<sup>13</sup> (para. 47).

<sup>14</sup> ‘Don’t fall ill: Sri Lanka doctors warn of drug shortage’, AP News, 13<sup>th</sup> July, 2022.

<https://apnews.com/article/covid-health-asia-south-5217195484ef4c8d858d86bbfb79d35c>

<sup>15</sup> Para 8.6, A.N v Switzerland, CAT/C/64/D/742/2016

<sup>16</sup> CAT/C/68/D/882/2018

<sup>17</sup> <https://www.osar.ch/publications/news-et-recits/crise-au-sri-lanka-renoncer-aux-renvois-jusqua-ce-que-la-situation-se-soit-stabilisee>

Article 3, 14 and 16 of the Convention against Torture, as well as all other relevant provisions outlined in regional and international human rights law which is applicable to Switzerland.

As this matter is relevant to his mandate, a copy of this letter will also be transmitted to the Special Rapporteur on the human rights of migrants.

Yours faithfully,  
Gerald Staberock  
Secretary General

World Organisation Against Torture (OMCT)