



**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. 608/2014\*, \*\***

<i>Communication submitted by:</i>	M.N. (represented by counsel, John Phillip Sweeney from the Edmund Rice Centre)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	2 June 2014 (initial submission)
<i>Date of adoption of decision:</i>	2 August 2016
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Risk of torture; non-refoulement
<i>Article of the Convention:</i>	3

1.1 The complainant is M.N., a national of Sri Lanka, born in 1983. He sought asylum in Australia but his application was rejected and he is awaiting forced removal to Sri Lanka. He claims that his removal to Sri Lanka by the State party would constitute a violation of his rights under article 3 of the Convention. He is represented by counsel.

1.2 On 3 June 2014, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Sri Lanka while his complaint was being considered by the Committee.

\* Adopted by the Committee at its fifty-eighth session (25 July-12 August 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu and Kening Zhang.

GE.16-15816(E)



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**Factual background**

2.1 The complainant is of Tamil ethnicity. He grew up and lived in the village of Mankadu, Batticaloa District, Eastern Province. He claims that between October 2003 and March 2004 he worked as an administrative assistant with the Liberation Tigers of Tamil Eelam (LTTE) in the Batticaloa area, helping people to fill in forms to allow them to access LTTE-controlled areas.

2.2 The complainant submits that in 2004, an LTTE commander known as Karuna split from LTTE and formed what became known as the Karuna Group. The fight between factions led to considerable violence in the Batticaloa area. In that context, a friend of the complainant's who worked with him in LTTE was kidnapped from a neighbouring village. Since the complainant feared falling victim to the violence, on 29 April 2004 he went to Qatar, where he stayed on a temporary work visa until 2010. The Karuna Group was also in dispute with the Tamil Makkal Viduthalai Pulikal (TMVP) or Pillayan Group over control of territory. The complainant submits that in September 2008, his cousin, L.L., was shot dead in the complainant's village. His family believes that was a reprisal carried out by TMVP, because the cousin, who was an engineer, had fallen out with TMVP over some commercial contracts.

2.3 On 16 April 2010, the complainant returned to Sri Lanka, since he believed that the war had ended. He lived in the village of Thetativu, where his mother had moved while he was abroad. He purchased a truck and began operating an agricultural transport business as a carrier in the area of Batticaloa. He claims that TMVP was active in the area, and that after an incident with some local people in January 2012, it became antagonistic towards his village. On 15 March 2012, he was in Jaffna when he received a telephone call from someone claiming to be in TMVP. He claims that the person wanted to use his truck to prepare a TMVP conference that was to be held near Batticaloa. He refused to lend them his truck, telling the person that he was in Jaffna on business and so could not provide the truck the next day. The complainant submits that he was not sure that the person would pay him and return the truck. He was called again the next day and, on that occasion, the TMVP member threatened him, saying "we will soon see what will happen to you". Four days later, two unknown men allegedly from TMVP came to look for the complainant at his family home, but his mother told them that he was at work. Subsequently, TMVP members called the complainant and asked him to come to their office in Batticaloa. Fearing reprisals, the complainant decided to flee Sri Lanka.

2.4 On 25 March 2012, the complainant left Sri Lanka by boat. On 11 April 2012, he arrived at Christmas Island in Australia, without a valid visa. He was detained upon arrival under section 189 (3) of the Migration Act as an irregular maritime arrival. He was later transferred to Scherger Immigration Detention Centre where he was interviewed for the purpose of initial entry processing. On 1 July 2012, the complainant applied to the Department of Immigration and Citizenship for a protection visa. He claimed that he feared that TMVP would kill him owing to his refusal to lend them his truck; that the authorities were unable to protect people from TMVP; and that he would be denied protection as a Tamil in Sri Lanka.

2.5 On 11 July 2012, the complainant attended an interview with the authorities. He confirmed that all the details of his protection visa application were correct and pointed out, among other details, that he had grown up in the village of Mankadu where he had lived with his mother, brother and aunt; that his village was in an army-controlled area; that he had rarely entered LTTE-controlled areas as a child; and that he had never been approached to join LTTE. He also claimed that his family consisted of his mother and his brother, who was in Afghanistan; that he did not have family with whom he could live; and that TMVP could still find him in Colombo where he would not have any family support.

When asked by the authorities if there was any other reason why he could not return to Sri Lanka, he replied in the negative.

2.6 On 6 September 2012, the Department of Immigration and Citizenship refused to grant the complainant a protection visa on the grounds that his fear of persecution was not well-founded. Although it was satisfied in general with the credibility of his statements as to the events prior to his departure from Sri Lanka in relation to TMVP, it concluded that he would not face a real risk of persecution in Sri Lanka.

2.7 In its decision, the Department took note of the *Office of the United Nations High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka* (5 July 2010), of reports from States and well-known NGOs about the human rights situation in Sri Lanka, of possible alternative relocation within Sri Lanka and of the situation of failed asylum seekers,<sup>1</sup> including those cited by the complainant's agent.<sup>2</sup> As to his fear of persecution because of his Tamil ethnicity, the Department stated that according to reports, Tamils, even those from areas previously controlled by LTTE, and returnees were not generally subject to persecution by the Sri Lankan authorities; that Tamil ethnicity in itself did not constitute a particular risk factor; that there was no evidence that the complainant had ever been under suspicion of being an LTTE cadre or sympathizer; and that there was no indication that he had ever experienced significant problems owing to his Tamil ethnicity. Likewise, the complainant would not be at real risk as a result of being a failed asylum seeker since he had no connection with LTTE. With regard to his alleged communication with TMVP, the Department stated that the complainant did not face a real chance of harm if returned because of his refusal to lend his truck to TMVP. It noted that he had returned voluntarily to Sri Lanka in 2010; that he had lived in the Batticaloa District most of his life without incident; that he had remained in his village for several days after the alleged events with TMVP without incident; and that his family had remained in the village and had not been contacted or threatened by members of TMVP.

2.8 On 16 August 2012, the Minister for Immigration intervened in the complainant's case under section 195 A of the Migration Act, allowing him to be released from immigration detention and granting him a bridging (general) visa while his protection visa application was considered by the authorities.

2.9 On an unspecified date, the complainant appealed the decision of the Department of Immigration and Citizenship before the Refugee Review Tribunal. The complainant appeared before the Tribunal and reiterated his previous allegations that he feared persecution by the Sri Lankan authorities or paramilitary groups if returned owing to his Tamil ethnicity, and being harmed by the Pillayan faction in retaliation for the incident that occurred prior to his departure. The Tribunal carried out lengthy and detailed interviews about all his allegations, making reference to available information about the human rights situation in Sri Lanka. He stated, inter alia, that neither he nor any of his relatives had been involved with LTTE, nor had they been involved in political activity or human rights

<sup>1</sup> In its decision, the Department of Immigration and Citizenship referred, inter alia, to the following documents: Immigration and Refugee Board of Canada, "Sri Lanka: Registration requirements in Colombo for Tamil and Sinhalese citizens who migrate from Jaffna or other regions of the country", 22 August 2011; Immigration and Refugee Board of Canada, "Sri Lanka: Information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport", 22 August 2011; and International Crisis Group, "Sri Lanka: Government promises, ground realities", 1 March 2012.

<sup>2</sup> See Home Office, UK Border Agency, "Sri Lanka: Country of origin information (COI) report", 7 March 2012.

activism. When asked if he feared harm in Sri Lanka for any other reason, he did not provide any other reason. On 18 January 2013, the complainant filed a written submission to the Tribunal arguing that he had a well-founded fear of persecution in Sri Lanka due to his Tamil ethnicity, his political opinions, which opposed TMVP and the Government of Sri Lanka in supporting LTTE, and as a failed asylum seeker. On 1 May 2013, the Tribunal conducted a second hearing, at which the complainant stated that he feared persecution by the Sri Lankan authorities due to his connection with LTTE, since he allegedly worked for it in 2004 for about six months. He argued that he had not referred to those allegations previously because he had feared that he would be put in jail or that the Australian authorities would disclose the information to their Sri Lankan counterparts.

2.10 On 16 July 2013, the Refugee Review Tribunal dismissed the complainant's appeal and confirmed the decision not to grant him asylum or complementary protection. The Tribunal referred in detail to the statements given by the complainant during the hearings and to his written submissions and found the inconsistencies in his allegations to be significant regarding the alleged visit of TMVP members to his family home in March 2012, and the incidents between TMVP members and people in his village. Accordingly, it concluded that it could not accept his statement that men allegedly from TMVP came to his family home looking for him in March 2012. Moreover, it found that he had not been subjected to extortion or other threats by TMVP or anyone else from the time when he returned to Sri Lanka from Qatar. Likewise, it did not accept the complainant's explanation for not having disclosed the allegation concerning his alleged involvement with LTTE earlier in the proceedings and considered that if he had in fact worked for LTTE, that would be a significant reason for fearing harm on his return to Sri Lanka. The Tribunal pointed out that the second hearing was not the resumption of an adjourned hearing and, accordingly, the complainant would have understood that his last opportunity to present his claims was before the conclusion of the first hearing. The Tribunal thus did not accept the allegation as true and found that the complainant had never worked for or otherwise been involved with LTTE. Against that background, the Tribunal accepted only that the complainant was a Tamil who lived and worked in northern Sri Lanka; that he had faced harassment and discrimination in the past by the Sinhalese community in his home area; and that he had left Sri Lanka in breach of the relevant Sri Lankan departure laws.

2.11 In its decision, the Refugee Review Tribunal took detailed note of the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka* (21 December 2012), reports from States and NGOs about the human rights situation in Sri Lanka, in particular concerning the treatment of Tamils by the authorities, the situation of failed asylum seekers and returnees, the consequences of breaching Sri Lankan departure laws, conditions in prison in Sri Lanka, and the situation of TMVP and the Karuna Group.<sup>3</sup> It concluded that the complainant would not be at risk of persecution or torture based solely on the fact that he was a Tamil from the Eastern Province and a failed asylum seeker. It also concluded that he would not be perceived as a political opponent by TMVP because he had refused to provide them with a truck or because his home village

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<sup>3</sup> The Refugee Review Tribunal cites, in particular, Immigration and Refugee Board of Canada, "Sri Lanka: Treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; information on specific asylum cases, including the Tamil asylum-seeker boat that stopped in Togo, the return of Sri Lankan asylum seekers from Australia in 2012, and any cases of voluntary repatriation (August 2011-January 2013)", 12 February 2013; Immigration and Refugee Board of Canada, "Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna factions; their relationship with each other; reports concerning their treatment of Sinhalese and Tamil citizens; whether they are still active as paramilitary groups", 17 February 2012; Freedom from Torture, "Sri Lankan Tamils tortured on return from the UK", 13 September 2012; and International Crisis Group, "Sri Lanka's North I: The denial of minority rights: Asia Report No. 219", 16 March 2012.

was perceived to be opposed to TMVP. In that regard, it pointed out, *inter alia*, that he had not been subject to extortion or threats by TMVP between his return to Sri Lanka in 2010 and his departure to Australia.

2.12 On 19 August 2013, the complainant submitted an application for judicial review of the Tribunal's decision to the Federal Circuit Court of Australia. On 4 February 2014, the Court dismissed his application. On an unspecified date, the complainant requested that the Minister for Immigration and Border Protection exercise his public interest power under section 417 of the Migration Act and grant him permanent residency. In his request, he reiterated his allegations of persecution due to his alleged former connection with LTTE. On 3 April 2014, the Assistant Minister declined to intervene.

### **The complaint**

3.1 The complainant submits that his return to Sri Lanka by the State party would constitute a violation of article 3 of the Convention since there are substantial grounds for believing that he would be at risk of torture by the Sri Lankan authorities due to his alleged work with LTTE between October 2003 and March 2004. Since he left Sri Lanka illegally, he would be arrested and detained upon return and would be suspected of having links with LTTE. He claims that he left his country of origin fearing for his life since he refused to provide his truck to TMVP, which would therefore take revenge.

3.2 The Karuna Group and the Pillayan Group remain active in the eastern and north-eastern parts of Sri Lanka. Neither group has been subject to any formal process of disarmament and they operate in coordination with elements of the Sri Lankan security forces. Therefore, the complainant would not receive protection from the authorities.

3.3 The Refugee Review Tribunal made a strict assessment of his credibility. However, the complainant claims that his accounts are consistent with the description of activities carried out by the Karuna Group and TMVP. He submits that he did not mention his connection with LTTE to the authorities at first because he was afraid that it would undermine his chances of being granted a protection visa in Australia, or that it would be shared with the Sri Lankan authorities if he were to be returned.

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

4.1 On 23 March 2015, the State party submitted its observations on admissibility and the merits of the complaint. It asserts that the complainant's allegations are manifestly unfounded and therefore inadmissible, as the complainant failed to establish a *prima facie* case for the purpose of admissibility. Should the Committee find his allegations admissible, the State party submits that they do not disclose a violation of the Convention. The complainant's allegations are not supported by evidence that there are substantial grounds for believing that he would be in danger of being tortured if returned to Sri Lanka. In that regard, the State party maintains that the obligation of non-refoulement is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment.<sup>4</sup>

4.2 The complainant has not provided any relevant new evidence in his submissions to the Committee that has not already been thoroughly considered by the domestic authorities, including the Refugee Review Tribunal and the Federal Circuit Court of Australia. In effective and adequate administrative and judicial proceedings, the authorities determined that his claims were not credible. The State party requests that the Committee give

<sup>4</sup> See the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, para. 3.

considerable weight to findings of fact that were made by its authorities, which found that the State party does not owe the complainant protection under the Convention.

4.3 The State party points out that the complainant's claims were considered during the protection visa application by the Department of Immigration and Citizenship, the Refugee Review Tribunal, the Federal Circuit Court of Australia and the Minister for Immigration and Border Protection. On 6 September, the Department refused the complainant's protection visa application, after conducting an interview with the assistance of an interpreter. It accepted his accounts of his refusal to lend his truck to TMVP; however, it concluded that he did not face a real risk of harm by TMVP owing to that refusal. In that finding, the Department took into account the fact that the complainant remained in his village without incident for several days after the unknown men visited his family home; that his family remained in the village and has not experienced any further approaches, nor has the family ever experienced any threats, violence or retribution from TMVP over his refusal to lend his truck. It considered that he did not face a risk of torture due to his Tamil ethnicity and position as a failed asylum seeker, either in isolation or cumulatively. The UNHCR guidelines and country information available at the time indicated that individuals who had left Sri Lanka illegally were selected for screening but were not at risk of harm if they were not connected to any Government-opposed activities. There was no evidence that he had links with LTTE and he provided no evidence before the Department of Immigration and Citizenship that he would be suspected of possessing any such links. Accordingly, the Department concluded that the complainant's claims were not credible and that there were no substantial grounds for believing that he would face a foreseeable, real and personal risk of harm if returned to Sri Lanka.

4.4 Subsequently, the Refugee Review Tribunal carried out an external merits review of the Department of Immigration and Citizenship's decision and on 26 July 2013, it confirmed that the complainant did not meet the criteria for a protection visa. The Tribunal received submissions from the complainant, assisted by a legal representative, and held two oral hearings, which were conducted with the assistance of a Tamil interpreter. During the hearings, the Tribunal made plain its concerns about the complainant's claims, particularly in relation to changes in his evidence, in order to give him and his legal representative the opportunity to respond. At the first hearing, the complainant confirmed that he had no links with LTTE and the hearing focused on his fear of harm by TMVP. During the course of that hearing, he gave new statements indicating that in response to the attack in January 2012, TMVP had beaten members of his village. He also changed his description of the visit paid by unknown men to his family home on or about 19 March 2012. Notably, at the second hearing, the complainant stated, for the first time, that he had worked for LTTE for six months. The State party points out that there was no expectation at the first oral hearing before the Tribunal that a second hearing would necessarily take place. As such, at the time of the first hearing, the complainant would have understood that that was his final opportunity to give evidence about his links with LTTE or to make allegations against it. In the light of the significant inconsistencies in the information provided by the complainant, the Tribunal concluded that he had deliberately fabricated his claims and did not accept that he was a truthful witness.

4.5 The Tribunal, however, considered whether he was at risk of harm on return to Sri Lanka owing to his position as a failed asylum seeker, his ethnicity and the presence of TMVP in eastern Sri Lanka. The 2012 UNHCR guidelines indicated that Tamil ethnicity in itself was not a risk factor, and country information did not suggest that LTTE connections were imputed on the basis of Tamil ethnicity alone. Likewise, a failed asylum seeker did not face a real risk of serious harm in Sri Lanka solely because the person was so identified. As to the general risk posed by TMVP, available country information indicated that militias and armed groups associated with TMVP in the east of Sri Lanka targeted individuals who they perceived to be their opponents. In that regard, the Tribunal found that the complainant

would not be perceived as being opposed to TMVP because he had refused to provide it with his truck or for any other reason.

4.6 With regard to the complainant's request for ministerial intervention under sections 417 and 48 B of the Migration Act, the State party notes that under those powers, the Minister for Immigration and Border Protection can intervene in individual cases if he thinks that it is in the public interest to do so. The complainant's request focused on his alleged links to LTTE. The State party points out that the only supporting documentation that he provided to the Minister was in a foreign language. The Minister, however, was unable to consider the documentation as no English translation was provided. In that regard, publicly available information on requesting ministerial intervention provides that documents not written in English should be accompanied by an English translation by a translator accredited by the National Accreditation Authority for Translators and Interpreters. In the absence of a translation, the Minister considered his request in the light of other available information, and concluded that it did not meet the guidelines for ministerial intervention.

4.7 On 31 March 2016, the State party reiterated its observations and maintained that there were not substantial grounds for believing that the complainant faced a real risk of irreparable harm if returned to Sri Lanka. It therefore considered the Committee's request for interim measures to be unwarranted.

#### **Complainant's comments on the State party's observations**

5.1 On 11 April 2016, the complainant provided his comments on the State party's observations. He contested the State party's assertions that his request for visa protection was considered in a thorough and adequate fashion. After concluding that the complainant was not entitled to refugee protection, the Refugee Review Tribunal assessed only briefly whether he was entitled to complementary protection.

5.2 Although the Tribunal stated that individuals who left Sri Lanka in breach of departure laws would be subjected to an interrogation process upon return for a maximum of three days, it considered that this would not constitute significant harm that warranted granting complementary protection. The Tribunal failed to consider the possible harassment the complainant might face on return to his home village in Sri Lanka by members of TMVP or anyone else. The complainant refers to a document that contains information about the case of a Tamil failed asylum seeker who was interrogated by the authorities on arrival in Colombo, as he was considered to have connections with LTTE, and after his release he was allegedly harassed and on one occasion severely beaten by the police in his village.<sup>5</sup> Likewise, another report refers to the case of a Tamil failed asylum seeker who had allegedly witnessed a murder committed by a TMVP high-ranking officer, and was harassed and tortured by the officer after his return to Sri Lanka.<sup>6</sup>

5.3 The Tribunal found his accounts not credible due to the inconsistencies. However, it should have been more understanding, since he explained the reasons behind the inconsistencies. In particular, the Tribunal found that his allegation that he had worked for LTTE in 2004 was not credible because he had not made the allegation earlier in the proceedings. The complainant submits that there are reasons why many Sri Lankans initially hide their connection with LTTE, such as the State party's policy of indefinite detention of those found to be a security risk because of their involvement with LTTE.

<sup>5</sup> See Edmund Rice Centre, "Sri Lanka: Australia continues to deport people to danger", 5 May 2015.

<sup>6</sup> See Edmund Rice Centre, "Australia sponsored torture in Sri Lanka? The foreseen consequences of supporting a brutal regime to stop the boats at any cost", 12 August 2015.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the complainant's claims under article 3 of the Convention are manifestly ill-founded. The Committee, however, considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage. As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

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

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

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the 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. 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. 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.<sup>7</sup>

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a

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<sup>7</sup> See, for example, communications No. 467/2011, *Y.B.F., S.A.Q. and Y.Y. v. Switzerland*, decision adopted on 31 May 2013, para. 7.2; No. 392/2009, *R.S.M. v. Canada*, decision adopted on 24 May 2013, para. 7.3; and No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.



foreseeable, real and personal risk.<sup>8</sup> Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).<sup>9</sup>

7.5 The Committee notes the complainant's claims that his forcible removal to Sri Lanka would amount to a violation of article 3 of the Convention as he would be exposed to a risk of torture by the Sri Lankan authorities due to his alleged previous connection with LTTE in 2003-2004 and his status as a failed asylum seeker; that he would also face a risk of severe harm by TMVP because of his refusal to lend them his truck in March 2012; and that although he clarified the inconsistencies of his accounts and explained why the information concerning his links with LTTE was not submitted to the State party's authorities earlier in the proceedings, the Refugee Review Tribunal questioned his credibility and arbitrarily dismissed his request for a protection visa.

7.6 The Committee also notes the State party's arguments that its authorities reviewed all the allegations and evidence submitted to them by the complainant and determined that his claims were not credible; that the decisions reached by its authorities relied on reports that indicate that not all young Tamil males from northern Sri Lanka face a real and personal risk of persecution by the Sri Lankan authorities, but only those who are suspected of having links to LTTE; and that the complainant has not demonstrated that he is a person suspected of having significant and concrete links with LTTE. The State party maintains that available country information indicates that militia and armed groups associated with TMVP in eastern Sri Lanka target, mainly through extortion, individuals who they perceive to be their opponents; and that the complainant has failed to show that he would be perceived as a political opponent by TMVP.

7.7 The Committee recalls that the occurrence of a consistent pattern of gross human rights violations in a complainant's country of origin is not sufficient in itself for it to be concluded that he or she runs a personal risk of torture there.<sup>10</sup> In that context, the Committee refers to its concluding observations following its 2011 examination of the combined third and fourth periodic reports of Sri Lanka (CAT/C/LKA/CO/3-4), in which it expressed concern at reports suggesting that torture and ill-treatment perpetrated by State actors, both the military and the police, had continued in many parts of the country after the conflict with LTTE had ended in May 2009 (para. 6). The Committee also refers to its concluding observations following its 2013 examination of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/CO/5), in which the Committee noted evidence that some Sri Lankan Tamils had been victims of torture and ill-treatment following their forced or voluntary removal from that State party to Sri Lanka (para. 20). The Committee further refers to the preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment following the official joint visit to Sri Lanka with the Special Rapporteur on the independence of judges and lawyers, which noted that "torture is a common practice" and that the "current legal framework and the lack of reform within the structures of the armed forces, police, Attorney-General's Office and judiciary perpetuate

<sup>8</sup> See, for example, communications No. 203/2002, *A.R. v. Netherlands*, Views adopted on 14 November 2003, para. 7.3; No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4; No. 343/2008, *Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012, para. 7.3.

<sup>9</sup> See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

<sup>10</sup> See, for example, communications No. 426/2010, *R.D. v. Switzerland*, decision of 8 November 2013, para. 9.2; and No. 591/2014, *K. v. Australia*, decision of 25 November 2015, para. 10.11.

the real risk that the practice of torture will still continue”.<sup>11</sup> The Committee takes note of credible reports published by non-governmental organizations concerning the treatment given by the Sri Lankan authorities to individuals returned to Sri Lanka.<sup>12</sup> The Committee considers that all the above-mentioned reports shows that Sri Lankans of Tamil ethnicity with a prior personal or familial connection to LTTE facing forcible return to Sri Lanka may face a risk of torture.<sup>13</sup>

7.8 However, in the present case, the Committee notes that the main focus of the complainant’s allegations is the evaluation of his accounts by the authorities. He argues that the authorities’ strict assessment of his credibility resulted in the arbitrary refusal of his application for a protection visa. The complainant submits that he did not mention his alleged job with LTTE in 2004 because he was afraid that it would undermine his chances of being granted a protection visa; that the information would be shared with the Sri Lankan authorities; and that he would be considered a security risk by the State party and kept in detention. The Committee, however, observes that in the decision of the Department of Immigration and Citizenship and at the first hearing with Refugee Review Tribunal, the complainant was informed on several occasions that reports on the human rights situation in Sri Lanka indicated that Tamils suspected of having links to LTTE might be in need of international protection; that although he was asked whether he had any other reason to fear persecution in Sri Lanka other than the incident with TMVP, he did not raise any other claim; and that he added his allegations of links with LTTE only at a very late stage in the proceedings, without providing any relevant evidence of the links. Furthermore, he has not argued that he experienced any incidents with or harassment by the authorities after his return to Sri Lanka between 16 April 2010 and 25 March 2012, nor has he claimed that his relatives were subjected to persecution due to his alleged connection with LTTE.

7.9 With regard to the allegations concerning TMVP, the Committee observes that the reports referred to by the parties indicate that between 2010 and 2012, groups such as TMVP continued to operate in Sri Lanka with close links to security forces; that they were involved in illegal activities; and that they increasingly took on the characteristics of criminal gangs, resorting to extortion, particularly of business people, to gather money. According to the reports, those targeted by the Karuna faction included anyone who opposed the Sri Lanka Freedom Party, regardless of whether they were Tamil or Sinhalese, and Muslims in the east, particularly in Batticaloa.<sup>14</sup> Against that background, the State party’s authorities concluded that the complainant would not be perceived as an opponent to TMVP solely because he refused to lend them his truck in March 2012. Moreover, he was not subject to extortion by TMVP between his return to Sri Lanka in 2010 and his departure to Australia, and his relatives have not been contacted or harassed by TMVP due to his refusal to lend his truck. The complainant disagrees with the assessment of the State party’s authorities. However, the Committee observes that he has failed to explain why the decision to deny him a protection visa was arbitrary or amounted to a denial of justice, for instance due to the authorities’ failure to take into account a relevant risk factor.

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<sup>11</sup> See the preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez, on the official joint visit to Sri Lanka – 29 April-7 May 2016.

<sup>12</sup> See Freedom from Torture, “Tainted Peace: Torture in Sri Lanka since May 2009”, August 2015, and Yasmin Sooka, Bar Human Rights Committee of England and Wales and International Truth and Justice Project, Sri Lanka, “An unfinished war: torture and sexual violence in Sri Lanka 2009-2014”, March 2014.

<sup>13</sup> See communication No. 628/2014, *J.N. v. Denmark*, decision of 13 May 2016, para. 7.9.

<sup>14</sup> See *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka* (21 December 2012), p. 19.

7.10 In the light of the above, the Committee recalls that, according to its general comment No. 1, the burden of presenting an arguable case lies with the author of a communication (para. 5). In the Committee's opinion, in the present case, the complainant has not discharged the burden of proof.<sup>15</sup>

8. Consequently, the Committee considers that the evidence and circumstances invoked by the complainant do not show sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to torture in case of his removal to Sri Lanka. The Committee thus considers that the material on the file does not enable it to conclude that the return of the author would constitute a violation of article 3 of the Convention.

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

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<sup>15</sup> See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.