



**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. 649/2015\*, \*\***

<i>Communication submitted by:</i>	K.N. (represented by counsel, John Phillip Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	6 January 2015 (initial submission)
<i>Date of present decision:</i>	23 November 2016
<i>Subject matter:</i>	Deportation to Sri Lanka; risk of torture
<i>Procedural issue:</i>	Admissibility — manifestly ill-founded
<i>Substantive issue:</i>	Non-refoulement
<i>Articles of the Convention:</i>	3 and 22

1.1 The complainant is K.N., a national of Sri Lanka of Tamil ethnicity born in 1988. He comes from the north-eastern part of Sri Lanka. The complainant sought asylum in Australia but his application was rejected. At the time of submitting his communication, he was in detention and his deportation was imminent. He maintains that, if deported to Sri Lanka, he would be at risk of being detained and of being subjected to torture and other cruel and inhuman treatment, in violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel, John Phillip Sweeney.<sup>1</sup>

1.2 On 18 March 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author while the complaint was being considered. On 2 May 2016, following a request by the State party

\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

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

<sup>1</sup> The complainant submitted an initial communication on 6 January 2015 and additional information and documentation on 18 March 2015.

GE.17-01757(E)



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dated 31 March 2016, the Committee, acting through the Rapporteur, denied the request of the State party to lift interim measures.

### **The facts as presented by the complainant**

2.1 The complainant was born in Kaluwanchikudy, Batticaloa District, Sri Lanka. In October 2002, he was drafted into the Liberation Tigers of Tamil Eelam (LTTE) in exchange for his mother's release. He remained with LTTE for four years, during which time he attended an LTTE school and was then assigned to work at an LTTE field hospital. In 2006, he absconded and crossed over to a government-controlled area, where he stayed with his maternal aunt in Amanakovil. His father managed to get a passport and a visa for the complainant so that he could go to Qatar to work. The complainant remained in Qatar until March 2010, when he returned to Sri Lanka. In January 2009, the complainant's cousin was abducted in Sri Lanka and has still not been found. In May 2010, the complainant, not feeling safe, especially in the light of his cousin's abduction, went to Kuwait looking for work but, unable to find any, returned to Sri Lanka in November 2010. While the complainant was in Kuwait, members of the Karuna group came to his father's house several times asking for his whereabouts, threatening and hitting his father. On his return, the complainant stayed with a friend in Vaharai for 14 months, working as a driver and general help in a shop. As he was still afraid that sooner or later he would be picked up because of his time with LTTE, his father organized for him to leave on a boat for Australia, which he did in February 2012.

2.2 The complainant arrived in Australia on 28 June 2012 on a boat from Sri Lanka that was intercepted by the Australian Navy and taken to Christmas Island; he was detained upon arrival. On 19 May 2012, he submitted an application for a protection visa (class XA) to the Department of Immigration and Border Protection that was rejected on 18 July 2013. The complainant appealed to the Refugee Review Tribunal, which affirmed the decision of the Department on 7 November 2012. The complainant applied for a judicial review of the Tribunal's decision to the Federal Circuit Court of Australia. The Court dismissed the matter on 18 September 2013. On 25 June 2014, the applicant appealed to the High Court, which dismissed his appeal on 15 October 2014. The complainant submitted an application to the Minister of Immigration and Border Protection on 30 October 2014. The Minister rejected his application on 9 December 2014. There are no further remedies available to the complainant.

2.3 The complainant states that he cannot return to Sri Lanka because he will be persecuted. He fears that he will be imprisoned without bail in Negombo jail or be harassed or abducted if returned to the north-eastern part of Sri Lanka. The complainant presented as evidence a copy of a document entitled "Extract from the information book of Kaluwanchikudy police station" dated 10 January 2015 and an English translation of that document. The document sets out the details of a complaint made to the police by the complainant's father concerning an incident in which unidentified armed persons visited the home of the complainant's father and asked about the complainant's whereabouts. The visitors allegedly said that the complainant was a former member of LTTE and that they had received orders to kill him, adding that they would visit the complainant's father frequently until the complainant was caught. The complainant alleges that his father had received similar visits in March, June and October of 2014, but that he had been too frightened to lodge complaints on those occasions. The complainant also presented to the Committee a declaration from an individual in a situation similar to his, who was deported to Sri Lanka after his asylum request had been rejected by Australia and who declares that he was arrested and tortured for three days upon arrival in Sri Lanka on 1 August 2014. His interrogators allegedly asked for information about his travel to Australia, about his application for asylum, about other young men from Batticaloa District who had travelled to Australia and about "the young Liberation Tigers who had fled to Australia after being

identified as terrorists in Sri Lanka". The individual also claimed that he was released after relatives paid a ransom and that his mental and physical health has been severely impacted.

### **The complaint**

3. The complainant submits that, should he be returned to Sri Lanka, he would be detained upon arrival, interrogated (since he had left Sri Lanka illegally), charged and held on remand for offences relating to his illegal departure. He claims that he is at real risk of being tortured and of suffering cruel, inhuman and degrading treatment and punishment at the hands of the Sri Lankan authorities. Conditions in the Negombo remand unit have been well documented: the unit is cramped, unsanitary and unhygienic, it provides little chance to exercise and it is overcrowded to the extent that prisoners have to take turns to sleep; the complainant submits that this alone constitutes degrading treatment regardless of the length of time spent there on remand. The complainant therefore maintains that his return to Sri Lanka would constitute a violation of article 3 of the Convention.

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

4.1 In a communication dated 12 October 2015, the State party submits that the complainant's allegations are inadmissible on the ground that they are manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure. Should the Committee find that the allegations are admissible, the State party submits that the claims are without merit, as they have not been supported by evidence indicating that there are substantial grounds for believing that the complainant is in danger of being tortured, as defined by article 1 of the Convention.

4.2 The State party maintains that, pursuant to article 3 of the Convention, States parties have an obligation to not return a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.<sup>2</sup> The Committee's views in *G.R.B. v. Sweden* confirm that the obligation under article 3 must be interpreted in reference to the definition of torture set out in article 1 of the Convention.<sup>3</sup> Under the definition of torture contained in article 1, several elements must exist for an act to constitute torture: (a) the act must cause a person severe pain or suffering, whether mental or physical; (b) the act must be intentionally inflicted for such purposes as obtaining information or a confession, inflicting punishment for an act committed or suspected of having been committed, and intimidating or coercing, or for any reason based on discrimination of any kind; and (c) the act must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>4</sup> Each case must be assessed on its own facts. Whether an alleged act amounts to torture depends on its nature. The obligation of non-refoulement under article 3 of the Convention is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment.<sup>5</sup> If it is established that the alleged acts would constitute torture, article 3 also requires that there exist substantial grounds for believing that the complainant would be in danger of being subjected to torture. That is, the complainant must be at a foreseeable, real and personal risk of being subjected to torture. The Committee has stated that the danger must be personal and present.<sup>6</sup> In order to show that a State party would be in breach of its non-refoulement obligations under article 3 of the Convention, an individual must be found to be personally at risk of such treatment should he or she be returned. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a

<sup>2</sup> See also communication No. 39/1996, *Páez v. Sweden*, Views adopted on 28 April 1997, para 4.5.

<sup>3</sup> See communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

<sup>4</sup> Committee against Torture, general comment No. 1 (1997) on the implementation of article 3, para. 3.

<sup>5</sup> *Ibid.*, para. 1.

<sup>6</sup> *Ibid.*, para. 7.

country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk.<sup>7</sup> Therefore, additional grounds must be adduced by the complainant to show that he would be personally at risk.<sup>8</sup> The onus of proving that there is a foreseeable, real and personal risk of being subjected to torture upon extradition or deportation rests on the complainant and the risk must be assessed on grounds that go beyond mere theory and suspicion.<sup>9</sup>

4.3 The State party reiterates that the complainant's claims are inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure on the ground that they are manifestly unfounded. Under rule 113 (b), it is the responsibility of the complainant to establish a *prima facie* case for the purpose of establishing the admissibility of the complaint.<sup>10</sup> The Government of Australia respectfully submits that the complainant has failed to do so. If the Committee considers the complainant's claims to be admissible, the Government submits that they are also without merit.

4.4 The State party submits also that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including the Department of Immigration and Border Protection (during the determination of the complainant's protection visa application) and the Refugee Review Tribunal. The decision of the Tribunal was subject to judicial review by the Federal Circuit Court and the Federal Court. The complainant's claims were also assessed during the ministerial intervention process.<sup>11</sup> Robust domestic processes have considered the complainant's claims and determined that they were not credible and did not engage the Government's non-refoulement obligations. In particular, the complainant's claims have been assessed under the complementary protection provisions contained in section 36 (2) (aa) of the Migration Act 1958, which reflects the Government's non-refoulement obligations under the Convention and the International Covenant on Civil and Political Rights.

4.5 The State party maintains that the evidence that the complainant has provided in his submissions has been considered through its comprehensive domestic administrative and judicial processes. It refers to the Committee's general comment No. 1 (1997) on the implementation of article 3, stating that, as the Committee is not an appellate or judicial body, it gives considerable weight to findings of fact that are made by organs of a State party.<sup>12</sup> The State party requests that the Committee accept that it has thoroughly assessed the complainant's claims through its domestic processes and found that it does not owe the complainant protection obligations under the Convention. The State party takes its obligations under the Convention seriously and has implemented them in good faith through its domestic migration processes.

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<sup>7</sup> See communication No. 83/1997, *G.R.B. v. Sweden*, para 6.3.

<sup>8</sup> See communication No. 177/2001, *H.M.H.I. v. Australia*, decision adopted on 1 May 2002, para. 6.5.

<sup>9</sup> See communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

<sup>10</sup> Committee against Torture, general comment No. 1, para. 4.

<sup>11</sup> Section 48B of the Migration Act 1958 provides the Minister for Immigration and Border Protection with the power to allow applicants in Australia to lodge a fresh protection visa application if the Minister thinks it is in the public interest to do so, where they have had a previous protection visa application refused or a previous protection visa cancelled while in Australia. Section 417 of the Migration Act 1958 provides the Minister with the power to substitute a decision of the Refugee Review Tribunal with a more favourable decision if the Minister thinks it is in the public interest to do so.

<sup>12</sup> Committee against Torture, general comment No. 1, para. 9 (a).

4.6 The State party does acknowledge that complete accuracy can seldom be expected by victims of torture.<sup>13</sup> Domestic decision makers have taken into account the need to make some allowance for flaws and inconsistencies in the complainant's testimony. For example, in assessing the complainant's protection visa application, they have acknowledged the need to be sensitive to the difficulties often faced by asylum seekers.

4.7 The complainant's claims in the communication have been considered during the following domestic processes: the protection visa application; the review of the independent merits by the Refugee Review Tribunal; the judicial reviews by the Federal Circuit Court and the Federal Court; and the request for ministerial intervention.

4.8 The complainant lodged an application for a protection visa on 19 May 2012, having completed an entry interview on 20 March 2012. He was granted a Bridging E (subclass 050) visa on 3 July 2012 while his protection visa application was under consideration by the Department of Immigration and Border Protection. On 18 July 2012, the complainant's protection visa application was refused. The decision maker in the case had conducted an interview with the complainant (with the assistance of an interpreter) and considered other relevant material such as country information provided by the Department of Foreign Affairs and Trade of Australia. The decision maker considered most of the claims made by the complainant in his submissions to the Committee. Specifically, the decision maker considered the complainant's claims that he was made to reside in and serve at an LTTE camp between 2002 and 2006, that his parents' house had been visited by Criminal Investigation Department officers and members of the Karuna group, that his cousin had been abducted and remained missing and that his situation had worsened by the fact that he had sought asylum. The decision maker was not satisfied that the complainant had provided a truthful and accurate account of his circumstances in Sri Lanka, noting inconsistencies in the complainant's evidence and discrepancies between that evidence and documentary records. The decision maker accepted that the complainant had spent some time in an LTTE camp between 2002 and 2006, but doubted the complainant's account of the duration of his stay and the nature of his activities there.

4.9 The decision maker gave no weight to copies of letters provided by the complainant in support of his claims, noting discrepancies between the content of the letters and the complainant's own account of events. The decision maker also took note of the significant incidence of document fraud in Sri Lanka and the fact that a number of people who had arrived on the same boat as the complainant had provided similar letters as part of their own applications. The decision maker concluded that the letters were written at the request of the complainant after he had arrived in Australia by persons with no personal knowledge of his circumstances. The decision maker also rejected the complainant's claim that he was wanted by the Karuna group. The complainant was able to obtain a genuine Sri Lankan passport and had twice exited and re-entered the country through official channels, passing numerous checkpoints. The decision maker considered that this suggested that the complainant was not of interest to the Sri Lankan authorities or associated paramilitary groups. The decision maker did not consider that the complainant's position in that respect had been changed by his subsequent illegal departure from Sri Lanka and application for protection. The decision maker accepted that it was possible that the complainant may be identified as a "failed asylum seeker" if returned to Sri Lanka, but considered it unlikely that the complainant would be subjected to anything more than a perfunctory screening upon return. The decision maker concluded that the complainant was not a refugee, as he did not have a well-founded fear of persecution. The decision maker went on to consider whether the complainant was owed protection obligations under the complementary protection provisions of the Migration Act 1958, which reflect Australia's non-refoulement

<sup>13</sup> See also communication No. 21/1995, *Alan v. Switzerland*, Views adopted on 8 May 1996, para. 11.3.

obligations under the Convention. Under section 36 (2) (aa) of the Migration Act 1958, the decision maker must be satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of a non-citizen's removal from Australia, there is a real risk that the non-citizen will suffer significant harm. The decision maker concluded that the complainant did not face a real risk of significant harm should he be returned to Sri Lanka. Having concluded that the complainant was not owed complementary protection obligations under section 36 (2) (aa) of the Migration Act 1958, the decision maker refused the complainant's protection visa application.

4.10 The complainant subsequently made an application for a review of the independent merits to the Refugee Review Tribunal, a specialist independent review body that provides full and independent reviews of decisions concerning protection visas. On 7 November 2012, the Tribunal affirmed the decision of the Department of Immigration and Border Protection not to grant the complainant a protection visa. The complainant was physically present at the hearing and was able to make oral submissions with the assistance of an interpreter. During the hearing, a member of the Tribunal sought to clarify aspects of the evidence given by the complainant during the protection visa application. The complainant was also invited to respond to the adverse findings made by the decision maker considering the protection visa application (during the hearing or in written submissions). The Tribunal member observed, during the course of the review, a number of very significant inconsistencies and discrepancies in the central components of the applicant's evidence that significantly detracted from both the plausibility of the applicant's claims and his overall credibility.<sup>14</sup> The Tribunal member did not find the responses given by the complainant during the hearing — that he was confused and had poor English — to be credible. The complainant was invited to address the matter further in written submissions through his representative, but did not do so. The Tribunal concluded that the complainant's claims about events that had occurred between March 2009 and May 2010 were not true. The decision maker was of the view that the complainant had manufactured those claims in an attempt to bolster his claims for a protection visa and that he was actually working in Qatar at the time of the alleged events. The complainant also claimed that he was at risk of harm from the authorities and the Karuna group, that he had been forced into hiding and that his father had been tortured by the Karuna group in order to obtain information about the complainant.

4.11 The Refugee Review Tribunal member noted that the Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka of the Office of the United Nations High Commissioner for Refugees (UNHCR) no longer referred to a presumption of eligibility for refugee status for Sri Lankans of Tamil ethnicity and that the complainant had been able to obtain a passport and to travel in and out of Sri Lanka without difficulty. While accepting as plausible the claim that the complainant's neighbour had been a victim of crime, the Tribunal member did not accept that that indicated that the complainant would also fall victim to crime (in particular, at the hands of criminal gangs) if returned to Eastern Province. Nor did the Tribunal member accept that the complainant's father had been tortured or that the complainant himself was of interest to the Karuna Group or to the Sri Lankan authorities. Given the concerns about the complainant's overall credibility, the Tribunal member too rejected the complainant's claims about his forcible recruitment into LTTE. The member accepted that the complainant may have attended an LTTE-run school and later worked in a hospital, but not that his mother had been abducted and taken hostage.

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<sup>14</sup> For example, the complainant had consistently and on multiple occasions maintained before the State party's authorities that he had resided in Sri Lanka from March 2009 to May 2010. That claim was contradicted by the fact that the complainant's Qatari driving licence had been issued in December 2009.

4.12 The Refugee Review Tribunal member rejected the complainant's claims that he had been or would be at risk of adverse attention from the Sri Lankan authorities, noting that the complainant had been able to obtain a passport and travel freely in and out of Sri Lanka. The Tribunal member reviewed the complainant's profile as a young Tamil male from the north-eastern part of Sri Lanka, taking into account the relevant country information. The member also considered the possibility that the complainant might be imputed with particular political opinions. The Tribunal concluded that the complainant was not suspected or accused of being an LTTE member. As such, it considered that there was not a real chance that the applicant would be persecuted for that reason.

4.13 The Refugee Review Tribunal member accepted that the complainant may be interviewed by the authorities upon his return to Sri Lanka. The Tribunal member noted that under section 45 (1) (b) of the Immigrants and Emigrants Act it is an offence to depart other than through an official port of entry or exit. Penalties for leaving Sri Lanka illegally can include custodial sentences of up to five years and a fine. The Tribunal member considered country information indicating that returnees to Sri Lanka were routinely interviewed by the authorities but were able to pass through the airport after routine identity and documentation checks. The Tribunal member did not consider that the complainant's Tamil race or alleged LTTE connections would give him a profile that would attract adverse attention from the Sri Lankan authorities.

4.14 The Refugee Review Tribunal concluded that none of those factors, considered either in isolation or cumulatively, meant that there were substantial grounds for believing that there was a real risk that the complainant would suffer significant harm under section 36 (2) (aa) of the Migration Act 1958 if returned to Sri Lanka.

4.15 On 24 September 2013, the Federal Circuit Court dismissed the complainant's application for a judicial review of the Refugee Review Tribunal's decision.<sup>15</sup> The complainant was represented by counsel at the Court hearing. The Court concluded that there was no legal error with the Refugee Review Tribunal's decision. On 23 May 2014, the Federal Court dismissed the complainant's appeal concerning the Federal Circuit Court decision.<sup>16</sup> The applicant appeared in person at the Federal Court hearing with the assistance of an interpreter. The Federal Court decision is not referred to in the complainant's submissions. On 15 October 2014, the complainant's application for special leave to appeal the Federal Circuit Court decision to the High Court of Australia was also dismissed.

4.16 On 30 October 2014, the complainant made a request for ministerial intervention under sections 417 and 48B of the Migration Act 1958. Under those provisions, the Minister for Immigration and Border Protection can intervene in individual cases if he or she thinks it is in the public interest to do so. The claims made by the complainant were again assessed in full, with consideration given to the decisions reached by the Refugee Review Tribunal, the Federal Circuit Court and the Federal Court. No further information provided in the complainant's request for ministerial intervention indicated that the complainant had an enhanced chance of making a successful protection visa application, which is why the complainant's request under section 48B of the Migration Act 1958 was not referred to the Minister. The complainant's case was, however, referred to the Assistant Minister for Immigration and Border Protection, under section 417, who declined to intervene.

<sup>15</sup> Federal Circuit Court of Australia, *SZSHO v. Minister for Immigration & Anor*, judgment of 18 September 2013 (FCCA 1457).

<sup>16</sup> Federal Court of Australia, *SZSHO v. Minister for Immigration and Border Protection*, judgment of 23 May 2014 (FCA 535).

4.17 The State party wishes to provide clarifications concerning the following issues raised in the complainant's submissions: the new claim regarding prison conditions; the documents relating to the alleged abduction of the complainant's cousin; the additional information provided in March 2015; the new claim regarding comments reportedly made by the Secretary of Defence of Sri Lanka; and the claims regarding the return to Sri Lanka of persons whose application for asylum is rejected.

4.18 The State party notes that the complainant claimed that, should he be returned to Sri Lanka, he may be charged and face long periods of imprisonment in a facility referred to as Negombo jail or Negombo remand unit for having left Sri Lanka illegally. In his submissions, he claims that the conditions in the Negombo prison facility are poor and refers to the Committee's concluding observations on the combined third and fourth reports of Sri Lanka as providing evidence of the conditions of detention in Sri Lanka in general. The complainant claims that the conditions of his detention would amount to degrading treatment, regardless of the length of his detention. The State party reiterates that the obligation of non-refoulement under article 3 of the Convention is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment. In any event, on the basis of current country information, the Department of Immigration and Border Protection has determined that there is insufficient evidence to conclude that the complainant would suffer such harm on return to Sri Lanka, as he does not have a profile that would attract the adverse attention of the authorities. That finding is consistent with the findings of the Refugee Review Tribunal and the protection visa decision maker that the complainant had been able to freely move through checkpoints within Sri Lanka and depart and return through the airport on a genuine passport without being questioned by the authorities. The Department of Immigration and Border Protection has assessed that the most likely penalty for contravening section 45 (1) (b) of the Immigrants and Emigrants Act is a fine. Regarding the risk of detention in Negombo prison, country information indicates that individuals returned to Sri Lanka have generally been granted bail on personal recognisance immediately by the magistrate, with the requirement that a family member act as guarantor.

4.19 The State party also notes the complainant's claims that one of his cousins was abducted in 2009. In support of that claim, the complainant attached to his submissions a copy of a complaint about the alleged abduction made to the Human Rights Commission of Sri Lanka, copies of birth certificates of the complainant's family and other supporting documents. The State party's decision makers considered the complainant's claim about the alleged abduction of his cousin but were not provided with the above-mentioned documents. The Department of Immigration and Border Protection has subsequently assessed those documents, which were provided by the complainant as annexes to his submissions linked to the request for ministerial intervention on 30 October 2014. The Department considered that the claims regarding the complainant's cousin lacked detail and were unsubstantiated. Furthermore, the complainant failed to establish how the circumstances of his cousin's alleged disappearance were relevant to the way in which the complainant would be treated if returned to Sri Lanka, noting that his cousin was allegedly abducted during a time of generalized violence. The Department therefore concluded that the claims regarding the alleged abduction of the complainant's cousin should not be given any weight and were insufficient to establish that the complainant was at risk of personal harm if returned to Sri Lanka.

4.20 With regard to the information presented by the complainant on 18 March 2015, the State party notes that it included a number of documents (see para. 2.3). The Department of Immigration and Border Protection considered that additional information and determined that it did not establish that the complainant was owed non-refoulement obligations. The Department rejected the complainant's claims regarding the alleged harassment of his father by unidentified men in 2014 and 2015. Similar claims about the alleged torture of the



complainant's father in 2009 by the Karuna group were also rejected by the Refugee Review Tribunal. The complainant's claims that his father has been harassed and tortured are premised on an underlying claim that the complainant is of interest to the Karuna group and the Sri Lankan authorities. The Refugee Review Tribunal rejected that premise in 2012. The Department did not consider that the complainant had provided any evidence to indicate that he had since become a person of interest to the Sri Lankan authorities or to paramilitary groups. The Department therefore considered that the complainant's claims that his father had been harassed in 2014 and 2015 by men seeking to kill the complainant were not credible. The Department also noted that the complainant claimed that his father had been harassed in March, June and October 2014, but that the complainant failed to include those claims in the request for ministerial intervention that he submitted in November 2014. The Department considered it incongruent that the complainant had made those claims only when he had exhausted all domestic remedies. Given the circumstances, the Department considered that the claims regarding threats allegedly made to the complainant's father in 2014 and 2015 were not credible and were made with the sole purpose of bolstering the complainant's case.

4.21 The State party finally notes that the complainant has claimed being afraid of being tortured and killed if returned to Sri Lanka because his asylum application has been denied. It also notes that the complainant has provided documentation regarding alleged human rights violations committed in the region of Sri Lanka where he is from. The State party maintains that the complainant has not established the existence of additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka. Furthermore, the issues raised by the complainant relating to the human rights violations in, and the return of asylum seekers to, Sri Lanka have been specifically and carefully considered by all domestic processes. Material that was before the decision makers and considered as part of the assessment of the complainant's protection visa application, as well as the appeals of the subsequent adverse decisions to the Refugee Review Tribunal, the Federal Circuit Court and the Federal Court, included information on the country provided by UNHCR, by the Department of Foreign Affairs and Trade of Australia, by the Border Agency, the Foreign and Commonwealth Office and the Home Office of the United Kingdom of Great Britain and Northern Ireland, by the State Department of the United States of America, by the Immigration and Refugee Board of Canada, by the Danish Immigration Service, by the International Organization for Migration, by the International Crisis Group, by the Internal Displacement Monitoring Centre, by Child Soldiers International, by Amnesty International, by the Asian Human Rights Commission, by Human Rights Watch, by Freedom House and by various media outlets. That was the information considered by the primary decision maker and the Refugee Review Tribunal. There has been no relevant change in the country information indicating a worsening of the situation since those decisions were made.

4.22 On 31 March 2016, the State party recalled its submission dated 12 October 2015 and asked the Committee to lift its request for interim measures. If the Committee decides, after having given the matter due consideration, that the request should not be withdrawn, then the State party respectfully requests that the communication be fast-tracked for consideration by the Committee on the basis that it was not complex, the documentation was complete and all domestic processes had been finalized.

#### **Absence of comments by the complainant**

5. The State party's observations were transmitted to the complainant for comments on 14 October 2015, with a request to provide comments by 14 December 2015. Since he failed to do so, reminders were sent on 15 December 2015, 7 March 2016 and 13 July 2016. The State party's submission of 31 March 2016 was also transmitted on 28 April 2016, with

a request to provide comments by 29 June 2016. No response was ever received from the complainant.

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

#### *Consideration of admissibility*

6.1 Before considering any complaint 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 submission that the communication is manifestly unfounded and thus inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure. The Committee, however, considers that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently detailed the facts and the basis of the claim to enable the Committee to make a decision.

6.3 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention. As the Committee finds no further obstacles to admissibility, it declares the communication 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 The issue before the Committee is whether the expulsion 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 return 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. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, in many parts of the country since the conflict ended in May 2009.<sup>17</sup> 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; additional grounds must be adduced to show that the individual concerned would be personally at risk.<sup>18</sup>

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<sup>17</sup> See CAT/C/LKA/CO/3-4, para. 6.

<sup>18</sup> See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

7.4 The Committee recalls its general comment No. 1 (1997), 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), it must be personal and present. In that regard, in previous decisions the Committee determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention to freely assess the facts based upon the full set of circumstances in every case.

7.5 The Committee notes the complainant's claims that he would be at a real and personal risk of torture if returned to Sri Lanka because in October 2002 he was drafted into LTTE, because he remained with LTTE for four years, during which time he attended an LTTE school and was then assigned to work at the LTTE field hospital, where he remained until he absconded in 2006, and because of his illegal departure from Sri Lanka. The Committee notes, however, that the responsible organs of the State party had thoroughly evaluated all the evidence presented by the complainant and found it to lack credibility. The Committee also notes the State party's assertions that, in the present case, the complainant has not provided any credible evidence in his submissions to the Committee, that he has failed to substantiate that there was a foreseeable, real and personal risk that he would be subjected to torture by the Sri Lankan authorities if he were to be returned to his country of origin, that his claims have been thoroughly considered by a number of domestic decision makers, including the Refugee Review Tribunal, and have been the subject of a judicial review by the Federal Circuit Court and the Federal Court, and that each body specifically considered the claims and determined that they were not credible. With reference to the Refugee Review Tribunal's decision and the complainant's request for ministerial intervention, the State party also argues that persons whose asylum application has been rejected and Tamils are not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry and that there is no evidence to support a finding that the complainant had issues that would subject him to additional scrutiny or attention or that would delay his release after the performance of security checks upon return to Sri Lanka.

7.6 The Committee refers to its consideration of the fifth periodic report of Sri Lanka,<sup>19</sup> during which it voiced serious concerns about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including the police, had continued in many parts of the country after the conflict with LTTE had ended in May 2009.<sup>20</sup> The Committee has also expressed concern at the reprisals against victims and witnesses of acts of torture and at the acts of abduction and torture in unacknowledged detention facilities, and enquired whether a prompt, impartial and effective investigation of any such acts has been undertaken.<sup>21</sup>

7.7 In the present case, the Committee notes, however, that the information submitted by the complainant regarding the events in Sri Lanka that led to his departure from the country were thoroughly evaluated by the State party's authorities, which found the information insufficient to show that the complainant was in need of protection. The Committee also notes that the complainant has not presented any evidence in support of his claims that the Sri Lanka authorities were interested in him before he left the country and that the only evidence he presented that the Sri Lankan authorities were interested in him after that time was the copy of a complaint made to the police by the complainant's father, detailing an incident in which unidentified armed persons visited the home of the complainant's father and asked about the complainant's whereabouts. The Committee observes that the above is

<sup>19</sup> See CAT/C/SR.1472 and 1475.

<sup>20</sup> See CAT/C/LKA/CO/3-4, para. 6.

<sup>21</sup> See CAT/C/SR.1472, paras. 36 and 42, and CAT/C/SR.1475, paras. 10 and 27.

not sufficient to establish that the complainant was or is wanted by the Sri Lankan authorities in relation to his past involvement in LTTE. Although the complainant disagrees with the assessment of his accounts by the State party's authorities, he has failed to demonstrate that the decision to refuse him a protection visa was clearly arbitrary or amounted to a denial of justice, taking into account the absence of comments by the complainant or his counsel on the State party's observations, despite several reminders (see para. 5 above).

7.8 In the light of the above, the Committee recalls that, according to paragraph 5 of its general comment No. 1, the burden of presenting an arguable case lies with the author of a complaint. In the Committee's opinion, in the present case, the complainant has not discharged that burden of proof.<sup>22</sup>

8. The Committee, acting under article 22 (7) of the Convention, concludes that the decision of the State party to return the complainant to Sri Lanka does not constitute a violation of article 3 of the Convention.

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<sup>22</sup> See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.