



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
13 September 2023

Original: English

Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 946/2019*, **

<i>Communication submitted by:</i>	T.T. (represented by counsel, Daniel Taylor)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	5 June 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 26 July 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	11 July 2023
<i>Subject matter:</i>	Deportation to Sri Lanka of an alleged member of the Liberation Tigers of Tamil Eelam (LTTE)
<i>Procedural issue:</i>	Substantiation of claims
<i>Substantive issue:</i>	Non-refoulement
<i>Article of the Convention:</i>	3

1.1 The complainant is T.T., a national of Sri Lanka born in 1988. He claims that, by removing him to Sri Lanka, the State party would violate his rights under article 3 of the Convention. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel, Daniel Taylor.

1.2 On 26 July 2019, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request for interim measures.

Facts as submitted by the complainant

2.1 The complainant is of Tamil ethnicity. He alleges that he was first suspected by the Sri Lankan authorities of involvement with the Liberation Tigers of Tamil Eelam (LTTE) in 2006, following the explosion of a bomb in Trincomalee, as he was a Tamil from the Vanni area. He was detained for two days and accused of being involved in the bombing. He was blindfolded and his hands were tied. He was taken to a bungalow where two officers severely beat him, burned him with a lighter and struck him with the butt of an AK-47. As a result of

* Adopted by the Committee at its seventy-seventh session (10–28 July 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



those events, the complainant fled for safety to the LTTE-controlled area, where he undertook LTTE military training in 2008. The complainant claims that he did not disclose this information to the Australian authorities in his protection visa application for fear of being accused of being a terrorist.

2.2 On 15 May 2009, in the final days of the civil war, the complainant and his family were taken by the Sri Lanka Army to Ramanathan internment camp. One night, he was abducted by army personnel, blindfolded and, along with six other Tamils, including a woman, taken to a torture camp in the jungle. The army personnel had their faces covered. The complainant witnessed a woman being raped. At the camp, he was subjected to acts of torture, including being severely beaten, tied up and kicked. He claims that one of his friends from the group was taken out of the camp and that he then heard two gunshots. There is no evidence that his friend survived. The complainant was released subject to reporting conditions. One day, he breached his reporting duties and, on a road in Selvanayagapuram, was approached by two men – allegedly Karuna paramilitaries – who, after arguing with him, cocked a pistol and put it to his head. Local community members arrived, and the Karuna paramilitaries left. However, after that incident, the complainant hid in his house, in the toilet, for several days. He continued to report to the authorities, accompanied by his mother and sister. The complainant claims that the Karuna paramilitaries who attacked him were present at the police station where he went to press charges. The complainant's sister was allegedly also threatened by the Karuna paramilitaries.

2.3 The complainant left Sri Lanka in January 2011 on a valid passport obtained in 2006. At Colombo Airport, he was stopped by an intelligence officer who took his identity card and made him look at photographs of suspected LTTE members on a computer. The officer slapped him and told him that he was keeping his identity card pending his return to Sri Lanka in three months and that a failure to return would be considered evidence of LTTE membership. The officer also kept a copy of his passport. The complainant was allowed to board an aeroplane to Malaysia. After this incident, intelligence officers visited his family home, saying that they knew that he had travelled to Malaysia, and took money and jewellery from his father. He approached the Office of the United Nations High Commissioner for Refugees (UNHCR) while in Malaysia, but left the country in 2012 owing to insecurity. During his stay in Malaysia, the complainant was confronted by six people who attempted to rob him and damaged his passport.

2.4 The complainant arrived in Australia on 13 October 2012 as an illegal maritime arrival. On June 2016, he lodged an application for a protection visa, which was refused on 19 March 2017. According to the delegate of the Minister for Immigration and Border Protection, it was not clear why the complainant had received the treatment that he had at Colombo Airport but, in any event, he had been allowed to leave and had therefore been of no further interest to the Sri Lankan authorities. During the protection visa process, the complainant did not claim to be an LTTE member or to have any links with LTTE. He claimed to have experienced little in the way of harm in the camp run by the Sri Lanka Army in Vavuniya and to have had little to no trouble leaving the camp. The delegate considered that the complainant's experience since leaving the camp was similar to that of virtually all other Tamil residents of the north, in particular young men who were fit to fight, and was not satisfied that, when he left Sri Lanka, the complainant had still been of particular interest to the authorities or parties who supported the authorities. The delegate found that the chance of the complainant being associated with LTTE on account of his Tamil ethnicity and his origins in the north was remote, therefore concluding that his profile did not give rise to a real chance of serious harm in the event of his return to Sri Lanka and that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of his removal to Sri Lanka, he would face a real risk of significant harm.

2.5 On 29 April 2017, the complainant applied for a review by the Immigration Assessment Authority, largely reiterating the claims made to the delegate. The complainant stated that his mental confusion and memory loss would lead the Sri Lankan authorities to think that he was associated with LTTE but did not present new evidence to indicate that the Sri Lankan authorities would associate him with LTTE on the basis of any mental health condition. In the absence of supporting information, the Authority did not consider this claim to constitute credible personal information. The complainant provided four letters of support

reiterating his claims: two from Members of the Parliament of Sri Lanka, one from a bishop and one from a Justice of the Peace. The Authority identified certain inconsistencies with the complainant's own evidence and also noted that the four letters post-dated the delegate's decision, with no explanation having been provided as to why they had not been presented at an earlier stage.

2.6 On 8 May 2017, the Immigration Assessment Authority received a further submission from the complainant, which contained new claims that had not previously been presented to the delegate, namely that, if he were returned, the Sri Lanka Army and/or the intelligence unit would plant weapons in his house and then charge and imprison him, shoot him, cause an accident to kill him or inject him with poison on the pretext that it was a vaccine and that he would die within five years. Furthermore, the complainant alleged that a group related to LTTE had emerged in Sri Lanka; that a torture camp existed in Trincomalee; that, in his home area, a person had been given a poisonous injection; and that persons with Sri Lankan national identity cards indicating that they were from the Vanni area had gone missing. The complainant did not provide a source for this information, and therefore the Authority did not consider that these new claims constituted credible personal information.

2.7 On 2 May 2017, the Immigration Assessment Authority received a letter from an Australian doctor, dated 17 April 2017, and an undated handwritten note from a counsellor working for the Treatment and Rehabilitation of Torture and Trauma Survivors stating that, in her opinion, the complainant was a genuine refugee suffering from post-traumatic stress disorder, that he had initially presented with severe mental distress and that, although his symptoms had abated, he feared and was anxious and distressed that he would be sent back to Sri Lanka. The Authority determined that the doctor's letter constituted credible personal information and that the complainant had some psychological vulnerabilities and a history of torture and trauma.

2.8 In its assessment, the Immigration Assessment Authority accepted that the complainant had been accused of being an LTTE member and had been seriously ill-treated prior to his release, that he had been severely beaten during his time in the camp run by the Sri Lanka Army and that he had witnessed atrocities taking place in the camp. However, as he had been released from the camp after six months, he had not been a person of interest to the Sri Lankan authorities at that time. The Authority accepted that, in 2010, the Sri Lankan authorities in the complainant's home area had conducted a screening operation and that the complainant, along with others from the Northern Province, had been required to report to the police station every month and considered it plausible that Tamils who had formerly resided in an LTTE-controlled area were being monitored at that time. With regard to the complainant's reporting duties, the Authority was not satisfied that the complainant's failure to comply with such requirements in 2010 had made him a person of interest to the authorities or the Karuna faction or that he had been in breach of any formal reporting requirements when he left Sri Lanka in January 2011. With regard to the incident with the intelligence officer at Colombo Airport, the Authority established that the fact that the complainant had been allowed to leave, and had been detained only briefly, indicated that he was not a person of interest to the authorities and that he was unlikely to have a mark on his record as a result of that event. Furthermore, the Authority recalled the 2012 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka, which did not specify that individuals of Tamil ethnicity required protection.

2.9 In the assessment of the Immigration Assessment Authority, the fact that the complainant was a young Tamil male from a formerly LTTE-controlled area, had briefly been detained in 2006, had refused to identify LTTE members in 2010, had had an encounter with the airport authorities in 2011, was an asylum-seeker and might have pro-Tamil political opinions did not prove that he was or would be of interest to the Sri Lankan authorities. The Authority found that, on the basis of the complainant's personal circumstances and information about the improved situation in the country, there was no real chance of harm, should he be returned to Sri Lanka. The Authority also found that there were no substantial grounds for believing that, as a necessary and foreseeable consequence of removal from Australia to Sri Lanka, he faced a real risk of significant harm.

2.10 The complainant's application for a review by the Immigration Assessment Authority was refused on 30 November 2017, and his appeal to the Federal Circuit Court was dismissed

on 2 July 2018. On 8 June 2018, the complainant lodged an application with the Federal Court of Australia for judicial review of the decision of the Federal Circuit Court. The complainant challenged the primary judge's rejection on the ground that the Authority had not considered some of the information included in the documents provided to the Authority and that the Authority had fallen into jurisdictional error. The Federal Court of Australia confirmed the decision of the Federal Circuit Court that, as no source had been specified in the documents provided by the complainant to the Authority on 8 May 2017 (see para. 2.6 above), they were not credible for the purpose of compliance with the practice direction given under section 473DD (a) of the Migration Act. The Federal Court of Australia dismissed the appeal on 12 February 2019. His application for special leave to appeal to the High Court of Australia was rejected on 8 May 2019.

Complaint

3.1 The complainant submits that, if returned to Sri Lanka, he would face a risk of being arrested, if not kidnapped, and tortured by the Sri Lanka Army or the Karuna faction as a result of what he had told the Australian authorities about the atrocities that he had witnessed in the camp and his real and supposed LTTE connections. The complainant fears that he will be tortured in custody and may even die as a result.

3.2 The complainant alleges that he has already experienced violence, threats and severe physical harm at the hands of the Sri Lankan authorities, which are supposed to protect him, that his experience highlights the fact that there is nowhere safe for him in Sri Lanka and that, given his ethnicity and supposed political opinions, he faces a risk throughout the country.

State party's observations on admissibility and the merits

4.1 On 27 February 2020, the State party submitted its observations on admissibility. With reference to rule 113 (b) of the Committee's rules of procedure, it submits that the complaint is inadmissible on the ground that the complainant's claims are manifestly unfounded. The State party recalls that the Rapporteur on new complaints and interim measures decided not to request interim measures in the present case.

4.2 The State party submits that the claims are without merit, as they are not supported by evidence that there are substantial grounds for believing that the complainant is in danger of being subjected to torture as defined in article 1 of the Convention. The State party recalls that the Committee's practice has been to determine that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".¹ The State party acknowledges that article 3 (2) of the Convention requires all relevant considerations to be taken into account when determining whether article 3 is engaged, including the existence of a "consistent pattern of gross, flagrant or mass violations of human rights" in the State concerned. It also acknowledges that the Committee has previously expressed the view that Sri Lankans of Tamil ethnicity with a real or perceived prior personal or familial connection to LTTE may face a risk of torture upon return to Sri Lanka.² However, the individual must be found to be personally at risk of such treatment.³

4.3 The State party alleges that the complainant's claims were thoroughly considered by a series of domestic decision makers during the protection visa application process and the subsequent review by the Immigration Assessment Authority. The complainant sought judicial review by the Federal Circuit Court and the Federal Court of Australia, alleging a legal error in the Authority's decision. Subsequently, the High Court of Australia refused his application for special leave. The complainant then made a request for ministerial intervention, which was determined not to meet the guidelines for referral. The State party argues that the complainant's claims have been considered as part of robust domestic processes and that it was determined that they did not engage the State party's non-refoulement obligations. Furthermore, the State party alleges that, in his submissions to the Committee, the complainant did not provide any relevant evidence that had not already been

¹ General comment No. 4 (2017), para. 11.

² *S.S. v. Australia* (CAT/C/61/D/720/2015), para. 9.6.

³ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.3.

considered, with the exception of claims relating to his social media activity and training with LTTE in 2008.

4.4 The State party acknowledges that “complete accuracy is seldom to be expected by victims of torture”,⁴ noting that the decision maker did indeed make allowances for the complainant’s difficulties in retelling his experiences. The decision maker conducted an interview with the complainant with the assistance of an interpreter, took into account the fact that the complainant had disclosed a history of torture and trauma and considered other relevant material such as country information provided by the Department of Foreign Affairs and Trade of Australia.

4.5 The State party recalls that, according to the facts presented by the complainant, the decision maker was satisfied that, in 2006, he had been detained by the Sri Lanka Army following the explosion of a bomb in Trincomalee, had been beaten and accused of being a member of LTTE and had been released two days later. The decision maker also accepted that the complainant had experienced a beating during his time at the camp and found that the complainant had had little to no trouble leaving the camp, as he had not been of any interest to the Sri Lankan authorities and was not suspected of having links to LTTE. The decision maker also accepted that it was entirely plausible that, in 2010, reporting duties had been imposed on the complainant and that, in the course of those encounters with the authorities, he had been beaten. However, the decision maker found the complainant’s account quite muddled and inconsistent, noting in particular that it was not plausible either that he had evaded the authorities by hiding in the toilet or bathroom of his home or that, after being threatened in 2010 and fearing for his safety, he had remained in his home until January 2011. Lastly, while the decision maker accepted that the complainant had been treated harshly by the Criminal Investigation Department of the Sri Lanka Police while trying to leave Sri Lanka and that it was plausible that, as a Tamil from the north, he would have been of interest to the authorities at the time, the fact remained that, following his interrogation, the complainant had been of no further interest to the Sri Lankan authorities and had been allowed to leave the country. The State party reiterates that there is no information to suggest that Tamils who have lived or stayed abroad face serious harm for spending time outside Sri Lanka or being failed asylum-seekers.

4.6 The State party argues that, during the review process, the Immigration Assessment Authority also considered that the author’s claim that he was hiding at home contradicted his claim that, after his encounter with the Karuna faction, he had gone to the police to lodge a complaint. With regard to the complainant’s claims that, following his departure, the Sri Lankan authorities had visited his parents and threatened them, the Authority found the complainant’s evidence to be far-fetched and lacking credibility and did not accept that the complainant was a person of interest to the authorities or that the Sri Lanka Army or any other group had approached his parents about him since his departure in 2011. Therefore, the Authority was not satisfied that the complainant faced a real chance of harm on account of his status as a young Tamil male from a formerly LTTE-controlled area.

4.7 The State party alleges that, after the refusal by the High Court of Australia of the complainant’s application for special leave to appeal, on 6 June 2019, the complainant made a request for ministerial intervention under section 48B of the Migration Act, which was substantially the same as his communication to the Committee. A delegate of the Minister for Immigration and Border Protection considered that the complainant’s claims had been comprehensively assessed, including by the Immigration Assessment Authority, and had undergone judicial review three times and that the complainant had not provided any new claims or evidence to challenge those findings.

4.8 With regard to the complainant’s claims relating to his social media activity, namely that he posted pictures in support of LTTE on his Facebook page and devotedly attended Maaveerar Naal, which identifies him as an LTTE supporter, the State party argues that the complainant’s full name is not used on his Facebook page, which makes it unlikely that its contents could be attributed to him and consequently used to identify him as an LTTE supporter. In addition, the State party recalls the most recent country information, which

⁴ *Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3.

indicates that, while some returnees with suspected LTTE links have been monitored by the authorities, it was not the case that returnees were treated in such a way that endangered their safety and security.⁵ The State party reiterates that the complainant has not established the existence of additional grounds to show that he is at a foreseeable and personal risk of torture if returned to Sri Lanka.

4.9 While the State party acknowledges that it is conceivable that the complainant may have had concerns about revealing that, while in the Vanni area in 2008, he had undertaken LTTE military training, the State party notes that it is not credible that the complainant thought that the disclosure of this fact would result in his immediate return to Sri Lanka and that he would have been aware that no decision regarding his removal could have been made until his claims had been processed domestically. The State party notes that, even if the complainant did train with LTTE at some point in 2008, it does not appear from his submissions that the Sri Lankan authorities were aware of the unspecified period in which he had undergone such training. He would not, therefore, face a foreseeable, real and personal risk of torture. According to the country information provided by the State party, the Government of Sri Lanka has managed a large-scale rehabilitation process for former LTTE members, including combatants. However, as of 2019, only one rehabilitation centre remained open, housing one former LTTE member. In the light of this fact and the fact that the complainant has not alleged that he has high-level LTTE links, the State party reiterates that it is not foreseeable that the complainant would be subjected to a rehabilitation process upon return to Sri Lanka. The State party, therefore, submits that the complainant has not provided sufficient evidence indicating that there are substantial grounds for believing that he would be personally at risk of treatment amounting to torture if returned to Sri Lanka.

Complainant's comments on the State party's observations on admissibility and the merits

5.1 In his comments dated 10 December 2022, the complainant highlights that the State party has accepted that he was indeed arrested, severely beaten and abused as a result of being accused of involvement in a terrorist bombing and that, after receiving threats to his life, he had been forced to identify former LTTE members. The complainant reiterates that he did not disclose the fact that he had undergone LTTE training for fear of being subjected to the arbitrary punishment inflicted by the State party in such cases, including the indefinite detention of those assessed as presenting a security risk. The complainant further alleges that, during the assessment process, the State party gave no consideration at all to his online support for militant Tamil separatism and that, by dismissing the material on his Facebook page on the basis that it was not published under his full name, the State party ignored the fact that his profile includes a shortened form of his name and a photograph, that his college and year of study are publicly available and that members of his family and friends are also listed. According to the complainant, the material on his Facebook page only adds to the interest that he presents to the authorities, particularly when considered alongside the fact that he has previously been suspected of involvement in a terrorist bombing, has admitted to training for LTTE and would be returned on a temporary travel document. The complainant also argues that, if returned on a temporary travel document, he would be subjected to questioning, which would reveal his continued support for Tamil separatism in the diaspora. He would therefore be subjected to ill-treatment and torture in the investigation process.

5.2 The complainant cites a domestic case in which it was concluded that the monitoring of the diaspora by the Sri Lankan authorities extends to the monitoring of the diaspora in Australia and that, in order to establish a real risk to safety, it was not necessary to prove that online material had come to the attention of the Sri Lankan authorities; rather, it was necessary to establish a reasonable possibility of such an occurrence, including during the return process. The complainant also cites the Immigration and Asylum Chamber of the Upper Tribunal of the United Kingdom of Great Britain and Northern Ireland, which stated that the Sri Lankan authorities maintained and built sophisticated intelligence and databases

⁵ Department of Foreign Affairs and Trade, "Country information report: Sri Lanka", 4 November 2019, para. 5.46.

about known and suspected LTTE supporters in Sri Lanka and abroad.⁶ Furthermore, the complainant argues that Sri Lanka has declared a state of emergency, which is accompanied by extraordinary powers of detention without trial, and is prone to committing other human rights abuses. The complainant states that his profile as a supporter of Tamil armed separatism, which is a direct result of his Facebook page, puts him at real risk of being detained and tortured after exiting the airport upon arrival.

5.3 The complainant reiterates that the State party has accepted that he was seriously harmed as a suspected terrorist and was thereafter forced to collaborate with the regime. He insists that he is a witness to crimes against humanity and that for him to be returned and face threats to his life and liberty, in addition to torture and degradation forcing him to collaborate, would be a violation of the prohibition of non-refoulement under article 3.

State party's additional observations

6.1 In its additional observations dated 6 April 2023, the State party argues that there is no information provided in the complainant's comments to alter its original assessment, that the complainant has adduced new evidence of his social media activity in the form of screenshots and that this evidence is substantially the same as the screenshots provided by the complainant during the domestic process and, hence, does not provide any new information that might alter the assessment.

6.2 With regard to the complainant's claim about the ongoing monitoring of the diaspora, the State party alleges that information about the intelligence capabilities of the Sri Lankan authorities and reports that members of the Tamil diaspora may be monitored upon return provide insufficient evidence to support the complainant's claim that he is at a foreseeable, real and personal risk of torture. Furthermore, the State party alleges that the evidence provided does not support the complainant's assertion that he now has a higher profile.

6.3 The State party argues that, in the domestic case cited by the complainant, the Federal Circuit Court was asked to consider whether personal information published as part of the proceedings would create a possibility of harm for the applicant, should the evidence and claims come to the attention of the Sri Lankan authorities. In the present case, however, the information available on the complainant's Facebook page does not meet the threshold for a possibility of harm. In any event, the question of a possibility of harm is distinct from that of a foreseeable, real and personal risk of torture.

6.4 The State party reiterates that, based on the most recent country information, the Department of Foreign Affairs and Trade is not aware of returnees being charged under the Prevention of Terrorism Act or subjected to ill-treatment during processing at the airport, that the level of security screening at the airport has decreased since 2015 and that mere membership of LTTE would not make someone a person of interest. There is therefore no indication that the complainant is at a foreseeable, real and personal risk.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 The Committee notes that, in the present case, the State party has argued that the communication is inadmissible as manifestly unfounded since the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of torture if he were returned to Sri Lanka.

7.2 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 *GJ and others (post-civil war: returnees) v. Secretary of State for the Home Department*, Appeal No. 00319, Determination, 5 July 2013.

7.3 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 is therefore satisfied that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.4 The Committee notes that the State party challenges the admissibility of the complainant's claims under article 3 as manifestly unfounded on the basis that he has failed to establish that the State party did not properly assess the risk that he would face if returned to Sri Lanka. The Committee considers, however, that the communication has been sufficiently substantiated for the purposes of admissibility. As the Committee finds no 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

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

8.2 In the present case, the issue before the Committee is whether the return of the complainant to Sri Lanka would violate 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. 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.⁷

8.3 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation.⁸ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.

8.4 The Committee recalls that, when assessing the existence of a risk under article 3, torture suffered in the past is only one element to be taken into account by the Committee, because, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned.⁹ The Committee also recalls that, although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if returned to Sri Lanka.¹⁰

8.5 In the present case, the Committee notes the complainant's claims that he would face a risk of torture if returned to Sri Lanka because of his real and supposed LTTE connections. The Committee notes that the State party authorities accepted that, in 2009, the complainant had been arrested, severely beaten and abused as a result of being accused of involvement in a terrorist bombing and that, after receiving threats to his life, he had been forced to identify former LTTE members; that he had witnessed atrocities in the camp; and that, after 2009, reporting duties had been imposed on him. However, the State party authorities were not satisfied that the complainant's failure to comply with his reporting duties in 2010 had made him a person of interest to the national authorities or the Karuna faction or that he had been

⁷ *D.S. v. Australia* (CAT/C/73/D/941/2019), para 10.3; and *Tharchanamoorthy v. Australia* (CAT/C/72/D/944/2019) para. 8.3.

⁸ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

⁹ *B.N.T.K. v. Sweden* (CAT/C/64/D/641/2014), para. 8.7.

¹⁰ *Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 8.7; and *S.H. v. Australia* (CAT/C/65/D/761/2016), para 9.5.

in breach of any formal reporting requirements when he had left Sri Lanka in January 2011. The Committee takes note of the State party's submissions that some of the complainant's accounts were inconsistent and that it was not plausible that he had evaded the authorities by hiding in the toilet or bathroom of his home or that, after being threatened in 2010 and fearing for his safety, he had remained in his home until January 2011. The Committee also takes note of the State party's submissions that, even if the complainant had been treated harshly by the Criminal Investigation Department of the Sri Lanka Police while trying to leave Sri Lanka, he had been of no further interest to the Sri Lankan authorities following the interrogation and had been allowed to leave.

8.6 With regard to the complainant's argument concerning the posting of information in support of LTTE on social media, the Committee takes note of the State party's argument that the complainant's full name is not used on his Facebook page, which makes it unlikely that its contents could be attributed to him and consequently used to identify him as an LTTE supporter.

8.7 Lastly, the Committee observes that, in its assessment of the complainant's asylum application, the authorities of the State party also considered the possible risk of the ill-treatment of failed asylum-seekers upon return to Sri Lanka and is of the view that, in the present case, the State party's authorities gave appropriate consideration to the complainant's claim.¹¹

9. In the light of the above considerations, the Committee concludes that, in the particular circumstances of the present case, the evidence and circumstances invoked by the complainant have not adduced sufficient grounds for believing that he would face 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 file does not enable it to conclude that the return of the complainant would constitute a violation of article 3 of the Convention.

10. In these circumstances, 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.

¹¹ *S.S. v. Australia*, para. 9.6.