



# 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. 832/2017\*, \*\*

<i>Communication submitted by:</i>	K.S. (represented by counsel, Gabriel Püntener)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	23 June 2017 (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 3 July 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	18 November 2021
<i>Subject matter:</i>	Deportation to India
<i>Procedural issue:</i>	None
<i>Substantive issue:</i>	Risk of chain refoulement and torture or other cruel, inhuman or degrading treatment in the event of removal to India (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is K.S., a Sri Lankan national born in 1977. He claims that by removing him to India, 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 1 January 1987. The complainant is represented by counsel.

1.2 On 3 July 2017, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from removing the complainant to India while his complaint was being considered by the Committee. On 7 July 2017, the State party reported that the complainant's removal had been suspended in accordance with the Committee's request.

#### Facts as submitted by the complainant

2.1 The complainant, of Tamil ethnicity, is from Jaffna District, Sri Lanka. In 2006, he was recruited and registered by the Liberation Tigers of Tamil Eelam (LTTE), with whom he stayed from 2006 to 2008. He completed military training and later was trained in how to

\* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdogan Iscan, Liu Huawen, Ilvija Pūce, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



conduct inspections of people and goods at LTTE checkpoints. At a later stage, he drove trucks and transported goods for LTTE in Kilinochchi.

2.2 Following an intensification of the fighting between LTTE and government forces, the complainant fled Kilinochchi and returned home in 2008. On 20 April 2009, he surrendered to the Sri Lanka Army. He was immediately arrested, identified as a member of LTTE and transferred to a so-called rehabilitation camp. There, representatives of the International Committee of the Red Cross regularly visited him.

2.3 On 22 May 2010, the complainant was released from the rehabilitation camp but had to report to the authorities on a weekly basis. In July 2011, he was arrested by the terrorism investigation division of the Sri Lanka Police and transferred to Colombo. He was detained for three months in Colombo, during which time he was mistreated and interrogated by members of the terrorism investigation division. They accused him of possessing information about hidden weapons belonging to LTTE and concerning LTTE members. The complainant was released in October 2011 but again had to report to the authorities on a weekly basis. He was regularly monitored and threatened by members of the terrorism investigation division, including through telephone calls. Due to the persistent accusations that he supported LTTE and the ongoing risk of an arrest, the complainant, his wife and son fled to India in 2012.

2.4 In India, the family lived in Chennai, in the State of Tamil Nadu. Upon their registration, the Indian authorities were informed of the complainant's past as an LTTE member and confiscated his passport. From 2014 until July 2015, the complainant worked as a driver for a well-known Tamil politician of the Naam Tamilar Katchi party. Due to repeated threats from Q Branch, the counter-terrorism unit of the Tamil Nadu Police Criminal Investigation Department, and by members of the national Intelligence Bureau, the complainant resigned in July 2015. Nevertheless, the Indian authorities still considered him to be a threat. They closely monitored and harassed him.

2.5 Out of fear of being arrested by the Indian authorities and being deported to Sri Lanka, the complainant left India and fled to Switzerland in April 2017. He arrived by plane and submitted his request for asylum at Zurich Airport on 22 April 2017. His request to enter Switzerland was denied on the same day. At the time of his application, the complainant was staying in the transit area of Zurich Airport.

2.6 On 25 April 2017 and 9 May 2017, the State Secretariat for Migration interviewed the complainant. On 11 May 2017, the State Secretariat for Migration dismissed the complainant's application for asylum on the basis that he had stayed in India for five years – between his initial flight from Sri Lanka in 2012 and his request for asylum in Switzerland in 2017. The State Secretariat for Migration decided not to consider the asylum application on the merits but to send the complainant back to India as a safe third country. The authorities argued that the complainant could file his request for asylum in India, that he would not be in danger of being returned to Sri Lanka from India (chain refoulement) and that he would be at no risk of being tortured or being subjected to inhuman treatment in India.

2.7 On 18 May 2017, the complainant appealed against the decision of the State Secretariat for Migration. On 8 June 2017, the Federal Administrative Court, which is the last instance for asylum cases in Switzerland, rejected the appeal.

2.8 Nevertheless, on 14 June 2017, the complainant filed a request for reconsideration of the Federal Administrative Court's decision, which was still pending at the time of the submission of his complaint to the Committee. As the request for reconsideration is an extraordinary legal remedy with no suspensive effect, the Federal Administrative Court decided that no decision would be taken to suspend the deportation of the complainant during the procedure. The pending remedy thus could not be considered as effective. Accordingly, the complainant claims to have exhausted all available domestic remedies, submitting that his complaint has not been or is not being examined under another procedure of international investigation or settlement.<sup>1</sup>

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<sup>1</sup> The present communication was originally scheduled for consideration during the Committee's sixty-ninth session, but its consideration was suspended due to the reopening of domestic proceedings. Subsequently, the complainant informed the Committee that the Federal Administrative Court had

## Complaint

3.1 The complainant fears he will face a foreseeable, real and personal risk of being tortured by the terrorism investigation division of the Sri Lanka Police if he is deported to Sri Lanka. He claims that his background as a former member of LTTE is undisputed by the Swiss authorities. It is also undisputed that, as a former member of the LTTE who underwent the rehabilitation process but illegally left Sri Lanka while he was still under the obligation of regularly reporting to the Sri Lankan authorities, he would be at risk of a treatment contrary to the prohibition of torture in Sri Lanka.

3.2 The complainant asserts that his claims raise two issues: whether he is at risk of being deported from India to Sri Lanka, if he were returned to India by the Swiss authorities (chain refoulement); and if he can obtain refugee status, as defined in the Convention relating to the Status of Refugees (1951 Convention), in India. He submits that India has neither ratified the 1951 Convention nor its 1967 Protocol relating to the Status of Refugees, and cannot be considered as a safe third country where he would be guaranteed the right to request asylum. He claims that there are no procedures in place in India to assess if a person is in danger of being subjected to torture and inhuman treatment or punishment in his country of origin.

3.3 The complainant claims to have provided evidence to the Swiss authorities that India does regularly deport asylum seekers to their countries of origin. There are also reports in the media of recurring threats by Indian political parties, including the ruling Hindu nationalist Bharatiya Janata Party, to deport thousands of Rohingya refugees and Bangladeshi migrants back to their countries of origin. He further claims that Tamils have frequently been deported from India to Sri Lanka. Even though there are reports of court orders restraining the Indian immigration authorities from deporting Tamils to Sri Lanka, the existence of these court proceedings attests to the fact that the Indian authorities do regularly attempt to do so.

3.4 The complainant claims that by forcibly returning him to India, where he would face an acute danger of chain refoulement to Sri Lanka, Switzerland would violate its obligations under article 3 of the Convention. The complainant claims that even if not deported to Sri Lanka, he would not enjoy the status of a refugee as defined in the 1951 Convention and its 1967 Protocol, but would live as a marginalized and illegal immigrant with no legal rights and no proper status. He also fears being arrested and put in a special camp for Sri Lankan Tamils under the provisions of the Foreigners Act, 1946, without any means of recourse or legal protection. He provides evidence that such orders are frequently issued by the Public Department of the State of Tamil Nadu. Hence, India cannot be considered as a safe third country of asylum.

## State party's observations on the merits

4.1 The State party provided its observations on the merits by note verbal of 29 December 2017. It observes that the situation of human rights in India has significantly improved, even though reports suggest that numerous acts of torture still occur in detention there. However, the State party asserts that the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not, in itself, constitute sufficient grounds for determining that a particular person will be subjected to torture upon return to his or her country of origin. The Committee must establish whether the complainant is personally at risk of being subjected to torture in the country to which he or she is to be returned.<sup>2</sup> Additional grounds must be adduced in order for the risk of torture to qualify as foreseeable, real and personal for the purposes of article 3 (1) of the Convention.<sup>3</sup> The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.<sup>4</sup>

4.2 The State party observes that the human rights situation in India has improved and stabilized in recent years, despite the fact that the Committee noted that numerous incidents of torture in police custody continue to take place, and that there is widespread impunity for

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rejected his appeal through a decision dated 22 October 2021, and that all available domestic remedies had been exhausted.

<sup>2</sup> *K.N. v. Switzerland* (CAT/C/20/D/94/1997), para. 10.2.

<sup>3</sup> *Ibid.*, para. 10.5; and *J.U.A. v. Switzerland* (CAT/C/21/D/100/1997), paras. 6.3 and 6.5.

<sup>4</sup> Committee against Torture, general comment No. 1 (1997), para. 6.

perpetrators.<sup>5</sup> However, the general human rights situation in India is not in itself sufficient to determine whether the complainant's deportation is compatible with article 3 of the Convention. In that regard, the State party submits that the complainant failed to provide any evidence to conclude that he would be at personal risk of being subjected to torture in India.

4.3 Moreover, the State party specifies that the Swiss authorities decision to deport the complainant is based on the possibility for him to return to India, where he lived for five years before travelling to Switzerland, and does not consider the question of his deportation to Sri Lanka. According to domestic law, the State Secretariat for Migration does not consider an asylum application on the merits if the complainant can return to a safe third country where he previously lived. In accordance with a decision of the Swiss Federal Court of 14 December 2007,<sup>6</sup> India is considered as a safe third country. In its deportation decision in the present case, the State Secretariat for Migration therefore stressed that Switzerland considers India to be a country where as a general rule no asylum-relevant persecution occurs.

4.4 The State party affirms that, according to the conclusions of the fact-finding mission conducted by the State Secretariat for Migration to Tamil Nadu in September 2017, approximately 36,000 Sri Lankan refugees live in this state outside of refugee camps and are considered as having a comfortable living.<sup>7</sup> The State party further notes that every Sri Lankan refugee is monitored in India. Refugees living in camps have restricted freedom of movement and are not allowed to leave the camp during certain periods, while refugees living outside of the camps have regular contact with Q Branch of the Tamil Nadu Police, either by phone, in-person visits or an informal obligation to report. A lawyer from Chennai who specializes in the defence of Sri Lankan refugees confirmed to investigators of the State Secretariat for Migration that there has been no forced return to Sri Lanka from India in recent years and that the tribunals of Tamil Nadu have rejected all requests for the extradition of Sri Lankan nationals of Tamil ethnicity.

4.5 Concerning the allegations that the complainant was subjected to treatment prohibited under the Convention before his departure from Sri Lanka, the State party emphasizes, again, that the decision of the Swiss authorities is based on the possibility of the author returning to India. For the same reason, the profile of the complainant as an alleged former member of LTTE is not a decisive factor in the consideration of his protection claim.

4.6 The State party notes that the complainant alleges to have been constantly harassed and intimidated by the Indian authorities while living in India. The State party submits that the problems allegedly faced by the complainant in India in connection to his profile as a former LTTE member and his perceived closeness with a well-known Tamil politician do not constitute acts of torture within the meaning of the Convention. The State party further notes that the complainant ceased working as a driver for this politician in July 2015, but that he remained in India until 2017. The causal link between the alleged harassment by the Indian secret services as a result of this activity and his departure from India is therefore missing. It also appears contradictory that the Government of India would grant protection to the complainant and his family by registering them as refugees and providing them with an apartment, while illegally persecuting him. In addition, the complainant failed to explain the interest the Indian authorities could have in him considering he only performed ancillary tasks for LTTE, and how they would have been informed of his activities in Sri Lanka. With regard to the allegations that the author was harassed by Q Branch of the Tamil Nadu Police and that his passport was confiscated, the State party recalls that according to the findings of the State Secretariat for Migration, following its mission in 2017, all Sri Lankan refugees are subject to the same surveillance. The complainant is, therefore, not personally targeted.

4.7 The State party observes that the complainant was legally registered in India and lived in that country from 2012 to 2017. His second child was born in an Indian hospital and received corresponding identification papers. Furthermore, the Government allocated the complainant an apartment, where his wife and children still reside. In view of these elements,

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<sup>5</sup> *P.S.B. and T.K. v. Canada* (CAT/C/55/D/505/2012), para. 8.3.

<sup>6</sup> The State party does not provide any reference for this decision.

<sup>7</sup> Based on information provided to the Committee by the Commissionerate of Rehabilitation and Welfare of Non-Resident Tamils on 31 July 2017.

the State party supports the findings of the asylum authorities that the complainant has the status of a legal resident in India.

4.8 The State party notes that, even though India has not ratified the 1951 Convention or the 1967 Protocol relating to the Status of Refugees and that there are no procedures in place to assess the claims of asylum seekers, the rights of refugees and asylum-seekers are protected in the Constitution. In 1996, the Indian Supreme Court issued a non-refoulement precept that is similar to that in the 1951 Convention. The complainant admitted to the Swiss authorities that instances of the return of foreign nationals by the Indian authorities are scarce. Moreover, the complainant has not engaged in activities in India that would have given him an exposed profile, his stay was regularized, an apartment was made available to him by the Government, and he lived in India continuously for five years. The examples of persons sent back from India to Sri Lanka cited by the complainant seem to concern different situations and are not relevant to the complainant's claim. Moreover, the State party observes that, to the extent that he would need protection, the complainant could apply to the competent Indian authorities. In India, he would benefit from work experience and State-provided accommodation. In accordance with the findings of the State Secretariat for Migration following its mission, the fact that the complainant resided outside a refugee camp in India confirms that he had financial means. Even without accommodation or revenue, the complainant could always move to a refugee camp. In light of the above, the State party is of the view that there is no indication that the complainant would be exposed to a risk of chain deportation to Sri Lanka if he were to return to India.

4.9 In view of the foregoing, the State party submits that the complainant has not established a credible claim that he would be exposed to a foreseeable, personal and real risk of being subjected to torture, within the meaning of article 3 of the Convention, if he were returned to India.

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

5.1 In his comments dated 10 February 2019, the complainant indicates that, at the Committee's request, his deportation to India was suspended on 4 July 2017, pending the Committee's decision. However, he was forced to live as an undocumented migrant, without access to health care and without identification papers. His attempts to regularize his stay have all been rejected by the State Secretariat for Migration. On 7 June 2018, he was arrested and charged with illegal stay in Switzerland. He was released after the intervention of his lawyer, but continues to live in precarious conditions.

5.2 With regard to the risk of chain refoulement, the complainant asserts that he has documented, through valid, publicly available and independent reports, that forceful deportations and instances of chain refoulement of Tamils from India to Sri Lanka and other refugees to their country of origin, despite their valid claims, have regularly occurred in recent years. The State party has not been able to counter or present any evidence to the contrary, except an unknown report of a fact-finding mission conducted by the State Secretariat for Migration in September 2017. The complainant also submits that, allegedly according to this report, the State Secretariat for Migration spoke to "about 16 interlocutors" who "did not possess any information about forced deportations of Sri Lankan refugees from India to Sri Lanka" and a "lawyer known from Chennai" who allegedly stated that there had been no forced deportations in recent years, although the lawyer confirmed that there had been court proceedings. The references to "about 16 interlocutors" and a "lawyer known in Chennai" are extremely vague, and the conclusions the State party draws from this report to refute the evidence presented by the complainant are far-reaching. The complainant argues that these references cannot outweigh the detailed and publicly available sources of information concerning the regular deportation of Tamils to Sri Lanka. The complainant further notes that the State party has not offered the fact-finding report into evidence. The report is not publicly available and is therefore unknown to the complainant. Without access to the report and verification of its authenticity, the foundation for the statements therein and the weight they should be given cannot be assessed, and the complainant cannot properly respond to the State party's observations. Consequently, the complainant moves to strike this report from the evidence considered by the Committee if not produced for the defence to refute it.

5.3 Regardless of the admissibility of this report as evidence, the complainant maintains that there is a real risk that he will be deported to Sri Lanka if returned to India. It is by no means guaranteed that the complainant will be able to avail himself of legal protection, allowing him to reside legally in India. On the contrary, it is more likely that he will be placed on a plane to Colombo upon his arrival in India by an official who is unaware of the abstract rules concerning non-refoulement and the Indian Supreme Court ruling on the issue in 1996. Over 200 Rohingya persons are currently detained in India on charges of irregular entry. On 2 October 2018, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance protested against the planned deportation of seven Rohingya men from India to Myanmar. The complainant also cites the example of a Tamil asylum-seeker who was returned to Sri Lanka after being deported from Australia in December 2018 in support of his main argument that chain refoulement from India to Sri Lanka continues to occur. The complainant contends that the risk of possible deportation of refugees to their country of origin contradicts the State party's assertion that India strictly adheres to the principle of non-refoulement and is, therefore, a safe country for the complainant. Lastly, the complainant emphasizes that the decision of the Federal Council that India is a safe third country was a political decision made by the highest executive organ in Switzerland, and not a decision based on an assessment of country of origin information.

5.4 The complainant contests the State party's assertion that he was registered as a "refugee" or "regular foreigner" in India and that he received support from the Government. He maintains that he was never officially registered by the Indian authorities and that he was not residing legally in India, as the Indian authorities no longer register Sri Lankans as refugees since the end of the civil war. Instead, the complainant had to register with the Ramapuram Police. He never received any document proving his registration in India and therefore had neither the right to work legally nor to get a driving licence and was forced to work illegally at night. The complainant disputes the findings of the Federal Administrative Court that he had received an apartment as a consequence of his registration with the police, thereby implying a causal relationship between the two events, when in fact, the complainant clearly stated in his testimony that he had received no support from the Indian State. He was not given an apartment by the Government, but by the Naam Tamilar Katchi party for whose leader he later worked.

5.5 The complainant maintains that he was subject to constant surveillance, intimidation and harassment by Q Branch of the Tamil Nadu Police since he was suspected of being involved in the rebuilding of LTTE in India. Prior to his registration, the authorities had already been notified of the complainant's past as an LTTE member, and they confiscated his passport. From 2014 to July 2015, the complainant worked as a driver for the leader of the Naam Tamilar Katchi party, advocating for Tamil separatism and promoting LTTE. He resigned due to repeated threats from Q Branch of the Tamil Nadu Police and members of the Indian secret service. Nevertheless, he was still considered to be a threat by the Indian authorities, which continued to closely monitor and harass him.

5.6 The complainant adds that, besides being harassed, he feared that he could be arrested and put into a special camp for Sri Lankan Tamils at any time under the provisions of the Foreigners Act, 1946, without any means of recourse or legal safeguards. He provides evidence of orders issued by the Public Department of the State of Tamil Nadu showing that Sri Lankan Tamils with links to LTTE are regularly detained in special camps by Q Branch and that Indian courts have continued to reserve the absolute power of the Government to expel foreigners without considering the non-refoulement principle.

5.7 The complainant notes that, under article 3 of the Convention, the State party has an obligation to base its assessment not only on legal precepts and a 22-year-old Indian Supreme Court ruling but on solid and assessable country of origin information to check if the complainant has substantial grounds for believing he would be in danger of being subjected to torture. The decisions of the Swiss courts are testimony to the fact that the complainant's case had not been assessed on its merits. Both were summary judgments in which the arguments of the complainant were not fully taken into consideration. According to the complainant, the Swiss authorities and courts, relayed by the State party in its submission, have distorted his claims during the domestic proceedings to make it appear as if he had received support from the Government of India and possessed a regular status in that country.

Even though his claims were supported by tangible evidence, the Swiss authorities relied on the general consideration that regarded India as a safe third country and failed to conduct a proper review of his claim based on reliable and assessable country of origin information. On the other hand, the State party has not presented any assessable evidence that would contradict the complainant's claim that he fears being subjected to treatment prohibited by the Convention in India or being deported to Sri Lanka.

## **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 In accordance with article 22 (5) (b) of the Convention, the Committee 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 challenged the admissibility of the communication. Consequently, the Committee finds no obstacle to admissibility and declares the communication admissible.

### *Consideration of the merits*

7.1 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.

7.2 The issue before the Committee is whether the removal of the complainant to India would constitute a violation of the State party's obligation under article 3 (1) 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 risk being subjected to torture or being at risk of further deportation to a third State in which he or she would be in danger of being subjected to torture.

7.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture, the Committee recalls that, under article 3 (2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country to which he or she would be returned. In this case, however, the Committee must determine whether the complainant runs a personal risk of being subjected to torture if he is returned to India. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, as such, constitute sufficient reason for determining that the complainant 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.<sup>8</sup> 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>9</sup>

7.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. Furthermore, the person at risk should not be deported to another State where he or she may subsequently face deportation to a third State in which there are substantial grounds for believing that he or she would be in danger

<sup>8</sup> *Alhaj Ali v. Morocco* (CAT/C/58/D/682/2015), para. 8.3; *R.A.Y. v. Morocco* (CAT/C/52/D/525/2012), para. 7.2; and *L.M. v. Canada* (CAT/C/63/D/488/2012), para. 11.3.

<sup>9</sup> See, for example, *E.K.W. v. Finland* (CAT/C/54/D/490/2012), para. 9.3; and *E.T. v. Netherlands* (CAT/C/65/D/801/2017), para. 7.3.



of being subjected to torture.<sup>10</sup> The Committee recalls that substantial grounds exist whenever the risk of torture is “foreseeable, personal, present and real”.<sup>11</sup> Indications of personal risk may include, but are not limited to, the complainant’s: (a) ethnic background; (b) political affiliation or political activities; (c) arrest without guarantee of a fair treatment and trial; (d) previous torture; (e) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (f) clandestine escape from the country of origin following threats of torture; (g) religious affiliation; and (h) violations of the right to freedom of thought, conscience and religion.<sup>12</sup>

7.5 The Committee recalls that the burden of proof is upon the complainant, who must present an arguable case, that is, submit circumstantiated arguments showing that the danger of being subjected to torture is foreseeable, personal, present and real.<sup>13</sup> However, when complainants are in a situation where they cannot elaborate on their case, the burden of proof is reversed and the State party concerned must investigate the allegations and verify the information on which the complaint is based.<sup>14</sup> 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 and will 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.<sup>15</sup>

7.6 In the present case, the Committee notes the complainant’s claim that if he were to be returned to India he would face deportation to Sri Lanka where there is a foreseeable, real and personal risk of him being subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Committee also notes the complainant’s argument that he could not obtain the status of refugee in India in the absence of a law on refugees and with no procedures to assess if a person is in danger of being subjected to torture and inhuman treatment or punishment in his country of origin. The complainant alleges that he would have no legal status or legal rights and would be subject to various restrictions in the exercise of his fundamental rights, such as the right to work. The Committee further notes the complainant’s fear of being arrested and detained in a special camp for Tamil refugees by Q Branch of the Tamil Nadu Police. It also notes the complainant’s allegations that, while living in India, he was continuously harassed and monitored by Q Branch, which suspected him of rebuilding LTTE in India; that he resigned from his occupation as a driver to a well-known Tamil politician in July 2015 following repeated threats; that the surveillance and acts of intimidation persisted after his resignation; and that he left India as a result of these persistent threats from the police and the Indian secret services.

7.7 The Committee also notes the State party’s position that there is no indication that there is no effective protection against repatriation in India. In this regard, the Committee notes in particular the State party’s observation that India has been recognized as a safe third country by the Swiss Federal Court in 2007. The Committee further notes that, according to the State party, even if India has not ratified the 1951 Convention or the 1967 Protocol relating to the Status of Refugees, it applies the principle of non-refoulement across its territory. It also notes the State party’s findings that there has been no forced repatriation of Sri Lankan refugees in recent years; that there have only been a few judicial proceedings involving extradition requests to Sri Lanka, which have all been rejected by Indian courts; and that the Tamil Nadu State Assembly has allegedly issued a ban on refoulement of refugees to Sri Lanka. The Committee notes the State party’s argument that the complainant has not engaged in activities in India that would have given him an exposed profile, that his stay has been regularized and that he lived in India continuously for five years.

<sup>10</sup> General comment No. 4 (2017), para. 12. See also *Avedes Hamayak Korban v. Sweden* (CAT/C/21/D/88/1997), para. 7; *R.T. v. Australia* (CAT/C/31/D/153/2000), para. 6.4; CAT/C/GRC/CO/5-6, para. 19; and CAT/C/SRB/CO/2, para. 15.

<sup>11</sup> General comment No. 4 (2017), para. 11.

<sup>12</sup> *Ibid.*, para. 45.

<sup>13</sup> *Ibid.* See also *Kalonzo v. Canada* (CAT/C/48/D/343/2008) para. 9.3; *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 8.4.

<sup>14</sup> General comment No. 4, para. 38.

<sup>15</sup> *Ibid.*, para. 50. See also General comment No. 1, para. 9; *T.D. v. Switzerland* (CAT/C/46/D/375/2009), para. 7.7; and *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.



7.8 The Committee recalls that it must ascertain whether the complainant would currently face a risk of being subjected to torture or chain deportation in India.<sup>16</sup> It notes that, while the complainant alleges to have been subject to constant monitoring, intimidation and harassment by Q Branch of the Tamil Nadu Police in connection to his profile as a former LTTE member, he does not provide documentation indicating that he was subjected to torture or other treatment contrary to article 3 of the Convention. The Committee notably remarks the absence of a causal link between the harassment endured by the complainant in relation to his work as the driver of a well-known Tamil politician and his departure from India, considering the time-lapse of two years between his resignation and his departure from the country. It notes that the complainant had ample opportunity to provide supporting evidence and more details about his claims to the State Secretariat for Migration and the Federal Administrative Court, but that the evidence provided did not lead the national authorities to conclude that he would be at risk of being subjected to torture or cruel, inhuman or degrading treatment upon his return.

7.9 The Committee also notes the State party's findings that the complainant failed to explain the interest the Indian authorities could have in him, considering that he only performed ancillary tasks for LTTE, and how they would have been informed of his activities in Sri Lanka. The Committee notes that, according to the State party, all Sri Lankan refugees are subject to the same surveillance and monitored by the police. In this connection, the Committee accepts the existence of special camps in which certain Sri Lankan Tamil refugees are detained. However, background evidence provided by the complainant shows that refugees are only sent to these special camps in two instances: after a preliminary screening upon their arrival in India or at a later stage when camp refugees are suspected of being involved in a crime or being a member of LTTE. The Committee observes that considering the conditions of the complainant's previous stay in India, it is extremely unlikely that he will be arrested and detained in one of these camps upon his return.

7.10 The Committee notes that although the complainant asserts that he was not residing in India legally and was never officially registered as a regular foreigner or a refugee, he was nevertheless able to legally register with the police for an indefinite period, as a consequence of which he received a residency permit. The complainant's claim that he received no support from the State and was in fact allocated an apartment by the Naam Tamilar Katchi party and not the Indian authorities does not have an impact on these findings.

7.11 The Committee expresses concern at the lack of clearly defined asylum proceedings in India and the fact that under Indian laws any non-citizen is viewed indiscriminately as falling in a single broad category of "foreigner". It is also concerned by reports that it is not uncommon in India to detain asylum seekers on the charge of irregular entry. However, the Committee recalls that the occurrence in the country of return of human rights violations is not in and of itself sufficient for it to conclude that a complainant is personally at risk of being tortured.<sup>17</sup> The Committee considers that in the present case, the complainant has not sufficiently demonstrated the existence of substantial grounds for believing that he would face a specific and personal risk of torture or chain deportation upon his return to India. The Committee considers that the complainant failed to demonstrate why he could not avail himself of legal protection in India and apply to the competent authorities. The Committee notes that the examples of forced repatriation of foreigners from India to their country of origin are scarce and apply to different circumstances than the case at hand. It observes that the principle of non-refoulement is generally upheld by Indian courts and that extradition requests of Sri Lankan Tamils have all been rejected by courts in recent years, a fact that is not refuted by the complainant.

8. On the basis of the above considerations, the Committee considers that the information in the file does not substantiate the claim that the complainant's return to India would expose him to a foreseeable, real and personal risk of torture.

<sup>16</sup> E.g., *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7.

<sup>17</sup> E.g., *I.E. v. Switzerland* (CAT/C/62/D/683/2015), para. 7.8.

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

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