



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. 600/2014*, **

<i>Communication submitted by:</i>	K.V.
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	25 April 2014 (initial submission)
<i>Date of present decision:</i>	11 August 2016
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Substantive issues:</i>	Risk of torture upon return to country of origin; non-refoulement
<i>Procedural issues:</i>	Non-substantiation of claims
<i>Articles of the Convention:</i>	3

1.1 The complainant is K.V., a national of Sri Lanka national born in 1992. He claims that his deportation to Sri Lanka would constitute a violation by Australia of his rights under article 3 of the Convention. The complainant is not represented by counsel.

1.2 On 8 May 2014, in application of rule 114 (1) of its rules of procedure, the Committee, through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Sri Lanka while his complaint was being considered by the Committee. On 13 June 2016, the Committee, acting through the same Rapporteur, denied the State party's request to lift interim measures.

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

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



Factual background

2.1 The complainant is of Tamil ethnicity and of the Hindu faith. He was born in the village of Kaluwanchikudy, Batticaloa District, Eastern Province, Sri Lanka, and lived there until 2007, when he and his family were displaced from their village owing to the civil war. The family sought refuge in Kaluthavalai, a village approximately 25 kilometres from the city of Batticaloa, and remained there for about four months. They then returned to their home, where the complainant remained until his departure for Australia.

2.2 The complainant claims that he fled Sri Lanka because he feared for his life after being personally threatened on two occasions by soldiers of the Sri Lanka Army. He worked as a mason and travelled to different places for his work. On 10 September 2011, he was working at a construction site approximately 25 kilometres away from his home. After finishing his work, he travelled home with his colleagues. When he arrived home, he realized that he had left his phone and wallet at work. He decided to return to the worksite to collect his belongings on his bicycle. He picked up his phone and wallet and was walking back to his bicycle when he heard a woman screaming. The sound was coming from an abandoned house which was a few metres away from the worksite. The complainant rushed over to see what was happening. He looked inside the abandoned house and saw two soldiers and a woman in one of the rooms. The woman was lying on the floor and one of the soldiers was sitting over her, strangling her. The other soldier was watching. The soldiers were wearing black T-shirts and army trousers and had black grease smeared over their faces.

2.3 The soldier who was watching the attack saw the complainant and started to approach him, but the complainant ran away. The soldier chased him and shouted at him in Sinhala, but the complainant does not speak Sinhala and could not understand what the soldier was saying. The complainant kept running and, at some point, the soldier stopped chasing him. When he reached home two to three hours later, he realized that he did not have his wallet. He did not know where he had dropped it. He told his family what had happened.

2.4 The next day, on 11 September 2011, the complainant and his father went to the local police station to report what the complainant has seen. He told a police officer what had happened and provided the location of the village where the attack had occurred and a description of the soldiers. The police officer reportedly suggested that the soldier who had chased the complainant was only a "madman" and he did not take the complainant's statement.

2.5 Late in the evening on 13 September 2011, three soldiers came to the complainant's house. One of them began banging on the front door but the complainant's parents did not open it. The soldiers began yelling in Sinhala but the complainant and his family did not understand what they were saying. The neighbours heard the shouting and started coming around to see what was happening. When the soldiers saw the neighbours they decided to leave and drove away in a white van. After this, the complainant decided to hide and went to live with other relatives.

2.6 On 19 September 2011, the complainant was walking along a road close to his house when a white van with no number plates stopped next to him. The complainant suspected that it was the same van used by the soldiers who had come to his house on 13 September 2011. As the complainant was near his aunt's house, he jumped over a fence and ran into her back yard. The van drove away. After that, he decided to leave Sri Lanka.

2.7 On 28 January 2012, the complainant left his village and travelled by bus to Colombo, then to Beruwala, a town in Kalutara District, Western Province, and, on 2 February 2012, he left Sri Lanka illegally by boat. On 17 February 2012, he arrived at Christmas Island, Australia, without a valid visa. The complainant participated in an entry

interview on 15 March 2012. On 28 May 2012, he was interviewed by a representative of the Immigration Advice and Application Assistance Scheme (IAAAS) and applied to the then Department of Immigration and Citizenship¹ for a protection visa. On 1 June 2012, he participated in a protection visa interview at Scherger Immigration Detention Centre. During the interview he said that he was not sure if anyone else was in the area at the time that the woman was being attacked but he did not think that anyone else had heard the woman screaming. He did not know what had happened to the woman who was being attacked. He stated that he was afraid of being harmed because he was a Tamil and belonged to the particular social group of Sri Lankan Tamils from the North or East of Sri Lanka and because of his real and imputed political opinion owing to the ethnic group to which he belonged and his former residence in a predominantly Tamil region. He also submitted that his fear of being harmed had been exacerbated because he was seeking asylum in Australia.

2.8 The complainant believes that if he is returned to Sri Lanka, his life would be in danger because he witnessed a soldier strangling a woman. He fears that the soldiers who were looking for him will abduct and kill him to prevent him from testifying against them in court. He believes that they found his wallet and know all of his details. The complainant states that he tried to seek help from the police but they did not offer him any protection. He believes that the police officer did not pay attention to his account because he is a Tamil and “of no significance” and that the police knew the soldiers and were covering up for them. Consequently, he does not believe that the Government will provide him with any protection if he returned to Sri Lanka now.

2.9 The complainant submits that after he left Sri Lanka, officials from the Sri Lanka Criminal Investigation Department had gone to his house looking for him. His family told them that he had travelled to Australia. He does not know why the Criminal Investigation Department wanted to speak to him. He suggests, however, that the soldiers who were looking for him may have framed him for the assault or murder of the woman and the Department was investigating his involvement.

2.10 The complainant referred to an article published on 2 April 2012 on a Tamil news website, according to which, the Government of Sri Lanka had declared that everyone on the boat in which he had travelled to Australia had fought with the Liberation Tigers of Tamil Eelam (LTTE). He fears that the police in Sri Lanka will arrest him if he returns because he is a young Tamil and they would suspect him of having links with LTTE. He is also concerned that he will come to their attention because he left Sri Lanka illegally. The complainant does not believe that he could defend himself against those allegations and fears that he would be seriously mistreated as a consequence.

2.11 On 31 August 2012, the Department of Immigration and Citizenship refused to grant the complainant a protection visa on the grounds that his statements lacked credibility and his fear of persecution was not well-founded. On 20 December 2012, the Refugee Review Tribunal confirmed the decision. On 23 January 2013, the complainant filed an application for review with the Federal Circuit Court of Australia, which was rejected on 28 August 2013. On 5 December 2013, the complainant’s application for leave to appeal the decision of the Federal Circuit Court before the Federal Court of Australia was also dismissed. On 15 December 2013, the complainant requested the Minister for Immigration and Border Protection to exercise his public interest powers under section 417 of the Migration Act. On 25 February 2014 and 16 March 2014, respectively, the Minister’s office declined to

¹ As of September 2013, the name of the Department of Immigration and Citizenship was changed to Department of Immigration and Border Protection.

intervene. The complainant therefore submits that he has exhausted all available and effective domestic remedies.

The complaint

3. The complainant claims that there are substantial grounds for believing that he will suffer irreparable harm if deported to Sri Lanka. He states that, as a consequence of his complaining to the Sri Lankan police about the woman being strangled by soldiers, the military intelligence of Sri Lanka is demanding his return. He also states that he has “no hope of survival in Sri Lanka” if returned. The complainant argues that, since he left Sri Lanka illegally by boat, if he is returned, he will be taken to Negombo prison for interrogation and subjected to torture.

State party’s observations on admissibility and the merits

4.1 On 7 November 2014, the State party submitted its observations on the admissibility and merits of the complaint. It asserts that the complainant’s claims are manifestly unfounded and therefore inadmissible under rule 113 (b) of the Committee’s rules of procedure, as he failed to establish a prima facie case for the purpose of admissibility of his complaint under article 22 of the Convention. However, should the Committee consider the communication admissible, the State party submits that the complainant’s claims are without merit. The State party assumes that the claims are in relation to article 3 of the Convention, although the complainant does not specifically invoke this in his submissions. Regarding the facts, the State party submits that, on 9 October 2014, the complainant was granted a bridging visa by the Department of Immigration and Border Protection that allowed him to live in the community.²

4.2 The State party recalls, based on the Committee’s jurisprudence, that, 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 being subjected to torture should he or she be returned to a country. In addition, 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.³

4.3 The State party argues that the complainant’s claims were thoroughly considered by a number of domestic decision makers, including the Refugee Review Tribunal, and subjected to judicial review by the Federal Circuit Court and the Federal Court of Australia. Each body specifically considered the claims and determined that they were not credible and that they did not engage the State party’s non-refoulement obligations. In particular, the complainant’s claims were assessed under the complementary protection provisions of section 36 (2) (aa) of the Migration Act, which contains the State party’s non-refoulement obligations under, inter alia, the Convention.

4.4 When assessing the complainant’s claims, the Tribunal took into account the difficulties faced by asylum seekers in providing supporting evidence. It considered, however, that it was reasonable to expect that an individual would be able to provide evidence at a basic level regarding personal experiences. The complainant has not provided any credible new evidence in his submissions to the Committee that had not already been considered in the domestic administrative and judicial proceedings. In this

² In its additional observations of 31 March 2016, the State party stated that the complainant had been in Australia since 17 February 2012 and was currently residing unlawfully in the community.

³ See, for example, communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

regard, the State party refers to the Committee's general comment No. 1, in which it is stated that the Committee is not an appellate or judicial body and that it gives considerable weight to findings of fact that are made by the organs of the State party concerned.⁴ The State party therefore requests that the Committee accept that it has thoroughly assessed the complainant's claims in its domestic proceedings and found that it does not owe the complainant protection obligations under the Convention.

4.5 The State party recalls that the complainant lodged an application for a protection visa on 28 May 2012. He was granted a bridging visa while his protection visa application was under consideration by the Department of Immigration and Citizenship. On 31 August 2012, the complainant's protection visa application was refused.

4.6 The Department of Immigration and Citizenship interviewed the complainant (with the assistance of an interpreter) and also considered other relevant material, such as country information provided by the Australian Department of Foreign Affairs and Trade. The decision maker who examined the complainant's protection visa application evaluated the copies of character references that were filed with his application. Despite claiming to be a Hindu, he provided a reference from a parish priest of St. John de Brito's Church in Batticaloa, Sri Lanka, dated 15 March 2012, indicating that the priest had known the complainant "for some years". However, the decision maker determined that the priest did not appear to know the complainant personally, which called into question the integrity of the reference. After considering all the information available, the Department of Immigration and Citizenship was not satisfied that there were substantial grounds for believing that, as a necessary and foreseeable consequence of the complainant being removed to Sri Lanka, there was a real risk that he would suffer significant harm.

4.7 The complainant subsequently filed an application for an external merits review with the Refugee Review Tribunal. Such review is normally carried out by a special external review body that provides a full and independent review of decisions concerning protection visas. The complainant was present at the review hearing on 7 November 2012 and was represented by a registered migration officer. He was able to make oral submissions with the assistance of an interpreter.

4.8 After considering the available evidence, the Tribunal concluded that the complainant "was not providing evidence regarding events that he had actually participated in or witnessed. He was instead providing evidence from a script that he had learnt based on fabricated claims that he had used to try and strengthen his claim for refugee status". The Tribunal considered that the evidence indicated that the claims were fabricated, including for the following reasons: (a) the death certificate provided by the complainant in respect of the woman who was allegedly killed in the September 2011 incident was not genuine. The Tribunal found that his answers to the questions about how his father had discovered who had been killed were circular and that his evidence about this was fabricated; (b) the complainant acknowledged that he had remained in Sri Lanka for almost four months after the alleged incident. He had initially said that he had been visited twice while in Sri Lanka: the first time being when three men came to his house late one evening; and the second time being when people in a white van attempted to abduct him; (c) when the Tribunal raised that four months was a long time to remain in Sri Lanka if he was being pursued by the Sri Lanka Army or authorities, the complainant said that he had been visited a third time before he left for Australia.

⁴ See, the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, para. 9.

4.9 The Tribunal noted that the complainant would be subject to security checks when returned to Sri Lanka and might face short-term detention and/or a fine for leaving Sri Lanka illegally. However, the Tribunal did not consider that there was any evidence to support a finding that the complainant had issues that would draw additional scrutiny or attention to him on his return or that would delay his release after such checks were made. The Tribunal found that, in such circumstances, security checks, short-term detention and/or a fine for leaving Sri Lanka illegally did not constitute significant harm under section 36 (2) (aa) of the Migration Act which implements the State party's non-refoulement obligations. Accordingly, the Tribunal concluded that there were no substantial grounds for believing that there was a real risk of the complainant being subjected to torture if removed to Sri Lanka.

4.10 The State party also notes that, on 28 August 2013, the Federal Circuit Court was unable to find any grounds upon which it could conclude that the Tribunal had made any jurisdictional error in reaching its decision. On 5 December 2013, the complainant's application for leave to appeal the decision of the Federal Circuit Court before the Federal Court of Australia was also dismissed.

4.11 On 15 December 2013, the complainant filed a request for ministerial intervention under sections 48B and 417 of the Migration Act, which was determined not to meet the relevant guidelines on 25 February 2014 and 16 March 2014, respectively. In his request for ministerial intervention, the complainant reiterated his previous claims. He also claimed that returnees who were believed to have departed in breach of immigration laws were arrested at the airport and brought before a court to apply for bail and might be placed in Negombo Prison, possibly for days until a bail hearing date becomes available. The complainant further claimed that the Tribunal had failed to apply the correct test for degrading punishment in relation to contravention of the Sri Lanka Immigrants and Emigrants Act. He claimed that he had no family or close relatives in Colombo to secure bail on his behalf, which exposed him to long-term detention.

4.12 The ministerial intervention assessment concluded that it was reasonable to expect that, in the light of the complainant's apparent concern for his personal safety, a member of his family would travel to secure his release from remand in the event that he were brought before the court to apply for bail. Furthermore, the complainant had previously stated that his family lived in the Batticaloa area and that he still communicated with them. The ministerial intervention assessment considered that, based on the information available, the complainant would not be exposed to long-term detention, as it would be reasonable to expect a family member to travel to Negombo to secure his release from remand. The assessment concluded that his claims were merely an attempt to bolster his chances for protection in Australia, rather than a genuine concern for his safety in Sri Lanka.

4.13 Extensive country information on Sri Lanka regarding the return of failed asylum seekers specifically was also carefully considered throughout the domestic processes. In particular, during the complainant's protection visa application review, material before the authorities included country information from the Department of Foreign Affairs and Trade, non-governmental organizations and the Office of the United Nations High Commissioner for Refugees (UNHCR).⁵ The Refugee Review Tribunal found that failed asylum seekers and Tamils were not specifically targeted for adverse attention from the Sri Lankan authorities at the time of entry and that there was no evidence before it to support a finding that the complainant had issues that would attract additional scrutiny or

⁵ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva, 1998).

attention on return, or that would delay his release after the security checks on his return to Sri Lanka. The ministerial intervention assessment considered that, while failed asylum seekers were detained on return to Sri Lanka under laws relating to leaving the country illegally, returnees have immediately been granted bail on personal recognizance by the magistrate, with the requirement that a family member acts as guarantor. The complainant had family members residing in Sri Lanka and it was reasonable to expect that his family would assist him with bail in such circumstances.

4.14 On 31 March 2016, the State party reiterated its observations and maintained that there were no substantial grounds for believing that the complainant faced a real risk of irreparable harm if returned to Sri Lanka and therefore considered the Committee's request for interim measures to be unwarranted.

Complainant's comments on the State party's observations

5.1 On 7 April 2016, the complainant submitted his comments on the State party's observations. He recalls the facts on which the present complaint is based and states that he fears for his life, as the soldiers who were looking for him made "all attempts to silence him as an eyewitness of their gruesome crime". He claims that he will be detained and interrogated at the airport and that, at that time or at any moment thereafter, it could come to light that he was an eyewitness to a crime committed by Sri Lanka Army soldiers. There is, therefore, a real chance that he may even be summoned as a witness in any inquiry regarding that crime or in the event that the soldiers are prosecuted. He would then be targeted by other Sri Lanka Army personnel and would not be able to rely on police protection. As a young Tamil male from the area previously controlled by LTTE and who had left Sri Lanka illegally, he would be imputed with strong LTTE links either in order to silence him or in revenge for having exposed Army personnel by giving evidence and to discourage others from coming forward to give such evidence.

5.2 The complainant further submits that even the current Government in Sri Lanka has not indicated any intention to repeal the Prevention of Terrorism Act or to release Tamil political prisoners who have been detained in camps for long periods of time without charge. With reference to the country situation reports on Sri Lanka,⁶ he adds that the witnesses of war crimes and those imputed with a pro-LTTE political profile suffer a foreseeable, real and personal risk of being subjected to torture. This risk is personal and present for him. Therefore, the State party will be violating its obligations under article 3 of the Convention if it deports him to Sri Lanka.

5.3 The complainant acknowledges the fact that he did not provide any evidence to corroborate his claims, other than the death certificate of the woman whose murder he had witnessed. He submits, however, that a careful study of the facts on which the present complaint is based would establish that "this is one of those unfortunate cases where it is impossible to produce further evidence" to substantiate claims. He was the only eyewitness to the murder and the other persons present at the scene were the perpetrators of the crime themselves. In the particular circumstances of his case, it is unreasonable to reject his claims on the ground of unfoundedness or inability to produce strong evidence. With reference to the UNHCR Handbook,⁷ he claims that the Australian authorities should have granted him the "benefit of the doubt".

⁶ Reference is made to UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* (Geneva, 21 December 2012), pp. 5, 13-14; Human Rights Watch, *World Report 2014: Sri Lanka*; and CAT/C/LKA/CO/3-4, para. 19.

⁷ See UNHCR Handbook, paras. 196 and 203.

5.4 The complainant submits that one should take into consideration in assessing his case and his demeanour in answering the questions of the State party's decision makers that he was still a teenager at the time of the incident who had undergone a very frightening experience of seeing a woman being strangled; he had escaped from being abducted; and had undertaken an illegal and perilous boat journey. He was not used to living outside of his home country nor to answering questions under extreme stress and fear for his future safety. Therefore, before the interviewers, he may have made small inconsistencies in his statements.

5.5 The Department of Immigration and Citizenship noted that the complainant's claims were inconsistent with his first biodata interview. In that respect, the complainant submits that he felt rushed in his first biodata interview and was made to summarize his claims in Tamil in one sentence. Furthermore, he was never given an opportunity in the first interview to elaborate on his claims. The Department of Immigration and Citizenship also noted that the complainant's claims were inconsistent with his first entry interview because he had only mentioned one attacker in the incident. The complainant accepts that he only mentioned one attacker and explains that he did so because the other soldier was not participating directly in the attack. The entry interview was also rushed and no further questions were asked. He adds that he also did not mention the white van during his entry interview as that element was not central to his request at that time and he did not think of mentioning it.

5.6 The complainant submits that the aforementioned inconsistencies are minor and can be explained by the fact that he was stressed, required an interpreter and the first interviews were short. However, he was consistent in his explanations whenever he did not feel rushed.

5.7 The complainant contends that the Committee should not accept the Refugee Review Tribunal's conclusion about his lack of credibility for the following reasons: (a) he was asked argumentative questions, such as how a woman could have screamed while being strangled, whereas in his testimony he said that he ran towards the house when he heard a woman scream, not when she was being strangled. He was confused about how to explain this obvious position without being considered argumentative and insolent. By repeating his story, he was attempting to explain to the Tribunal that the question itself was flawed; (b) he was asked questions for which answers were obvious, for example, why did he complain to the police. He thought that it was incumbent on any person who had witnessed a crime to report it to the police, as required by law and for one's own safety. He was confused as to why such questions were being asked and thought that he was actually being asked about the facts of his case. Later, the Tribunal rephrased the question and he answered the newly formulated question; (c) he does not understand how he could have been more "spontaneous" and yet answer the Tribunal's question as to whether he had seen the three men who allegedly came to his house one night; (d) he accepts that he did not immediately answer the Tribunal's question as to why the men had come to his house, because he did not speak English and found it difficult using an interpreter. However, when the question was rephrased, he did answer the newly formulated question; (e) he accepts that he did not answer the Tribunal's question as to why members of the Sri Lanka Army involved in an alleged murder would pursue him, when it would connect them to the alleged murder, because he did not speak English and the interpretation sometimes confused him. Unfortunately, he was unaware that he had inadvertently misunderstood the question; (f) regarding his inability to explain to the Tribunal the exact means through which his father had found out about the murder of the woman, he submits that he was not given time to ask his father, instead, he was declared not credible; (g) he submits that, in the specific circumstances of his case, it is unreasonable to expect him to remember the exact characteristics of the soldiers who were present at the crime scene; (h) he also argues that it is unreasonable to expect him

to recall the exact address of the crime scene or of his worksite, since he knew how to get there by visual memory as street names and house numbers are not common in rural and remote areas of Sri Lanka; (i) as to the Tribunal's finding that it was implausible that he had stayed four months before leaving Sri Lanka, he argues that four months is a short period of time to decide to leave one's home country forever, as he first wanted to see whether the problem would subside on its own and his first attempt to leave Sri Lanka earlier had failed; and (j) contrary to the State party's claims (see para. 4.8 above), the complainant states that he clearly told the Tribunal that the Sri Lankan authorities visited his house for the third time after he had already left for Australia. In conclusion, the complainant submits that it was unfair of the Refugee Review Tribunal to rely on small and explainable discrepancies to dismiss his general credibility.

5.8 The complainant submits that, according to the State party's law, the decision of the Tribunal may only be challenged on the grounds of jurisdictional errors. However, the courts' inability to find a jurisdictional error is unrelated to whether article 3 of the Convention would be violated in case of his return to Sri Lanka.

5.9 Lastly, the complainant argues that the ministerial intervention on humanitarian grounds is highly discretionary and did not adequately consider whether the Tribunal was mistaken in its finding.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee 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 the complainant's assertion that he 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.

6.3 The Committee notes that the State party has contested the admissibility of the communication on the grounds that the complainant's claims are manifestly unfounded. The Committee however considers that this ground is closely linked to the merits of the communication and should thus be considered at that stage.

6.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the return of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State

where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing this 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 recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.⁸

7.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable (para. 6), the burden of proof generally falls upon the complainant, who must present an arguable case establishing that he or she faces a foreseeable, real and personal risk.⁹ The Committee gives considerable weight to findings of fact that are made by organs of the State party concerned, however, it is not bound by such findings but rather has the power, provided by article 22 (4) of the Convention, to freely assess the facts based on the full set of circumstances in every case.¹⁰

7.5 The Committee notes the complainant's claims that his forcible removal to Sri Lanka would amount to a violation of article 3 of the Convention, as he would be at risk of being detained and interrogated upon arrival at the airport. If, at that time or at any moment thereafter, it should come to light that he was an eyewitness to a crime committed by Sri Lanka Army soldiers, he may even be summoned as a witness in any inquiry regarding that crime or at court; he would then be targeted by other Sri Lanka Army personnel and would not be able to rely on police protection. Furthermore, he claims that, as a young Tamil male originating from the area previously controlled by LTTE and who had left Sri Lanka illegally and failed in his asylum application, he would be imputed with strong LTTE links. He also claims that although he clarified the discrepancies of his accounts before the State party's authorities and explained why it was not possible to provide any evidence to corroborate his claims, other than the death certificate of the woman whose murder he had witnessed, the Australian Department of Immigration and Citizenship and the Refugee Review Tribunal questioned his credibility and arbitrarily dismissed his request for a

⁸ See, for example, communications No. 467/2011, *Y.B.F., S.A.Q. and Y.Y. v. Switzerland*, decision adopted on 31 May 2013, para. 7.2; No. 392/2009, *R.S.M. v. Canada*, decision adopted on 24 May 2013, para. 7.3; and No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

⁹ See, for example, *A.R. v. Netherlands*, para. 7.3; also communications No. 285/2006, *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4; No. 343/2008, *Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012, para. 7.3.

¹⁰ See, for example, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

protection visa. The complainant also claims that returnees who are believed to have departed in breach of the Sri Lanka Immigrants and Emigrants Act are arrested at the airport and brought before a court to apply for bail and might be placed in Negombo prison, possibly for some days until a bail hearing date becomes available.

7.6 The Committee also notes the State party's assertions that, in the present case, the complainant has not provided any new credible evidence in his submissions to the Committee; 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; his claims have been thoroughly considered by a number of domestic decision makers, including the Refugee Review Tribunal, and subjected to judicial review by the Federal Circuit Court and the Federal Court of Australia; and each body specifically considered the claims and determined that they were not credible. With reference to the decision of the Tribunal and the ministerial intervention assessment, the State party also argues that failed asylum seekers and Tamils are not specifically targeted for adverse attention by the Sri Lankan authorities at the time of entry into the country and that there was no evidence to support a finding that the complainant had issues that would draw additional scrutiny or attention to him on his return or that would delay his release after security checks on his return to Sri Lanka.

7.7 In this context, the Committee refers to its concluding observations on the combined third and fourth periodic reports of Sri Lanka,¹¹ in which it expressed serious concern about reports suggesting that torture and ill-treatment perpetrated by State actors in Sri Lanka, both the military and the police, had continued in many parts of the country after the conflict with the LTTE had ended in May 2009.¹² The Committee also refers to its concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, in which it had noted evidence that some Sri Lankan Tamils had been victims of torture and ill-treatment following their forced or voluntary removal from the State party to Sri Lanka.¹³

7.8 In the present case, the Committee notes that the information submitted by the complainant regarding the events in Sri Lanka that led to his leaving the country were thoroughly evaluated by the State party's authorities, who found it insufficient to show that he 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 Army or the Criminal Investigation Department are interested in him; that his fears regarding the soldiers whom he claims committed a murder and the investigation related to it are based on speculation; and that his family continues to live in their village and do not seem to have been disturbed by persons looking for him. The Committee further notes that, despite the complainant being a Tamil originating from the area previously controlled by LTTE, the Sri Lankan authorities did not suspect him of having any links with LTTE prior to his departure from the country. 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.

7.9 The Committee recalls its general comment No. 1, according to which the burden of presenting an arguable case lies with the complainant. In the Committee's opinion, in the present case, the complainant has not discharged this burden of proof.¹⁴

¹¹ See CAT/C/LKA/CO/3-4.

¹² *Ibid.*, para. 6.

¹³ See CAT/C/GBR/CO/5, para. 20.

¹⁴ See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5-10.6.

8. Consequently, the Committee considers that the material before it does not enable it to conclude that the complainant would run a real, foreseeable, personal and present risk of being subjected to torture within the meaning of article 3 of the Convention if returned to Sri Lanka.

9. In the light of the foregoing, 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.
