



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. 941/2019*, **

<i>Submitted by:</i>	D.S. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	12 July 2019 (initial submission)
<i>Date of adoption of decision:</i>	22 April 2022
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Procedural issues:</i>	Level of substantiation of claims, exhaustion of domestic remedies

1.1 The complainant is D.S., a national of Sri Lanka, born in 1993. He claims that his deportation to Sri Lanka would amount to a violation by the State party of article 3 of the Convention. The complainant is not represented by counsel. The State party made the declaration under article 22 (1) of the Convention on 28 January 1993.

1.2 On 15 July 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to accede to the complainant's request to ask the State party to refrain from deporting him, while his case is being considered.

Factual background

2.1 The complainant is a national of Sri Lanka, of Tamil ethnicity, from the northern province of Kilinochchi. He states that he was tortured by agents of the Sri Lankan Criminal Investigation Department at Zone 6 camp in Vavuniya on suspicion of association with and support for the Liberation Tigers of Tamil Eelam (LTTE).¹ As a result of his torture, he has a scar on the right side of his face.

2.2 The complainant left Sri Lanka on 20 February 2013 at the age of 19. He arrived in Australia, by boat, on 9 April 2013. He was transported to Christmas Island where he was detained for 40 days. As a result of making a claim for a temporary protection visa,² he was

* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

** 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.

¹ Further details are not provided. It seems from the domestic files that he was tortured sometime between 2007 and 2010; however, the complainant failed to provide additional information regarding the facts of his case.

² With this visa, you can stay in Australia for three years, work, study and access government services.



granted a bridging visa³ upon his release from immigration detention in Sydney on 31 May 2013.

2.3 The complainant's application for asylum and refugee protection was based on his treatment in Sri Lanka, as a result of suspicion of involvement with LTTE and this, along with his unlawful departure from Sri Lanka, formed the basis of his well-founded fear of persecution and serious harm if returned to Sri Lanka. He claimed to suffer from post-traumatic stress disorder and depression, owing to his persecution in Sri Lanka and the trauma of the boat journey.

2.4 The Minister for Immigration and Border Protection refused his application on 6 November 2014, holding that neither his unlawful departure nor the facts alleged supported a finding that the applicant would face persecution upon return.

2.5 The complainant applied to the Administrative Appeals Tribunal, which upheld the Minister's decision on 24 March 2016.

2.6 The complainant filed for appeal before the Federal Court of Australia. On 3 November 2016, the Federal Circuit Court rejected the appeal on the grounds that the complainant's right to appeal had become time-barred, having missed the deadline for submissions. He filed an application to reinstate his right to appeal on 8 December 2016, requesting an extension of the deadline. The criterion for extension is a material change in the circumstances of the case, which the Court decided, after hearing the complainant's oral testimony, was not substantiated. His request was denied on 11 April 2017. The complainant filed for judicial review of that decision on 28 April 2017.

2.7 On 11 August 2017, the Federal Court dismissed the complainant's application, holding that there had been no error in law in rejecting the complainant's applications to reinstate the proceedings. The complainant's further application for an order to show cause for the denial was rejected by the High Court of Australia on 20 June 2018.

2.8 The complainant filed a request for ministerial intervention on 24 December 2018.⁴ He argued that because of his depression and anxiety, his Tamil ethnicity and the political environment, which had become more dangerous since the election in 2018 had returned to power those who were responsible for the worst atrocities against Tamils during the civil war in Sri Lanka, he had a well-founded fear of persecution, involving the risk of serious harm, if deported. He submitted a psychological report regarding his diagnoses of depression and anxiety. The complainant was informed that he failed to meet the requirements for ministerial intervention on 7 March 2019.

Complaint

3.1 The complainant claims that his removal to Sri Lanka would amount to a violation of article 3 of the Convention. He claims that he will be persecuted based on his ethnicity, his actual or imputed political opinion as a person previously suspected of being an LTTE supporter, his illegal departure and as a failed asylum seeker. He submits that he was arrested and tortured by government agents and he therefore has a profile which would place him in danger today.

³ Bridging visas (class A) allow asylum seekers to stay lawfully in Australia until the substantive visa application is finally determined or, where granted in association with a judicial review, until those proceedings are completed. Applicants are allowed to work if they meet the requirements for employment. See <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/bridging-visa-a-010> and https://www.legislation.gov.au/Details/F2018C00957/Html/Volume_2 for more detail.

⁴ The Minister for Immigration, Citizenship and Multicultural Affairs has discretionary public interest powers under sections 351, 417 and 501J of the Migration Act 1958 to replace a decision of a merits review tribunal on a person's case with a decision that is more favourable to that person if the Minister thinks it is in the public interest to do so. See <https://immi.homeaffairs.gov.au/what-we-do/status-resolution-service/ministerial-intervention>.

3.2 The complainant claims to suffer from post-traumatic stress disorder and to be emotionally disturbed by the idea of returning to Sri Lanka.⁵ He claims that his mental health will deteriorate, since Sri Lanka lacks adequate mental health services and the institutional capacity to support his needs.

3.3 Relying upon article 3 of the Convention, the complainant contends that he fears being tortured by the Sri Lankan authorities upon his return. The complainant asserts that, if returned, he will be harassed by the Sri Lankan authorities on arrival, owing to his illegal departure, and subjected to ill-treatment prohibited by the Convention. He asserts that the findings of the Australian authorities did not take his claims of historical treatment into account in the context of the changes in national security and the worsening human rights situation in Sri Lanka.

State party's observations on admissibility and the merits

4.1 On 20 January 2020, the State party submitted its observations on admissibility and the merits. It asserted that the complainant's allegations were inadmissible on the grounds that they were manifestly unfounded pursuant to rule 113 (b) of the Committee's rules of procedure.

4.2 The State party recalls that article 3 of the Convention provides that States parties have an obligation not to return a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. The Committee's views in the case of *G.R.B. v. Sweden* confirmed that the obligation under article 3 must be interpreted by reference to the definition of torture, set out in article 1 of the Convention.⁶ The obligation of non-refoulement under the Convention is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment.⁷

4.3 If it is established that the alleged acts would constitute torture, article 3 also requires that there must exist "substantial grounds for believing" that the complainant would be in danger of being subjected to torture, which the Committee has determined exist whenever the risk of torture is "foreseeable, personal, present and real".⁸

4.4 In *G.R.B. v. Sweden*, the Committee further held that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country did not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon return. Additional grounds must therefore be adduced by the complainant to show that he would be personally at risk.⁹ Furthermore, the risk must go "beyond mere theory or suspicion".¹⁰

4.5 The State party submits that the complainant's claims are inadmissible, pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure, on the grounds that they are manifestly unfounded. The State party refers to the Committee's Views on manifestly unfounded claims, namely where they lack sufficient documentary or other pertinent evidence to support the allegations made¹¹ or where the allegations are "pure speculation" and fail to rise to the basic level of substantiation required for the purposes of admissibility.¹² It is the responsibility of the complainant to provide exhaustive arguments supporting the alleged violation of article 3 in such a way that establishes a *prima facie* case

⁵ The complainant provides a medical report dated 2 September 2019, stating that he had presented worsening symptoms of anxiety and depression following the rejection of his appeals before the courts, including ideas of hopelessness, helplessness and worthlessness.

⁶ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.3.

⁷ *Y.Z.S v. Australia*, (CAT/C/49/D/417/2010), para. 4.10.

⁸ See the Committee's general comment No. 4 (2017).

⁹ *G.R.B. v. Sweden*, para. 6.3.

¹⁰ *Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 8.4.

¹¹ See *R.S. v. Denmark* (CAT/C/32/D/225/2003).

¹² *H.S.V. v. Sweden* (CAT/C/32/D/229/2003), para. 8.3.

for the purpose of admissibility of his complaint.¹³ The State party contends that the complainant has failed to discharge this responsibility.

4.6 The complainant's claims were thoroughly considered by a series of domestic decision makers, including by the Department of Immigration and Border Protection¹⁴ during the complainant's protection visa application and subsequently underwent administrative review by the Migration and Refugee Division of the Administrative Appeals Tribunal. The claims have also been the subject of judicial review by the Federal Circuit Court and the Federal Court of Australia.

4.7 The State party asserts that, in accordance with domestic law, it is obliged in all proceedings to act as a model litigant. The model litigant obligation requires that it acts honestly and fairly in handling claims and litigation brought by or against the State or an agency thereof. The obligation includes a duty not to take advantage of a claimant who lacks the resources to litigate a legitimate claim and to otherwise adhere to the highest professional standards, including by assisting the court to arrive at a proper and just result.¹⁵

4.8 The State party notes that the complainant's claims were also assessed during the ministerial intervention process. All of the complainant's claims have therefore been considered under robust domestic processes and it has been determined that they were not credible and did not engage the State party's non-refoulement or supplemental obligations.

4.9 The State party refers to the Committee's statement in its general comment No. 4 (2017) that it gives considerable weight to findings of fact by organs of a State party. It therefore requests that the Committee recognize that the complainant's claims were thoroughly assessed through robust domestic processes and it was concluded that they did not engage international obligations under article 3 of the Convention. The State party affirms that it takes its obligations under the Convention seriously and has implemented them in good faith through its domestic migration processes.

4.10 The State party acknowledges that complete accuracy is seldom to be expected from victims of torture in relaying past events. However, it asserts that this was taken into consideration by domestic decision makers in reaching conclusions on the complainant's credibility.¹⁶

4.11 The State party requests that the Committee consider that the complainant's claim does not meet the basic admissibility requirement and find it inadmissible as manifestly unfounded.

4.12 If the Committee finds the communication admissible, the State party reaffirms that the merits of the complainant's claims were thoroughly considered by the decision maker as part of the complainant's original protection visa application and subsequently by the Administrative Appeals Tribunal in its review of the decision. The original decision, the merits review conducted by the Tribunal and the subsequent judicial decisions handed down on appeal were reviewed and upheld as lawful during a judicial review by the Federal Circuit Court and again by the Federal Court of Australia.

4.13 The decision maker conducted an interview with the complainant, with the assistance of an interpreter, and also considered relevant material, such as country information provided

¹³ In particular, the complainant's claims have been assessed under the complementary protection provision contained in paragraph 36 (2) (aa) of the Migration Act 1958, which reflects the State's non-refoulement obligations under the Convention and the International Covenant on Civil and Political Rights.

¹⁴ Renamed in 2018 as the Department of Home Affairs.

¹⁵ Legal Services Directions 2017, as amended by Legal Services Amendment (Multi-use List) Direction 2018, available from:
<https://www.legislation.gov.au/Details/F2018L00937/Explanatory%20Statement/Text>.

¹⁶ For example, in assessing the complainant's temporary protection visa, the Delegate of the Minister for Immigration and Border Protection (the decision maker) noted that: "When assessing credibility, a decision maker must be sensitive to the difficulties often faced by asylum seekers and should give the benefit of the doubt to those who are generally credible but are unable to substantiate all of their claims."

by the Department of Foreign Affairs and Trade. The decision maker considered all of the claims made by the complainant in his submissions to the Committee.

4.14 The decision maker accepted that the complainant is a Tamil male originating from Vaddakachchi in the Kilinochchi district of Sri Lanka, that he was internally displaced from January 2009 to May 2009, lived in Omanthai Camp in Vavuniya from May 2009 until June 2010 and that he returned to Vaddakachchi in June 2010, remaining there until his departure from Sri Lanka on 20 February 2013.

4.15 The decision maker emphasized that he was mindful of the fact that a person who applies for refugee status may have been traumatized and that prior experiences could adversely influence his or her ability to formulate claims in a coherent and plausible manner. The decision maker was also aware that the procedure used in deciding a refugee application could be a stressful process that might further interfere with the applicant's ability to recall their evidence accurately and to express their claims consistently. The decision maker took this into account in making findings of fact on the applicant's evidence. However, significant inconsistencies were identified concerning other aspects of the complainant's claims in the present case.

4.16 The complainant initially claimed in his written protection visa application that in early January 2009 he was taken by members of LTTE to undertake forced labour and subsequently escaped the same night. The decision maker observed that at subsequent interviews the complainant gave conflicting accounts of being taken, later claiming that he was forced to fight with LTTE and that he escaped only after a period of two months. The decision maker also noted that in support of his later account of being forced to fight for LTTE, the complainant provided inconsistent information as to when and for how long he was involved in combat and whether he was provided with combat training. Owing to those inconsistencies, the decision maker did not accept that the complainant had been taken by LTTE.

4.17 In his protection visa application, the complainant had also asserted that he was suspected of involvement with LTTE while detained in Omanthai Camp and that he was assaulted by members of the Criminal Investigation Department, but that he was subsequently released from the camp due to his age. The decision maker noted that this aspect of the complainant's account was inconsistent with country information on the treatment of Tamil males suspected of LTTE involvement over the relevant period.¹⁷ Drawing on a range of country information, the decision maker further noted that "as a result of this interrogation, if there was any suspicion an individual was involved in any capacity with LTTE, they were transferred to a 'welfare centre' to be 'rehabilitated'". This led the decision maker to conclude that it would be implausible that the complainant would have remained in Omanthai Camp and subsequently resettled in Vaddakachchi, if the authorities had any suspicion that he was involved in any way with LTTE.

4.18 In his written application for a temporary protection visa, the complainant claimed that prior to his departure from Sri Lanka he was questioned about his involvement with LTTE by members of the Criminal Investigation Department and asked to report to them monthly. The decision maker noted that the complainant's account of his treatment by the Criminal Investigation Department was inconsistent with country information on the treatment of Tamils in the complainant's place of residence over the relevant period. In particular, the decision maker noted reports that those suspected by the authorities as being involved with LTTE were treated harshly and could face violent interrogation, prolonged periods of detention, torture and in some cases even death. This led the decision maker to conclude that the treatment the complainant claimed to have been subjected to by the Criminal Investigation Department was not commensurate with the treatment faced by those suspected of LTTE involvement in the complainant's region at the time.

4.19 In assessing whether the complainant has a well-founded fear of harm as a failed asylum seeker of Tamil ethnicity, the decision maker acknowledged that the complainant

¹⁷ In particular, the decision maker noted that: "Country information clearly indicates that young Tamil males faced regular interrogation while in IDP camps following the defeat of the LTTE in May 2009."

could face a fine upon return in relation to his illegal departure, but noted that there was no credible country evidence to suggest that the complainant had a real chance of being persecuted for one of the reasons provided for under the Convention relating to the Status of Refugees and that the complainant's fear of persecution, as defined under the Convention, was not well-founded and therefore the complainant did not engage the protection obligations of Australia.

4.20 The complainant also claimed to be a person in respect of whom Australia owed complementary protection obligations on the basis that he would be imprisoned and/or tortured if he were to return to Sri Lanka. For the reasons set out above, the decision maker 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 be subject to significant harm. Accordingly, the complainant's temporary protection visa application was refused as there were no substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of harm.

4.21 On 24 March 2016, a member of the Administrative Appeals Tribunal affirmed the decision of the Department to not grant the complainant a temporary protection visa. The State party notes that the complainant was physically present at the Tribunal hearing and was able to make oral submissions with the assistance of an interpreter. At the commencement of the hearing, the member of the Tribunal noted that there was no evidence before the Tribunal to suggest that discrepancies arising out of interviews with the complainant could be attributed to language and/or interpreting. The member of the Tribunal noted multiple inconsistencies between the evidence provided to the Tribunal by the complainant and the complainant's account of events in his written visa application.¹⁸ It was further noted that the complainant had not provided the Tribunal with any evidence as to the reason for these inconsistencies. The inconsistencies, together with the absence of evidence for their existence, led the member of the Tribunal to find that she was not satisfied that the complainant had been forcibly recruited by LTTE, nor that he had identified himself as having been involved with LTTE while in Omanthai Camp, nor that he was questioned, assaulted or subsequently requested to report to the Criminal Investigation Department.

4.22 The member of the Tribunal accepted the complainant to be of Tamil ethnicity from Kilinochchi. She noted that prior to May 2009, the complainant's identity might have been sufficient to give him a risk profile linked to LTTE, but that the complainant would not presently have such a profile. After hearing evidence of the family circumstances of the complainant, the member of the Tribunal was not satisfied that he currently had a profile that would give rise to a real chance of serious or significant harm in Sri Lanka.

4.23 The member of the Tribunal considered the evidence as to whether the complainant feared any form of punishment in Sri Lanka in connection with his illegal departure, noting that the complainant would return to Sri Lanka as a failed asylum-seeker and would likely be suspected of having sought asylum abroad. She considered and discussed with the complainant a variety of sources of information on the treatment of failed asylum-seekers

¹⁸ In particular, the member of the Tribunal noted that the complainant initially claimed in his written temporary protection visa application that he was taken by six members of LTTE at 7 a.m., but subsequently gave evidence to the Tribunal that he had been taken by four members around lunchtime. The member of the Tribunal also noted that in his written application for a temporary protection visa, the complainant claimed that he was forced to dig bunkers for the entirety of his first night with LTTE, but subsequently gave conflicting evidence to the Tribunal that he was required to collect water and was not involved in the digging of bunkers. In relation to the circumstances of the complainant's arrival at the LTTE camp, the member of the Tribunal noted that in his temporary protection visa application, the complainant claimed that he had arrived at the camp at 5 p.m., but subsequently gave evidence to the Tribunal that he had arrived at 2 a.m. The member of the Tribunal noted discrepancies between the complainant's initial account of his interaction with the Criminal Investigation Department at the Omanthai Camp and his subsequent account to the Tribunal. The member of the Tribunal noted that the complainant had initially claimed that he was not identified as being connected with LTTE, while at the Omanthai Camp, and that he was subsequently released, but noted that in the complainant's later account he stated that he was identified, questioned and assaulted while at the Camp. The member of the Tribunal also noted inconsistencies in the complainant's account of his subsequent interactions in reporting to the Criminal Investigation Department.

upon return to Sri Lanka, including a country information report by the Department of Foreign Affairs and Trade, dated 18 December 2015, and noted that the complainant would likely face a brief period of detention upon return.

4.24 The member of the Tribunal was not satisfied that the treatment likely to be faced by the complainant upon return would amount to persecution involving serious harm or give rise to a real chance of such harm in the reasonably foreseeable future. She concluded that the complainant was not a person to whom the State party owed protection obligations under the Convention relating to the Status of Refugees or complementary protection. Accordingly, the refusal of the complainant's temporary protection visa application was upheld, as there were no substantial grounds for believing that he would face a foreseeable, real and personal risk of harm.

4.25 On 3 November 2016 and 11 April 2017, the Federal Circuit Court discussed the complainant's applications for a judicial review of the decision of the member of the Tribunal. The complainant was physically present at the hearing and made oral submissions. In particular, the Court considered the complainant's claim that he had been denied procedural fairness by the Tribunal. In its careful consideration of the Tribunal decision, the Court found no evidence to support the complainant's claim of bias at the Tribunal. The Court concluded that the member of the Tribunal had made no error of law in upholding the decision of the decision maker.

4.26 On 11 August 2017, the complainant's application for leave to appeal the decision of the Federal Circuit Court to the Federal Court of Australia was dismissed. The Federal Court of Australia concluded that the Federal Circuit Court had committed no error of law and that the arguments put before it by the complainant lacked merit. On 20 June 2018, the complainant's application to the Federal Court of Australia for judicial review was also dismissed.

4.27 On 24 December 2018, the complainant submitted a request for a ministerial intervention. The claims made by the complainant were again assessed, with consideration given to the decisions reached by the decision maker and the Administrative Appeals Tribunal. The Department of Home Affairs assessed the request and it was determined that the claims and circumstances presented by the complainant did not meet the guidelines for referral to the Minister for Immigration, Citizenship and Multicultural Affairs.

4.28 The complainant refers in his complaint to completion by the Department of Home Affairs of a health status assessment. The Government confirms that on 11 February 2019, a Medical Officer of the Commonwealth completed an assessment of the complainant's health. The assessment found that the complainant's health would not prevent his return to Sri Lanka.

4.29 The State party refers to the medical reports and other material¹⁹ attached to the complainant's complaint, noting that no specific arguments were made in this respect.

4.30 The State party submits that the psychological and physical aspects of the complainant's health raised in the documents submitted by the complainant have been adequately addressed in the assessment by the Medical Officer. It notes that the assessment conducted in February 2019 provides a more recent assessment of the complainant's health than the documents attached to the complaint.

Complainant's comments on the State party's observations

5.1 On 3 March 2020, the complainant provided his comments on the State party's observations.

5.2 He claims that the State party failed to recognize him as an impecunious applicant for the purposes of the temporary protection visa application and owing to the refusal of the visa, his right to work was removed and he had no resources to mount an appeal. He further claims that he was unrepresented before the Administrative Appeals Tribunal. He claims that during

¹⁹ These included a report on the complainant's psychological treatment, dated 23 January 2019, and letters and medical reports submitted by medical practitioners, dated 11 June 2013, 17 June 2013, 19 July 2013, 5 August 2013, 23 September 2013, 26 October 2013, 23 November 2016 and 30 January 2019, and an undated report on Australian migration law by an Australian legal advocacy group.

the request for ministerial intervention, he was given very limited assistance in a meeting with a migration agent who spoke no Tamil. The agent did not accompany the complainant to the interview on 30 September 2014 with the delegate of the Minister for Immigration and Border Protection, claiming that he was busy.

5.3 The complainant refers to a member of the Administrative Appeals Tribunal, before which he appealed the decision to deny him a temporary protection visa. He notes that there are many other cases in which the same member of the Tribunal decided to uphold the migration agency's initial denial and which were later quashed on judicial review and referred back to the Tribunal for reconsideration. The complainant claims that the same flaws were present in his own hearing, namely the failure of that member of the Tribunal to appreciate the lower standard of proof in asylum claims, stating instead that he needed to be certain, convinced or satisfied of the truth, the opposing counsel's aggressive questioning (instead of seeking to elicit information) and the Tribunal's reliance on selective background country information (namely where conflicting reports were presented regarding widespread human rights violations, the Tribunal dismissed those of well-respected non-governmental organizations (NGOs) in favour of government sources).

5.4 At the hearing before the Federal Circuit Court on 3 November 2016 on the application to extend the deadline for submission of his request to have the Tribunal decision reviewed, the complainant claims that the government legal representative was aggressive in her questioning and owing to her ethnic background and the substance of his claims, was biased against him. He therefore claims that the decision not to extend the deadline on the basis that his claim lacked merit was erroneous. He also argues that the application to the Federal Circuit Court to accept his appeal was denied on 11 August 2017 in error.

5.5 The complainant appealed in the High Court of Australia against the order of 11 August 2017 but relief was refused.

5.6 Turning to the request for ministerial intervention of 24 December 2018, which was refused on 7 March 2019, the complainant was requested to attach a consent form and medical reports in support of his claim that his health issues were relevant factors to be considered under section 417 (b) of the Migration Act 1958. He states that he never received a copy of the medical assessment made by the Medical Officer of the Commonwealth, nor any indication of its contents at any time, receiving only a letter stating that the decision had been taken not to refer his request to the Minister without any means to challenge the assessment or decision. In that request he had invoked the State party's international protection obligations, which fall under non-statutory and non-delegable executive powers under the Migration Act, rather than discretionary powers. He therefore claims that this decision was jurisdictionally erroneous and lacked basic procedural fairness.

5.7 The complainant asserts that article 3 of the Convention is not wholly protected under article 36 (2) (aa) of the Migration Act 1958, which requires that the decision maker be "satisfied" that the applicant has a genuine fear based on a real risk of persecution. The complainant therefore requests that the Committee consider updated country information

5.8 The complainant further refers to the drastic change in the political situation in Sri Lanka with the election on 17 November 2019 of Gotabaya Rajapaksa as President of Sri Lanka and states that he now faces an even greater risk if returned to Sri Lanka.²⁰

State party's additional observations

6.1 The State party notes that the complainant submits that there are progressive grave material changes in Sri Lanka that support his fear of persecution. The complainant states that the Government of Sri Lanka has proscribed 424 individuals and 7 Tamil diaspora organizations, alleging that they had links to LTTE. In support of these claims the complainant attaches two copies of the gazette of the Government of Sri Lanka: Gazette Extraordinary No. 2216/37 of 25 February 2021, which lists designated entities, including

²⁰ Gotabaya Rajapaksa is a former defence secretary and elder brother of Mahinda Rajapaksa, who was President during the conflict between the Government of Sri Lanka and LTTE and whose administration was accused of serious human rights violations during the final stages of that conflict.

organizations based overseas, and Gazette Extraordinary No. 2150/77 of 22 November 2019 which concerns the maintenance of public order. The complainant also attaches media reports relating to the two gazettes, as well as a submission to the Committee from the International Truth and Justice Project dated 17 October 2016.

6.2 The State party reiterates that the complainant's claims have previously been considered in robust domestic processes, including those relating to the risk of harm owing to his status as a Tamil, his claims regarding links to LTTE, and the risk of harm owing to his unlawful departure and status as a failed asylum-seeker, and it was determined that the claims did not engage the State party's non-refoulement obligations.

6.3 The complainant also submits that he attended and participated in Tamil diaspora events in Australia (Tamil Martyrs Day on 27 November and Tamil Genocide Day on 18 May) from 2013 to 2021. In support of this claim, the complainant attached three photographs that he claims show his attendance at Tamil Martyrs Day events and a memorial service note. He also provided a photo that he states is of his older sister.

6.4 The State party notes that the dates on the photographs are handwritten and cannot be verified. In any event, he claimed to have attended diaspora events since 2013, however the handwritten dates on the photographs are only dated 2017–2019. Nothing suggests that the photographs were published or publicly available. This makes it unlikely that the photographs could be attributed to the complainant and that he could subsequently be imputed as an LTTE supporter or subject to harm for participation in diaspora events based on these documents. Similarly, there is nothing in the memorial service note that identifies the complainant.

6.5 Additionally, if this material could be attributed to the complainant and he could subsequently be imputed to be an LTTE supporter, recent country information from the Department of Foreign Affairs and Trade indicates that while some returnees with suspected LTTE links have been subject to monitoring, that does not extend to returnees being treated in such a way that endangers their safety and security.²¹ Thus, the State party believes that the complainant has not established the existence of additional grounds for the foreseeable, real and personal risk of torture in Sri Lanka.

Complainant's comments on the State party's additional observations

7.1 On 20 July 2021, the complainant submitted comments on the State party's additional observations.

7.2 The complainant affirms that the State party's observations ignore the recent decisions of the Upper Tribunal of the United Kingdom of Great Britain and Northern Ireland,²² with regard to the 2019 country report on Sri Lanka by the Department of Foreign Affairs and Trade of 4 November 2019,²³ in which it claimed that Sri Lankans faced a low risk of torture.²⁴ The complainant refers to the observations of the State party, claiming that the report, "one of the most heavily relied upon documents" by the Department of Home Affairs, and notes that the report is in any case largely silent on the dangers Sri Lankan expatriates face if they are returned to Sri Lanka after engaging in political activities abroad. In October 2020, the International Truth and Justice Project and the Australian Centre for International Justice addressed a detailed letter²⁵ to the Department regarding what they called the

²¹ The country information also indicates that the Sri Lankan authorities have relaxed some restrictions on the public commemoration of events associated with the Tamils' armed struggle for statehood and that Tamils are increasingly comfortable marking such events.

²² See Tribunal (Immigration and Asylum Chambers) appeal numbers PA/09978/2016 and PA/13288/2018 decision & reasons promulgated on 27 May 2021 "with particular reference to *sur place* activities" of the Sri Lankan Tamils.

²³ <https://www.dfat.gov.au/sites/default/files/country-information-report-sri-lanka.pdf>.

²⁴ SBS News 1 June 2021 DFAT on 1 June 2021.

²⁵ <https://acij.org.au/wp-content/uploads/2021/06/Letter-to-DFAT-Sri-Lanka-COI-Report-FINAL-webcopy.pdf>.

“staggering”²⁶ assertion that torture was no longer State-sponsored in Sri Lanka, made “in the face of overwhelming evidence from independent and verified sources”.²⁷

7.3 The complainant refers to the findings of the United Kingdom Upper Tribunal that *sur place* activities on behalf of an organization proscribed under the 2012 United Nations regulations²⁸ by the Government of Sri Lanka in Gazette No. 2216/37 (2021), is a relatively significant risk factor in the assessment of an individual’s profile²⁹ and that it is not necessary to have a formal role, to be a member of a particular organization, or to be high-profile or prominent.³⁰ The Tribunal broadens the list of *sur place* activities that generate risk, including attending Heroes’ Day commemoration events, signing petitions, social media activity (whether writing or reposting) and appearance online. It further states that “the advent of the 2012 UN Regulations and the proscription in 2014 of a number of organisations and the re-proscription in February 2021, has formalised and reinforced the authorities’ adverse view of particular aspects of diaspora activities”³¹ and that the fact that an individual may not be a “member” of a particular organization does not preclude them from having a profile sufficient to disclose a real risk on return.

7.4 Finally, the complainant refers to the rejection by the Upper Tribunal of the unqualified assertion contained in a letter from the British High Commission in Colombo, dated 18 May 2017, that members of [the eight groups de-proscribed in 2015] whether active or lay, have no reason to fear persecution because of their affiliation to them from the Government of Sri Lanka. The Tribunal considered the risk to returnees based on what they “would do, or at least wish to do, after return” to Sri Lanka. That is relevant to returnees on the government watch list without a significant role, but also to those for whom the regime holds no records, clarifying that, in general, the applicant’s fear should be considered well-founded if he or she can establish, to a reasonable degree, that his or her continued stay in his or her country of origin has become intolerable to him or her for the reasons stated in the definition, or would for the same reasons be intolerable if he or she returned there.³²

7.5 The 2019 country report on Sri Lanka states that “torture of Tamils is no longer State-sponsored and that Sri Lankan Tamils face a low risk of torture overall”. The Department of Home Affairs, despite evidence that Tamils are at real risk of torture, continues to make immoral and legally indefensible allegations against them. “This level of denial of ongoing abduction and torture is another layer of violence perpetrated against the victims and is quite disgraceful. There is no doubt that the abduction and torture of Tamils continued unabated up until the present day. The ITJP has continued to document ongoing violations of abduction, torture and rape of Tamils by the Sri Lankan security forces that occurred as recently as 2020

²⁶ See comment by Rawan Arraf, Executive Director, Australian Centre for International Justice at <https://acji.org.au/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>.

²⁷ The joint letter of the two NGOs to the Department states that the findings in the report are inconsistent with recent findings by the United States State Department, the Office of the United Nations High Commissioner for Human Rights and international NGOs, such as Human Rights Watch, and downplays the prevalence of abductions and unlawful detention.

²⁸ The complainant refers to the regulations giving effect to Security Council resolutions on financing for terrorism.

²⁹ Although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organization and, by extension, in individuals known or perceived to be associated with it. In respect of organizations which have never been proscribed and that remain deproscribed, it is reasonably likely that, depending on whether the organization in question has, or is perceived to have, a separatist agenda, there will be an adverse interest on the part of the Government of Sri Lanka, albeit not at the level applicable to proscribed groups.

³⁰ United Kingdom Upper Tribunal *KK and RS (Sri Lanka) v. Secretary of State for the Home Department* appeal numbers PA/09978/2016 and PA/13288/2018, paras. 455–456, available from <https://www.doughtystreet.co.uk/sites/default/files/media/document/KK%20%26%20RS%20%28Sri%20Lanka%29.pdf>.

³¹ *Ibid.*, para. 447.

³² In the asylum appeal in *KK and RS (Sri Lanka) v. Secretary of State for the Home Department*, the British Upper Tribunal expands the criteria of those who may be at risk in Sri Lanka, considering a range of activities from posting on social media to attendance at commemorative events and even signing petitions that could be perceived as being anti-government by the Sri Lankan authorities.

– and increasingly the victims are too young to have had any role in the war. All they did was ask for their rights.”³³ At a press conference held on International Day in Support of Victims of Torture, 26 June 2021, the Executive Director of the International Truth and Justice Project stated that: “Sri Lanka has become a world leader in torture, with more than a thousand having fled abroad since the end of the war, with the most recent case documented occurring in November 2020.”³⁴

7.6 The complainant also referred to the 2019 report of the United States State Department on human rights in Sri Lanka, which described torture as being “endemic”.³⁵ The Tamil population reported that the security forces regularly monitored and harassed activists, journalists and former or suspected former LTTE members. In her report of December 2018, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism confirmed the presence of torture in Sri Lanka as “endemic and systematic” and that impunity for abuses in detention persisted.³⁶

7.7 Some of the allegations characterizing the passengers of boats as LTTE members appeared to be coming directly or indirectly from the Government of Sri Lanka, which has a long history of labelling Tamil civilians as having links with LTTE.³⁷

7.8 The complainant states that on 12 May 2021 at around 11.05 a.m., New South Wales Community Status Resolution Officer S. called him on his mobile and advised him to register with the office of the International Organization for Migration (IOM) in Sydney and to depart Australia. She said that only then could she issue a bridging visa E (class WE) with permission to work in Australia. The complainant brought to her attention that he had made complaints to the Commonwealth Ombudsman and to the Committee against Torture, which was still pending, for which he provided evidence, as requested by the officer.

7.9 The complainant therefore asserts that the fact that he is from the Tamil minority and from an area formerly fully controlled by LTTE, together with his association with LTTE, his family’s political support for LTTE and the fact that his older sister died in combat against the Sri Lankan army would put him at serious risk of torture and death, of arrest under the draconian Prevention of Terrorism Act 1997 and of the violence inflicted on Tamils in Sri Lanka.

7.10 In light of the *sur place* activities to date, the complainant would attract sufficiently adverse interest to run a risk on return. He adds that the Department of Foreign Affairs and Trade report on Sri Lanka, even if it could be said to be reliable prior to the presidential elections in November 2019, does not reflect events since the election.

Additional submissions by the parties

8.1 On 29 November 2021, the State party submitted additional observations.

8.2 With respect to allegations regarding the Department of Foreign Affairs and Trade country information report, it reiterates that the complainant has not established the existence of additional grounds to show that he is at foreseeable, real and personal risk of torture if returned to Sri Lanka based on his *sur place* activities.

8.3 The State party rejects the complainant’s submission that the information contained within the country information report is unreliable. While the United Kingdom Upper Tribunal noted that “it is difficult to gauge the reliability of the sources” informing the report, it also concluded that the report provided useful contextual background and that it had “placed appropriate weight on [the] DFAT [report] when evaluating the country information as a whole”. Additionally, the Upper Tribunal relies on the country information report as a

³³ Statement by Yasmin Sooka, Executive Director of the International Truth and Justice Project and member of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, available from <https://acij.org.au/joint-media-release-human-rights-groups-demand-suspension-of-reports-on-sri-lanka-to-assess-refugee-applications-following-rejection-by-a-uk-court/>.

³⁴ <https://itjpsl.com/press-releases/not-cricket-sri-lankan-torture>.

³⁵ <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sri-lanka/>.

³⁶ [A/HRC/40/52/Add.3](https://www.unhcr.org/refugees/40/52/Add.3).

³⁷ <http://ccrweb.ca/en/bulletin/10/07/28>.

source of evidence and to confirm information provided by other sources, such as expert evidence. For example, it finds that: “DFAT...corroborate[s] sources...indicating that undercover members of the security forces carry out surveillance”. The State party refers to the description of the interaction between the authorities and the subjects of surveillance provided by the Department of Foreign Affairs and Trade as more “subtle” than in the past, which it asserts to be correct.

8.4 The Government of Australia notes by way of background that country information reports are prepared by the Department of Foreign Affairs and Trade for purposes of determining protection status only. They provide the Department’s best judgment and assessment at the time of writing. Country information reports take into account relevant and credible open-source reports, as well as information obtained on the ground. They provide a general, rather than an exhaustive, country overview. The Government further notes that decision makers are not bound by the information included in a country information report, as circumstances may change between the time of the publication of the report and a decision on a temporary protection visa. Decision makers have access to and are expected to take account of a range of current country information relevant to an applicant’s particular circumstances. Those sources include other government reports and those by international and local NGOs, United Nations bodies and the media.

8.5 As to the complainant’s allegations concerning dissuasive measures or policies, the State party notes that the record of interaction between the Status Resolution Officer and the complainant on 12 May 2021 reflects the fact that the Status Resolution Officer contacted the complainant to follow up on his intentions to engage with IOM. The record notes that the complainant stated that his intention was to remain in Australia and that he had no intention of engaging with IOM at that time. The State party confirms that at no point during this interaction was the complainant advised by a Status Resolution Officer that the grant of a bridging visa E was conditional on the complainant’s engagement with IOM.

8.6 Regarding the claims of risk of torture and death in Sri Lanka, the complainant claims that this risk exists as he is a Tamil minority representative, associated with LTTE and his older sister was an LTTE cadre who died in combat against the regular army. The State party reiterates that the complainant’s personal risk of harm if returned to Sri Lanka has been specifically and carefully considered. At each stage of the domestic process, decision makers found that there was no risk of the complainant being subject to serious harm in Sri Lanka and that the Sri Lankan authorities did not have an adverse interest in the complainant. The State party reiterates that the existence of a general risk of violence does not constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture in a country. That is consistent with the approach taken by the Committee in other communications. The State party therefore reiterates that the complainant has not established the existence of any additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

Issues and proceedings before the Committee

Consideration of admissibility

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

9.2 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 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.

9.3 The Committee notes that the State party challenges the admissibility of the complainant’s claims under article 3, as manifestly unfounded, given that the complainant

has failed to establish that there have been failures by the State party when assessing the risk he faced on return to Sri Lanka. However, the Committee considers that the complainant has sufficiently substantiated his claim, for the purposes of admissibility, based on article 3 of the Convention, regarding his risk of being subjected to torture and ill-treatment if returned to Sri Lanka. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

10.1 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.

10.2 In the present case, the issue before the Committee is whether the forcible removal of the complainant to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or 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.

10.3 The Committee must therefore evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must include 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. In that context, the Committee refers to its consideration of the fifth periodic report of Sri Lanka, in which it voiced serious concerns about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including by the police, had continued in many parts of the country after the end of the conflict with LTTE in May 2009.³⁸ It also refers to reports by NGOs concerning the treatment by the Sri Lankan authorities of individuals who have been returned to Sri Lanka.³⁹ However, the Committee recalls that the aim of the evaluation undertaken in the context of individual complaints 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, in and of itself, 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.⁴⁰ 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.

10.4 The Committee recalls its general comment No. 4 (2017), in which it affirmed that it would 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 a complainant under the Convention in case of deportation. Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) the political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention, without guarantee of fair treatment and trial; and (d) sentence in absentia. With respect to the merits of a communication submitted under article 22 of the Convention, the Committee recalls that the burden of proof is on the complainant, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.⁴¹ The Committee recalls that, while it gives considerable weight to findings of fact made by organs of the State party concerned, it is not bound by such findings and can make a free assessment of the information available to it, in accordance with

³⁸ CAT/C/LKA/CO/5, paras. 9–12. See also CAT/C/LKA/CO/3–4, para. 6.

³⁹ See Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009* (2015); and Human Rights Watch, *World Report 2019*.

⁴⁰ See, for example, *S.P.A. v. Canada* (CAT/C/37/D/282/2005), *T.I. v. Canada* (CAT/C/45/D/333/2007) and *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008).

⁴¹ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

article 22 (4) of the Convention, considering all the relevant circumstances.⁴² For the purposes of fully implementing article 3 of the Convention, the Committee recalls that States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of non-refoulement, including the referral of the person alleging previous torture for an independent medical examination free of charge.⁴³

10.5 In the present case, the complainant claims that he would be at risk of treatment contrary to article 3 of the Convention in Sri Lanka, as he would be persecuted based on his ethnicity, his actual or imputed political opinion as a former resident of an LTTE-controlled area who was forcibly recruited by LTTE, as a failed asylum-seeker who left Sri Lanka illegally and as someone with a previous adverse risk profile with the Sri Lankan authorities, as he was interrogated and mistreated by the Criminal Investigation Department and had failed to adhere to reporting conditions imposed on his release. He further claims that his *sur place* activities, particularly in light of the current political situation in Sri Lanka, mean that he faces the risk of treatment contrary to article 3 if he is returned to Sri Lanka. He argues that his claims were not comprehensively assessed by the State party on the basis that inconsistencies in his account, in spite of his explanations, formed the basis of a negative credibility assessment, which in turn negated the probative weight ascribed to his evidence. He claims that he was not afforded adequate or effective legal assistance and that the State party's decision-making bodies relied on background country information that has since been widely discredited. He asserts therefore that the State party failed to discharge its obligations under the Convention in assessing his risk of refoulement.

10.6 The Committee notes the State party's submission that the complainant's claims have been thoroughly considered through a series of robust domestic administrative and judicial processes, including a merits review by the Administrative Appeals Tribunal and a judicial review by the Federal Circuit Court, the Federal Court of Australia and the High Court of Australia. The State party claims that the complainant's request for a ministerial intervention was also thoroughly considered but was not found to meet the requirements for referral. The State party submits that the complainant's claims were found to be factually inconsistent on significant points and he was therefore not found to be credible. While it was accepted that the complainant is a Tamil from an LTTE-controlled area who, having left Sri Lanka illegally and on returning as a failed asylum-seeker, would face questioning and security checks on arrival, decision makers had not found his account of previous interactions with the Sri Lankan authorities or LTTE to be credible and did not conclude that any of the claimed *sur place* activities would change this profile. As a result, he was found not to face a personal serious risk on return that would engage the State party's non-refoulement obligations.

10.7 The Committee therefore notes that the central issue in the case is the credibility assessment, initially carried out by the State party in its decision on the temporary protection visa application, as this was crucial in determining the probative value of the complainant's evidence. The Committee must therefore establish whether the claims brought by the complainant before the national authorities were sufficiently substantiated to oblige the State party to discharge its duty to take all necessary steps to establish the veracity of those claims.

10.8 The Committee notes in particular the complainant's claims that he was tortured by agents of the Criminal Investigation Department, as a result of which he suffers from post-traumatic stress disorder and on the basis of which he fears that he carries an existing risk profile in Sri Lanka. He states that his condition is worsened by the idea of being returned to Sri Lanka, as he claims that his mental health will further deteriorate there because of inadequate mental health services and a lack of institutional capacity to support his needs. He

⁴² See the Committee's recent jurisprudence in recent decisions; for example, *S.P. v. Australia* (CAT/C/68/D/718/2015), *Ranawaka v. Australia* (CAT/C/68/D/855/2017) and *G.W.J. v. Australia* (CAT/C/68/D/856/2017).

⁴³ In accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Committee's general comment No. 2 (2007). See also CAT/C/CPV/CO/1, para. 29; CAT/C/NZL/CO/6, para. 18; and CAT/C/DNK/CO/6-7, para. 23. See also *Fadel v. Switzerland* (CAT/C/53/D/450/2011), paras. 7.6 and 7.8; and *M.B. et al. v. Denmark* (CAT/C/59/D/634/2014), para. 9.8.

provides a medical report, dated 2 September 2019, stating that he had presented worsening symptoms of anxiety and depression following the rejection of his appeals before the courts, including ideas of hopelessness, helplessness and worthlessness.

10.9 The Committee also notes that in the record of the temporary protection visa application, the complainant was asked about inconsistencies between his testimony on that day and the responses he had given in his enhanced screening interview about, for example, the year he was abducted by LTTE, the length of his detention, the time of day he was taken and whether or not he received training with a gun and went to the front line. It also notes that the decision maker considered but dismissed his statement that he had made different earlier statements because of the stressful journey he had recently endured. It was not found to be a sufficient explanation for the significant inconsistencies in his account and he was therefore thought to have fabricated his claims. The credibility assessment was therefore made on the basis of information that was internally inconsistent and when the complainant was given the chance to explain those inconsistencies, he had failed to do so satisfactorily. The Committee further notes that the complainant had opportunities later in the proceedings, before other instances, to have the factual bases of the credibility assessment reviewed but that he had not done so. For instance, before the High Court of Australia in August 2017, his grounds for requesting review included challenging the standard of proof used in the credibility assessment, rather than the State party's failure to commission an independent psychological evaluation in order to fully assess his credibility. In the Committee's opinion, in the present case, in failing to provide satisfactory responses to cure the inconsistencies in his evidence, the complainant did not discharge the burden of presenting an arguable case before domestic decision makers regarding events in Sri Lanka that were sufficient to shift the burden of proof to the State party to present evidence to verify or refute his account.

10.10 In the light of the considerations above, and on the basis of all the information submitted to it by the complainant and the State party, including on the general situation of human rights in Sri Lanka, the Committee considers that, in the present case, the information in the file does not allow it to conclude that the complainant's return to Sri Lanka would expose him to a real, foreseeable, personal and present risk of being subjected to torture, or that the authorities of the State party failed to conduct a proper investigation into his allegations.

11. The Committee against Torture, 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.
