



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. 971/2019*, **

<i>Submitted by:</i>	N.S. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	15 November 2019 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 19 November 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	22 April 2022
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	2, 3 and 16

1.1 The complainant is N.S., a national of Sri Lanka born in 1977. He claims that Australia would violate his rights under articles 2, 3 and 16 of the Convention if it removed him to Sri Lanka. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is not represented by counsel.

1.2 On 19 November 2019, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant while his case was being considered.

Factual background

2.1 The complainant is a national of Sri Lanka of Tamil ethnicity and Hindu religion, born in Trincomalee, Eastern Province of Sri Lanka. In 1984, when the complainant was 7 years old, his parents took him and his four siblings from their home in Kuchchaveli, Trincomalee District, Eastern Province to Mannar District, Northern Province to avoid the civil war. The following year, his family travelled by boat from Mannar to Tamil Nadu, India, where they stayed in three different refugee camps.

* 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.



2.2 The Office of the United Nations High Commissioner for Refugees (UNHCR) considered them as refugees in 1994 and assisted with their return to Sri Lanka. Since the family could not return to their home in Kuchchaveli, which had become part of a high security zone under the control of the Sri Lankan Navy, it moved to a UNHCR-run internally displaced persons camp in Trincomalee.

2.3 In 1997, the UNHCR handed over the administration of the camp to the Government of Sri Lanka. The Sri Lankan Navy was based on one side of the camp and the Sri Lankan Army on the other. The complainant's father, who was a fisherman, had to seek a permit from both authorities for each fishing trip.

2.4 From 1997, the Sri Lankan Army began carrying out round-ups of random groups of camp residents. A masked informer would then identify the Liberation Tigers of Tamil Eelam (LTTE)¹ supporters to the Sri Lankan Army, and those people would be taken away. The complainant was forced into these round-ups on many occasions and in 1999, shortly after the complainant had completed his high school qualifications, he was identified as an LTTE supporter by an informer. The complainant submits that he does not know why he was identified as he had no association with LTTE. The complainant and some others were taken to the Sri Lankan Army's nearby base, where they were interrogated and tortured to obtain information about LTTE. As a result, the complainant had to undergo treatment in a hospital in Trincomalee for two weeks.

2.5 In 2000, in order to avoid being caught in another round-up, the complainant decided to travel to India. He remained in a refugee camp there for a year, working as a painter. In 2001, he returned to Sri Lanka by plane using a one-way travel document issued by the Government of India. His parents had arranged for him to get married and his father required assistance in running his fishing business.

2.6 In May 2002, the complainant got married and his parents and younger sister left the internally displaced persons camp and moved back to their original home in Kuchchaveli, which was still part of the high security zone. The Sri Lankan Navy ordered them to leave, which they refused to do. In December 2003, the complainant's younger sister saw their mother being taken away by the Sri Lankan Navy. In January 2004, the police informed the family that a decomposed body, identified as the complainant's mother, had been found at the Sri Lankan Navy checkpoint. A judge called to the scene identified the cause of death as strangulation. The complainant's maternal uncle was shot on his way to court to give evidence about his sister's death. As a result of the injuries, he was paralyzed.

2.7 In 2005, the complainant joined the Vikneswara Fisherman Development Society and became its secretary and treasurer. As part of his functions, the complainant was responsible for collecting and banking monthly membership fees. The Sri Lankan Army and the Sri Lankan Navy frequently used to attend the Society's meetings and demand money in order to allow the Society's boats to pass safely.

2.8 In 2008, the Karuna Group² started demanding payments from the Society. During the election campaign in 2010, the Karuna Group demanded a large sum and started asking office bearers personally for money. The complainant refused to pay the Karuna Group and was detained for 10 days and beaten. He was also threatened that he would be killed if he reported the abduction. In April 2012, the complainant's uncle, who was the Chair of the Society, was killed.

2.9 The complainant informed the police that the Karuna Group had been demanding money from the Society. The Karuna Group went to the complainant's home and threatened to harm him for having filed a report with the police. When they returned two weeks later, the complainant refused to open the door. The complainant became afraid and moved to the adjacent district of Batticaloa where he lived with a friend for two months. During this period the Karuna Group did not contact the complainant or his family.

¹ Tamil separatist organization that was based in north-eastern Sri Lanka.

² An armed group that split from LTTE in 2004 and is believed to be working with the Sri Lankan Army.

2.10 On 27 July 2012, the complainant departed Sri Lanka by boat. On 17 August 2012, he arrived in Christmas Island, Australia, and was subjected to several interviews.³ Between August 2012 and February 2013, the complainant was held in detention centres, after which he was granted a temporary visa, released into the community on the Australian mainland and placed in the “fast track visa process”.

2.11 In 2015, a group of men, claiming to be from the Criminal Investigation Department but without proof of their identities, went to complainant’s home in Sri Lanka and asked about his whereabouts. The complainant’s wife informed them that he was in Australia and gave them his telephone number, but he has not received a call from them. The same year, a brother of the complainant’s cousin’s wife was killed and his body was found on a beach, and a friend of the complainant went missing.

2.12 On 1 April 2016, the complainant applied for a safe haven enterprise visa. In the presence of his migration agent, the complainant was interviewed by the Delegate of the Minister for Immigration and Border Protection, where he was able to present his claims. On 16 December 2016, the Delegate made a decision refusing to grant the complainant a visa.

2.13 On 27 March 2017, the Immigration Assessment Authority upheld the decision of the Delegate not to grant the complainant a protection visa. The Immigration Assessment Authority accepted his evidence regarding his family’s travel to India, their situation in Trincomalee and his account about his mother’s death. It also accepted his claim that he had been identified as an LTTE supporter, detained and tortured by the army, and released after 15 days. It, however, noted that 15 years had passed since then; that the Sri Lankan authorities had not since demonstrated any interest in him as a potential LTTE suspect; and that the monitoring and harassment of Tamils had significantly eased since the end of the war. The Immigration Assessment Authority noted that the complainant had been able to travel to India and return, transiting through the Colombo airport, without any hindrance; that he had obtained a passport in 2008 without any difficulty; and that he had had regular contact with the authorities because of his role as treasurer of the Vikneswara Fisherman Development Society and had never encountered any problems. While accepting that the Sri Lankan Army and the Karuna Group had extorted money from the Society and abducted and threatened him, the Immigration Assessment Authority pointed out that the Karuna Group could have located him in Batticaloa but had not done so, and that he was no longer responsible for the management of the Society and therefore of no interest to the Karuna Group.

2.14 Concerning his ethnicity and previous residency in an LTTE-controlled area, the Immigration Assessment Authority referred to the UNHCR guidelines providing that being Tamil alone did not give rise to protection needs. As regards his status as a failed asylum-seeker, the Immigration Assessment Authority accepted that he could be stopped and interrogated upon return and even detained for a short time, up to four days, waiting to appear before a magistrate. However, according to country information, thousands of failed asylum-seekers had returned to Sri Lanka since 2009 with relatively few allegations of torture and ill-treatment. Moreover, this process applies to all Sri Lankan citizens and is not discriminatory on its face or on its application.

2.15 The complainant applied to the Federal Circuit Court for judicial review of the Immigration Assessment Authority’s decision and the Federal Court of Australia for legal error in the Immigration Assessment Authority decision, which were dismissed. On 13 June 2018, the complainant’s further appeal to Federal Court of Australia was dismissed. The complainant’s appeal for a special leave with the High Court of Australia, and request for ministerial intervention were refused on 12 September 2018 and 17 April 2019, respectively.

Complaint

3.1 The complainant claims that his removal to Sri Lanka would amount to a violation of articles 2, 3 and 16 of the Convention. He claims that he will be persecuted on the basis of his ethnicity, his actual or imputed political opinion as an alleged LTTE supporter, and his status as a former resident of an LTTE-controlled area and as a failed asylum-seeker. He

³ On 20 August 2012 and 17 January 2013, the complainant was subjected to “Biodata” and “Entry” interviews, respectively.

submits that he was kidnapped and tortured by the Karuna Group for refusing to pay money when he was working as the secretary and treasurer of the Vikneswara Fisherman Development Society. He claims that the Karuna Group is after him because he filed a report with the police about their attempt at extortion.

3.2 The complainant submits that he was detained for 15 days by the Sri Lankan authorities, and that he was interrogated, beaten and tortured on suspicion of being a member of LTTE. He claims that if returned to Sri Lanka, he would be at risk of harm from the Sri Lankan Army, the Sri Lankan Navy and the paramilitary groups that are pro-Government of Sri Lanka, such as the Karuna Group.

3.3 The complainant claims to suffer from post-traumatic stress disorder and to be emotionally disturbed by the idea of returning to Sri Lanka.⁴ The Australian authorities failed to sufficiently take into account the psychological and physical harm he suffered due to his exposure to the prolonged armed conflict and serious human rights violations in Sri Lanka. He claims that his mental health will deteriorate since Sri Lanka lacks adequate mental health services and institutional capacity to respond to his needs.

3.4 The complainant claims that he will face a real risk of harm due to his illegal departure from Sri Lanka and due to the time he has spent in Australia seeking protection. He states that Sri Lanka does not have appropriate criminal law, a reasonably impartial justice system or a reasonably effective police force. Torture and sexual violence are committed by the army in several camps across Sri Lanka, and the Tamil community remains institutionally stigmatized and oppressed. He also refers to the change in the security and human rights situation and the prevailing violence following the Easter bombings in April 2019, and contends that in the light of the deteriorating conditions in Sri Lanka, the assessment of the Immigration Assessment Authority is no longer valid.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 16 July 2020, the State party submitted its observations on admissibility and the merits. It claims that the complainant had failed to substantiate the alleged breaches of articles 2 or 16 of the Convention, which relate to the prohibition and prevention of torture and other cruel, inhuman and degrading treatment or punishment in the State party's jurisdiction. The State party observes that articles 2 and 16 of the Convention impose obligations on a State party to prevent acts of torture in "any territory under its jurisdiction". These obligations are territorially limited and would not impose obligations on the State party with respect to acts that allegedly occurred in Sri Lanka. Therefore, the State party submits, that the complainant's claims with respect to articles 2 and 16 are inadmissible *ratione materiae*.

4.2 Concerning the complainant's claims that, if returned to Sri Lanka, he would be at future risk of harm from the Sri Lankan Army, the Sri Lankan Navy and the paramilitary groups that are pro-Government of Sri Lanka, such as the Karuna Group, the State party submits that a number of the complainant's claims regarding the harm he would be subjected to on return to Sri Lanka do not amount to torture within the meaning of article 3 of the Convention. As for the complainant's claims that, if returned to Sri Lanka, he will face persecution and severe discrimination, that he is likely to become distressed and that his mental health condition is likely to deteriorate, the State party observes that these claims are inadmissible *ratione materiae*, as the obligation of non-refoulement under article 3 of the Convention is confined to circumstances in which there are substantial grounds for believing that the returnee would be in danger of being subjected to torture.⁵ The State party observes that the Committee has maintained a distinction between torture and treatment that does not meet that threshold, including cruel, inhuman or degrading treatment or punishment, for the purposes of determining whether article 3 of the Convention is engaged.⁶

⁴ 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.

⁵ Committee against Torture, general comment No. 4 (2017), para. 9.

⁶ *Y.Z.S. v. Australia* (CAT/C/49/D/417/2010), para. 4.10.

4.3 The State party submits that the complainant's claims regarding his fear of persecution and discrimination, his distress and the alleged lack of medical assistance available in Sri Lanka to manage his mental health condition, do not meet the threshold of torture under article 1 of the Convention and therefore do not engage the State party's non-refoulement obligations under article 3 of the Convention.

4.4 The State party further 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 the claims are manifestly unfounded. In this context, the State party refers to the Committee's earlier decisions where it found claims to be manifestly unfounded where they lack sufficient documentary or other pertinent evidence to support the allegations made,⁷ or where the allegations are pure speculation and fail to rise to a basic level of substantiation required for the purposes of admissibility.⁸ 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 for the purpose of admissibility of his complaint.⁹ The complainant has failed to discharge this responsibility.

4.5 The State party notes that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including an assessment of the complainant's safe haven enterprise visa application by the Delegate of the Minister for Immigration and Border Protection and through an independent merits review by the Immigration Assessment Authority. The complainant also sought judicial review by the Federal Circuit Court and the Federal Court of Australia for legal error in the Immigration Assessment Authority decision. Finally, he sought special leave for appeal of the Federal Court of Australia decision to the High Court of Australia. The complainant's claims were also assessed during the ministerial intervention process.

4.6 Referring to the complainant's credibility, the State party notes that during the domestic decision-making processes, the complainant was found to have exaggerated some aspects of his claims. The State party does acknowledge that complete accuracy is seldom to be expected by victims of torture;¹⁰ however, this factor was taken into consideration by domestic decision makers in forming views on the complainant's claims. For example, in assessing the complainant's application for review of his rejected application for a safe haven enterprise visa, the Immigration Assessment Authority afforded a reasonable margin of appreciation to flaws and inconsistencies in the complainant's evidence. The State party concludes that the complainant's claims under article 3 of the Convention remain manifestly unfounded and should therefore be held inadmissible. In addition, noting the Committee's long-standing position on admissibility requirements, the State party requests that the Committee specifically consider and respond in its Views to the arguments made in these submissions in respect of admissibility.

4.7 Should the Committee consider the complainant's allegations admissible, they should be dismissed as being without merit as demonstrated by the findings made in the domestic decisions concerning the complainant's claims and the consideration by the State party of other issues raised in his submission to the Committee.

4.8 The State party submits that the merits of the complainant's claims were thoroughly considered as part of his safe haven enterprise visa application process, including a merits review by the Immigration Assessment Authority, as well as in subsequent requests for ministerial intervention under the Migration Act. The Immigration Assessment Authority decision, which affirmed the decision of the Delegate of the Minister for Immigration and Border Protection, was subsequently upheld as having been lawfully made during the following domestic judicial review processes: judicial review by the Federal Circuit Court, judicial review by the Federal Court of Australia and appeal by special leave of the High Court of Australia.

⁷ *R.S. v. Denmark* (CAT/C/32/D/225/2003), para. 6.2.

⁸ *H.S.V. v. Sweden* (CAT/C/32/D/229/2003), para. 8.3.

⁹ Committee against Torture, general comment No. 4, para. 31.

¹⁰ *Ismail Alan v. Switzerland* (CAT/C/16/D/21/1995), para. 11.3.

4.9 On 16 December 2016, the complainant's safe haven enterprise visa application was refused by the Delegate of the Minister for Immigration and Border Protection, who assessed the answers provided during an interview conducted with the complainant (with the assistance of a Tamil interpreter) and also considered other relevant material, including country information provided by the Australian Department of Foreign Affairs and Trade. The State party notes that some of the claims raised by the complainant in his visa application differ from the claims made by him in his submissions to the Committee.

4.10 After an evaluation of the complainant's claims submitted in his safe haven enterprise visa application and provided in the related interview, alongside country information gathered through reports,¹¹ the Delegate of the Minister for Immigration and Border Protection found that available country information substantiated the complainant's claims about the activity of the military in the area and accepted that the complainant was questioned by Sri Lankan authorities on a number of occasions while at a camp for internally displaced persons, including one occasion where he was detained for 15 days, interrogated, beaten and tortured on suspicion of being a member of LTTE. However, the Delegate noted that the complainant had not claimed that he had been subjected to any harm by the Sri Lankan authorities after his return to Sri Lanka in 2001 until his departure to Australia in 2012. Considering that the complainant entered Sri Lanka unhindered, then operated a business for 11 years, including during the conflict, and was issued with a passport in 2008, the Delegate concluded that the Sri Lankan authorities did not have an adverse interest in the complainant as a result of any imputed involvement with LTTE.

4.11 The Delegate noted that despite the complainant's almost daily interactions with the Sri Lankan authorities and the Sri Lankan Navy, he had not reported any harm or harassment from the Sri Lankan authorities related to his activities as a fisherman since 2009. The Delegate accepted that the complainant's mother had gone missing and that her body was found in January 2004 at a Sri Lankan Navy checkpoint, and that the complainant's sister had witnessed their mother being taken away by Sri Lankan Navy officers, and accepted that the complainant's maternal uncle had been shot and seriously injured on his way to give evidence at court regarding the complainant's mother's death. Nevertheless, the complainant had not been subjected to any harm by the Sri Lankan authorities since 1997, and the Delegate did not accept that the complainant had a profile that was of interest to the Sri Lankan authorities due to his familial associations.

4.12 Following the consideration of country information on the activities of the Karuna Group, the Delegate did not believe the Karuna Group would continue to seek money from a society for two years after being told it did not exist, or that they would just leave when the complainant failed to comply with their demands. Concerning the complainant's claims that he was visited twice by Karuna Group members and threatened due to his having filed a report with the police, the Delegate considered them as not credible because there was no evidence of the Karuna Group's involvement in the uncle's death or that the police took action against members of the Karuna Group as a consequence of the complainant's statement. If the Karuna Group had wanted to hurt the complainant, it is likely they would have done so, instead of just threatening the complainant and leaving. In addition, the complainant made no claims that his family had been harassed or questioned while the complainant was not staying in his home village, and the complainant's return to his home village before departing Sri Lanka indicates he did not fear for his life at the hands of the Karuna Group.

4.13 The State party further observes that, on the basis of country information and media reports, the Delegate concluded that the situation for Tamils in Sri Lanka had changed significantly since the complainant had arrived in Australia and concluded that the complainant did not have a profile that would result in a well-founded fear of persecution on the basis of any imputed LTTE support or links. Referring to the complainant's claim of returning to Sri Lanka as a failed asylum-seeker, the Delegate found that any fine or punishment for illegal departure would be the result of a law of general application and does

¹¹ Reports published by the United Nations, non-governmental organisations (NGOs), newspapers, and foreign government departments.

not amount to persecution. Therefore, the Delegate was not satisfied that the complainant's circumstances in their totality gave rise to a well-founded fear of persecution.

4.14 In terms of the risk of significant harm due to his Tamil ethnicity, as a Tamil from the East – an LTTE-controlled area of Sri Lanka – or as a Tamil imputed with LTTE support or links, the Delegate found that there were no substantial grounds for believing that the complainant faced any real risk of significant harm if he returned to Sri Lanka.

4.15 The State party submits that on 27 March 2017, the Immigration Assessment Authority affirmed the Delegate's decision not to grant the complainant a safe haven enterprise visa, and noted that it had considered the complainant's protection claims and concluded that he did not have a well-founded fear of persecution, nor were there substantial grounds for believing that as a necessary and foreseeable consequence of being returned from Australia to Sri Lanka, there was a real risk that he would suffer significant harm, including torture.

4.16 The State party submits that on 31 January 2018, the Federal Circuit Court dismissed the complainant's application for judicial review of the Immigration Assessment Authority decision. The complainant was physically present at the Federal Circuit Court hearing and made oral submissions. His first ground of appeal was that the Immigration Assessment Authority had failed to consider the risk of harm to the complainant if he were to resume the position of treasurer or secretary of the Vikneswara Fisherman Development Society should he be returned to Sri Lanka, alleging that there was a jurisdictional error, thus requiring the decision to be reviewed. The Federal Circuit Court dismissed this ground on the basis that no claim arose on the material before the Immigration Assessment Authority that the complainant feared harm from the possibility of resuming either position or that suggested that the complainant was contemplating resuming either position. As a result, the Immigration Assessment Authority was not required to consider this possibility and there was no jurisdictional error.

4.17 Referring to complainant's second ground of appeal, the State party submits that he argued that the Immigration Assessment Authority had failed to consider his claims for protection under the Convention relating to the Status of Refugees on a cumulative basis. The Federal Circuit Court concluded that considering the Immigration Assessment Authority's dispositive findings in relation to having a well-founded fear of persecution and in relation to whether there was a real chance that the complainant would face serious harm on his return to Sri Lanka, no amount of cumulative consideration of the rejected matters would produce a different outcome. Moreover, the Federal Circuit Court found that as the Immigration Assessment Authority had rejected the whole of the complainant's claims, there was no requirement to make a cumulative assessment. As a result, there was no jurisdictional error and the complainant's appeal was dismissed.

4.18 On 9 February 2018, the complainant lodged an application for leave to appeal the Federal Circuit Court's decision to the Federal Court of Australia, arguing that the Immigration Assessment Authority had failed to consider his claims cumulatively for the purposes of determining whether there existed a well-founded fear of persecution. The State party observes that on the basis of existing Australian case law, the Federal Court of Australia determined that what must be considered in a cumulative way are the "claims or bases" for establishing the existence of a well-founded fear. The complainant's claims were: fear arising from being a young Tamil from the East with real and imputed pro-LTTE political opinion; fear arising from the actions of the Karuna Group; and fear arising from having left Sri Lanka illegally. All of these claims were rejected by the Immigration Assessment Authority on the grounds that, consistent with Australian case law, there is no obligation to make a cumulative assessment where individual claims have been rejected as a factual matter, or have been the subject of findings that they did not or would not lead to ongoing problems for the visa applicant were he or she to return to the receiving country. The Federal Court of Australia concluded that a cumulative consideration of the Immigration Assessment Authority's factual findings would not be capable of producing any different result than that reached by the Authority, given that each claim had been dismissed by the Authority. On 13 June 2018, the Federal Court of Australia dismissed the appeal.

4.19 The State party submits that on 25 June 2018, the complainant lodged an application for special leave to appeal the Federal Court of Australia's decision, which was dismissed by the High Court of Australia on 12 September 2018.

4.20 The State party further observes that on 7 October 2018, the complainant made his first request for ministerial intervention,¹² claiming that he could not return to Sri Lanka because he is suffering from depression and anxiety, but failed to supply any substantiating evidence. While the Department of Home Affairs did consider updated country information, it determined that the new information was not likely to result in finding that the protection obligations of Australia were engaged. On 17 April 2019, the Department determined that the complainant's claims did not meet the guidelines for ministerial intervention and his claim was not referred to the Minister for consideration.

4.21 On 13 September 2019, the complainant made a second request for ministerial intervention, attaching a medical report from a social worker dated 2 September 2019 and independent country information on Sri Lanka. The State party submits that the Department of Home Affairs considered the country information provided by the complainant, as well as the UNHCR guidelines, country information on Sri Lanka provided by the Australian Department of Foreign Affairs and Trade and the Home Office of the United Kingdom of Great Britain and Northern Ireland, and the complainant's profile. The Department concluded that while Tamils with perceived links to LTTE or those considered to be a threat to the integrity of the State of Sri Lanka are at risk of harm, the complainant has had no involvement or links with LTTE or identified with any group that threatens the integrity of the State of Sri Lanka.

4.22 As to the complainant's claim relating to mental health, the Department of Home Affairs acknowledged that he may be vulnerable and may have suffered emotional and psychological stress and that mental health services are scarce in Sri Lanka, but concluded that the complainant will have access to basic mental health and medical services under the universal health-care system in Sri Lanka. Concerning the complainant's concerns over the political situation in Sri Lanka in 2018 due to the sacking of the elected Prime Minister, the Department found that there would be no additional risk of serious or significant harm to the complaint due to this situation. The Department determined that the complainant's request for ministerial intervention did not raise any new or additional information that would result in a finding that the protection obligations of Australia are engaged, and therefore decided not to refer the complainant's request for the Minister's consideration.

4.23 Referring to three additional issues raised in the complainant's submission to the Committee, including claims relating to flaws in the domestic procedures and standards, claims concerning the current situation in Sri Lanka and likely circumstances for the complainant upon return, and claims regarding the complainant's mental health and the availability of health services in Sri Lanka, the State party submits its clarifications and notes that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including by a Delegate of the Minister for Immigration and Border Protection during the determination of the complainant's safe haven enterprise visa application and through an independent merits review by the Immigration Assessment Authority. In addition, the complainant also sought judicial review by the Federal Circuit Court, the Federal Court of Australia and the High Court of Australia for legal error in the Immigration Assessment Authority decision. The complainant's claims were also considered twice as part of the ministerial intervention process. The State party furthermore notes that the Immigration Assessment Authority is under no obligation to explicitly refer in its Decisions and Reasons to every piece of evidence before it or every consideration taken into account by the Authority.

4.24 Referring to the fast-track assessment, the State party notes that it offers applicants procedural fairness, the primary purpose of which is to more efficiently manage a large number of cases stemming from an influx of boat arrivals. The fast-track assessment places

¹² Under section 48B of the Migration Act, the Minister can intervene in individual cases to allow a person to make an application for a protection visa if the Minister thinks it is in the public interest to do so.

an emphasis on applicants fully and truthfully articulating their protection claims at the earliest possible opportunity. The State party submits that the Australian fast-track visa assessment provides applicants with a full and comprehensive pathway for expeditious review of their claims for protection and that the complainant's application was treated fairly throughout this process.

4.25 The State party submits that the Migration Act and relevant regulations implement the non-refoulement obligations of Australia, including the obligation set out in article 3 of the Convention, and that the Migration Act allows for a protection visa to be granted where a person engages the non-refoulement obligation. The State party reiterates that the Committee has commented previously that the Australian domestic legal system offers a robust process of merits and judicial review to ensure that any error made by an initial decision maker can be corrected.¹³ The complainant's claims have been thoroughly considered by a series of domestic decision makers and have been found not to engage the non-refoulement obligations of Australia under the Convention. For these reasons, the State party submits, it is appropriate for the Committee to give considerable weight to the findings made by the domestic processes of Australia with regard to the complainant's claims. The State party underlines that the complainant was afforded procedural fairness during the domestic processes, which considered his claim for protection.

4.26 As for the complainant's claims concerning the current situation in Sri Lanka and likely circumstances upon his return, and the change in the security and human rights situation, reflected in various sources of information, including the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,¹⁴ the State party acknowledges that article 3 (2) of the Convention requires all relevant considerations to be taken into account when determining whether article 3 (1) is engaged, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the State party continues, 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 upon return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk.¹⁵ In this context, the State party submits that the information provided by the complainant in his communication, particularly the two additional reports, elaborates on the general risk of violence in Sri Lanka, particularly where individuals are accused of terrorist offences, but does not clarify how the complainant would be at personal risk. The complainant has therefore failed to demonstrate the existence of additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

4.27 The State party also refers to the most recent country report on Sri Lanka by the Australian Department of Foreign Affairs and Trade and notes that while Muslims have been the subject of reprisals and widespread discrimination and vilification since the Easter attacks, non-Muslim Sri Lankans, including Tamils, face a low risk of official or societal discrimination based on ethnicity.¹⁶

4.28 With regards to the complainant's claims that mental health facilities and support in Sri Lanka are scarce and that as a result of his mental health condition, if returned to Sri Lanka, he is likely to become distressed and his mental health condition is likely to deteriorate, the State party refers to the Committee's earlier observation that a claim that deportation will aggravate a complainant's mental health does not, in the absence of other factors, breach article 3 of the Convention.¹⁷ The State party notes that the complainant sought medical treatment in September 2019, i.e. after approximately seven years of staying in Australia. The report identified that the complainant had displayed worsening symptoms of anxiety and depression after the rejection of his appeal to the Court. In this context, the State party draws the attention to the Committee to the complainant's worsening symptoms of depression that

¹³ *Y.Z.S. v. Australia* (CAT/C/49/D/417/2010), para. 4.13.

¹⁴ [A/HRC/40/52/Add.3](#).

¹⁵ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.3.

¹⁶ Australian Department of Foreign Affairs and Trade, *DFAT Country Information Report: Sri Lanka*, 4 November 2019, p. 23.

¹⁷ *T.M. v. Sweden* (CAT/C/31/D/228/2003), para. 6.2.

were linked to the rejection of his appeal, and not to experiences of harm or torture in Sri Lanka. The State party refers to Committee's pronouncement that the fact that a complainant suffers from psychological problems cannot, in itself, be seen as sufficient grounds creating an obligation for the State party to refrain from expelling him.¹⁸

4.29 The State party notes that the complainant's mental health claims were considered by the Department of Home Affairs following his second request for ministerial intervention. After considering the medical report provided by the complainant and country information of the Australian Department of Foreign Affairs and Trade, the Department determined that, while mental health services are scarce in Sri Lanka, the complainant will have access to basic mental health and medical services under the universal health-care system in Sri Lanka. In this context, the State party submits that despite the complainant providing a medical report to the Committee, there is no evidence that his mental condition would deteriorate in Sri Lanka or that he would be deliberately denied medical treatment on his return to Sri Lanka. Therefore, the State party submits, the complainant has not established additional grounds to show that he is at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

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

5.1 On 29 October 2020, the complainant commented on the State party's observations and maintained that the State party would violate article 3 of the Convention if it returned him to Sri Lanka.

5.2 The complainant submits that the State party disempowered him by not providing a legal aid at various stages of the refugee assessment process. The complainant was alone and self-represented before the Department of Immigration and Border Protection interviews. He submits that the State party failed to acknowledge the complainant as an impecunious applicant who had insufficient resources, which is contrary to the State party's obligation to act as a model litigant.¹⁹

5.3 The complainant submits that his persecution in Sri Lanka and his trip to Australia by boat caused him to suffer psychological problems, leaving him with severe anxiety, post-traumatic stress disorder and depression.

5.4 The complainant claims that the State party has failed to substantiate its argumentation as to the admissibility of the communication and notes that the State party had missed the two-month deadline for submitting its comments challenging the admissibility of the communication.

5.5 The complainant further submits that his claims were not thoroughly reviewed by the competent domestic authorities and courts. He reiterates that the facts of his personal circumstances – i.e. his Tamil ethnicity, his association with LTTE, his past experience of ill-treatment, such as arrest, periods of detention and torture, and his fear of persecution – are genuine and not speculative. The complainant submits that the Delegate of the Minister for Immigration and Border Protection failed to appreciate that the level of proof needed to establish the material facts is relatively low and must be borne in mind throughout the process. The complainant further claims that the standard of proof required under the Migration Act is greater than that required by the Convention.

5.6 The complainant claims that the State party refused his applications for ministerial intervention and by doing so denied him procedural fairness. He claims that the Delegate failed to provide the Minister for Immigration, Citizenship, Migrant Service and Multicultural Affairs with a sufficient analysis of the information and, in particular, of the recent changes in the political situation and violence in Sri Lanka.

5.7 The complainant refers to the preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or

¹⁸ *C.S. v. Switzerland* (CAT/C/54/D/540/2013), para. 8.8.

¹⁹ The complainant referred to several cases of Sri Lankan Tamil asylum-seekers before the Courts where judges made orders to quash the decisions of the Administrative Appeals Tribunals and the Immigration Assessment Authority.

punishment on his visit to Sri Lanka from 29 April to 7 May 2016, in which the Special Rapporteur noted that torture was a routine practice and that the current legal framework and the lack of reform within the structures of the armed forces, Attorney-General's office and judiciary perpetuated the real risk that the practice of torture would continue.²⁰

5.8 The complainant submits that there is a consistent pattern of gross, flagrant and/or mass violation of human rights in the country, and that the political situation has drastically changed since Gotabaya Rajapaksa became President of Sri Lanka in November 2019. He claims that he remains a person of interest and is at significant and real risk of facing torture from Sri Lankan Army, the paramilitary groups and the Criminal Investigation Department if returned to Sri Lanka.

State party's additional observations

6.1 On 18 January 2021, the State party informed the Committee that there was no information provided in the complainant's submissions to alter the State party's original assessment and that his claims were inadmissible or should be dismissed for lack of merit.

6.2 Referring to the complainant's claims that the State party failed to submit its admissibility objections within the two-month deadline, the State party underlines that it had submitted its observations on admissibility and merits on time, following its correspondence with the Office of the United Nations High Commissioner for Human Rights.²¹ The State party respectfully submits that its claims regarding the admissibility of the complainant's claims were clear and, in the light of the requirement to consider and determine admissibility, reiterates that the Committee should specifically consider and respond in its Views to the arguments made in respect of admissibility.

6.3 Regarding the complainant's grievances that his claims were not thoroughly reviewed by the competent domestic authorities and courts, the State party reiterates that it had already provided comprehensive information in its original submissions that robust domestic processes had considered the complainant's claims; that it had determined that those claims were not credible and did not engage the State party's non-refoulement obligations; and that it was appropriate for the Committee to give considerable weight to the findings made by the State party's domestic processes. Each domestic decision maker determined that the complainant's claims for protection were not substantiated and found that his account of events, on which his claims for protection were based, were not credible. The complainant sought judicial review by the Federal Circuit Court and the Federal Court of Australia for any legal error in the Immigration Assessment Authority's decision. The Federal Circuit Court and the Federal Court of Australia each dismissed his appeal, finding that he had failed to demonstrate any legal error.

6.4 Concerning the complainant's claim that asylum-seekers are disadvantaged as they do not receive a legal assistance at various stages of the refugee assessment process, the State party notes that the complainant was represented by counsel in his appeals to the Federal Circuit Court and the Federal Court of Australia, and that the domestic decision makers took into account his vulnerability when assessing his claims, as was already reflected in the State party's original submission.

6.5 Responding to the complainant's claims that the national authorities denied him procedural fairness by refusing his applications for ministerial intervention and failed to take into account the change in political and humanitarian circumstances in Sri Lanka, the State party draws the Committee's attention to its original submission, which reflects that the complainant's applications for ministerial intervention were considered thoroughly by the Department of Home Affairs in accordance with the ministerial guidelines. The Department considered updated country information provided by the complainant, as well as from the UNHCR guidelines, country information on Sri Lanka provided by the Australian Department of Foreign Affairs and Trade and the Home Office of the United Kingdom. The

²⁰ [A/HRC/34/54/Add.2](#).

²¹ In the light of the impact of the coronavirus disease (COVID-19) pandemic, an automatic two-month extension of deadlines to provide observations or comments for all registered cases before human rights treaty bodies was granted.

Department determined that the complainant's requests for ministerial intervention did not raise any new or additional information that would result in a finding that the State party's protection obligations were engaged.

6.6 Regarding the complainant's contention that the State party acted contrary to its obligation to act as a model litigant, the State party reiterates that, in assessing the credibility of the complainant's claims, domestic decision makers were mindful of any mitigating circumstances that might exist and of the impact that those circumstances could have on the complainant's behavior or his capacity to present claims. For example, the State party submits that, in assessing the complainant's application for review of his rejected application for a safe haven enterprise visa, the Immigration Assessment Authority afforded a reasonable margin of appreciation to flaws and inconsistencies in his evidence.

6.7 Referring to the complainant's obtained medical certificate and his claims that his psychological problems stem from his persecution in Sri Lanka and his travel to Australia, the State party refers to its original submission and reiterates that there is no evidence that the complainant's mental condition would deteriorate in Sri Lanka or that he would be deliberately denied medical treatment upon his return to Sri Lanka.

6.8 Responding to the complainant's claims that in assessing his application for a safe haven enterprise visa, the Delegate of the Minister for Immigration and Border Protection failed to appreciate that the level of proof required to establish facts is relatively low, the State party draws the Committee's attention to its original submission and submits that there is no legal onus of proof or standard of proof in administrative decision-making, and that the general administrative decision-making standard under the Migration Act is "satisfaction", which means that the decision maker has enough information before them to make a finding against the relevant criterion, test or requirement. In respect of the Migration Act, the State party submits that the complainant must demonstrate a "real chance" of persecution if returned to their home country. Under the Convention, a complainant must demonstrate "substantial grounds for believing" that they would be in danger of torture.²² The State party submits that the Migration Act therefore establishes a lower threshold with which a decision maker must be satisfied before the non-refoulement obligations of Australia are engaged.

6.9 Regarding the complainant's claims of drastic changes in the political situation in Sri Lanka since the election of Gotabaya Rajapaksa in November 2019, the State party refers to the most recent Department of Home Affairs situational update on Sri Lanka which, while acknowledging that minority groups including Tamils remain anxious about whether the Government will protect the interests of minority Sri Lankans, it does not conclude that the risk of official or societal discrimination towards Tamils has increased since the election of President Gotabaya Rajapaksa and appointment of Prime Minister Mahinda Rajapaksa. The State party, in this context, 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 upon return to that country as additional grounds must be adduced to show the individual concerned would be personally at risk.²³

6.10 Finally, the State party refers to complainant's claims of his involvement with LTTE and status as a person of interest giving rise to a foreseeable and real risk of harm from the Sri Lankan Army and the paramilitary groups, and the Criminal Investigation Department if returned to Sri Lanka, the State reiterates that these claims were thoroughly considered as part of the State party's robust domestic legal processes and were found to be without merit.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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

²² Reference is made to article 3 of the Convention.

²³ *H.M.H.I. v. Australia* (CAT/C/28/D/177/2001), para. 6.5.

matter has not been and is not being examined under another procedure of international investigation or settlement.

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

7.3 The Committee notes that the State party challenged the admissibility of articles 2 and 16 of the Convention by arguing that these provisions impose obligations on a State party to prevent acts in any territory under its jurisdiction and that these obligations are territorially limited and would not impose obligations on the State party with respect to acts that allegedly occurred in Sri Lanka. The Committee notes that no further information is on the file, and it finds that this part of the communication is not sufficiently substantiated for the purpose of admissibility.

7.4 The Committee considers that the complainant has sufficiently substantiated, for the purposes of admissibility, his claims 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

8.1 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.

8.2 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.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this context, the Committee refers to its consideration of the fifth periodic report of Sri Lanka,²⁴ during 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 2009.²⁵ It also refers to reports by non-governmental organizations²⁶ concerning the treatment by the Sri Lankan authorities of individuals who have been returned to Sri Lanka. 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 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.²⁷ 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.

²⁴ CAT/C/LKA/CO/5, paras. 9–12.

²⁵ CAT/C/LKA/CO/3-4, para. 6.

²⁶ Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009* (London, 2015); and Human Rights Watch, *World Report 2019* (New York, 2019).

²⁷ *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).

8.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant’s ethnic background; (b) 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 (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon 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 (para. 38).²⁸ The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned; however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

8.5 In the present case, the complainant claims that he would be at risk of treatment contrary to article 3 of the Convention if he were returned to Sri Lanka, as he would be persecuted on the basis of his ethnicity, his actual or imputed political opinion as an alleged LTTE supporter, and his status as a former resident of an LTTE-controlled area and a failed asylum-seeker. The Committee further notes the complainant’s claims that he was kidnapped and tortured by Karuna Group for refusing to pay money when he was working in the Vikneswara Fisherman Development Society and that the Karuna Group is after him because he reported to the police about their attempt to extort money.

8.6 The Committee notes the State party’s submission that the complainant’s claims have been thoroughly considered by a series of domestic decision-making processes, including by a Delegate of the Minister for Immigration and Border Protection during the determination of the complainant’s safe haven enterprise visa application and through an independent merits review by the Immigration Assessment Authority. In addition, the complainant also sought judicial review by the Federal Circuit Court, the Federal Court of Australia and the High Court of Australia for legal error in the Immigration Assessment Authority decision. The complainant’s claims were also considered twice as part of the ministerial intervention process. The Committee notes the State party’s submission that the competent domestic authorities and courts established that the complainant’s claims were not credible and did not engage the State party’s non-refoulement obligations and that the complainant would not be at risk of treatment contrary to article 3 of the Convention in Sri Lanka. The Committee notes that the Immigration Assessment Authority accepted that the Karuna Group had demanded money from the complainant and determined that the complainant would no longer be the target of the Karuna Group as he was no longer responsible for the funds of the Vikneswara Fisherman Development Society. The Immigration Assessment Authority also assessed the complainant’s claims that he had to move to another location out of fear of persecution by the Karuna Group and concluded that the Karuna Group had no continuing interest in the complainant or his whereabouts at the time of his departure from Sri Lanka by boat.

8.7 The Committee further notes the complainant’s claims that he will face harm due to his illegal departure from Sri Lanka and for seeking protection in Australia. The Committee notes that on the basis of country information and media reports, the national authorities observed that the situation for Tamils in Sri Lanka had changed significantly since the complainant came to Australia and concluded that the complainant did not have a profile that would result in a well-founded fear of persecution on the basis of any imputed LTTE support or links. Regarding the complainant’s claim of returning to Sri Lanka as a failed asylum-seeker, the national authorities found that any fine or punishment for illegal departure would be the result of a law of general application and does not amount to persecution.

8.8 Regarding the complainant’s claims that he had been identified as an LTTE supporter, detained and tortured by the army, and released after 15 days, the Committee notes that 15 years had passed since these events, and that the Sri Lankan authorities had not since

²⁸ *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

demonstrated any interest in him as a potential LTTE suspect; and that the monitoring and harassment of Tamils had significantly eased since the end of the war. The Committee further notes the assessment made by State party authorities, which states that the complainant had been able to travel to India and return, transiting through the Colombo airport, without any hindrance; that he had obtained a passport in 2008 without any difficulty; that he had had regular contacts with the authorities because of his role as the treasurer of the Vikneswara Fisherman Development Society and had never encountered any problems; and that he was no longer responsible for the management of the Society. The Committee notes the State party's conclusion that the Sri Lankan authorities did not have an adverse interest in the complainant as a result of any imputed involvement with LTTE.

8.9 With regard to the complainant's claim relating to his mental health, and his claim that the authorities had failed to take sufficiently into account the psychological and physical harm he suffered due to his exposure to the prolonged armed conflict and serious human rights violations in Sri Lanka, the Committee notes that the State party assessed that the complainant could be vulnerable and could have suffered emotional and psychological stress and that mental health services were scarce in Sri Lanka, but concluded that he would have access to basic mental health and medical services under the universal health-care system in Sri Lanka and that there was no evidence that the complainant's mental condition would deteriorate in Sri Lanka or that he would be deliberately denied medical treatment on his return to Sri Lanka.

8.10 Regarding the complainant's claims of worsening human rights situation in Sri Lanka since the election of President Gotabaya Rajapaksa in November 2019, the Committee notes the recent Department of Home Affairs situational update on Sri Lanka. While acknowledging that minority groups, including Tamils, remained anxious about whether the Government would protect the interests of minority Sri Lankans, the Department of Home Affairs does not conclude that the risk of official or societal discrimination towards Tamils has increased since the election of President Gotabaya Rajapaksa and appointment of Prime Minister Mahinda Rajapaksa. The Committee notes the State party's finding that in this situation there would be no additional risk of serious or significant harm to the complainant if he returned to Sri Lanka. The Committee further notes 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 upon return to that country as additional grounds must be adduced to show the individual concerned would be personally at risk.²⁹

9. In the light of the considerations above, and on the basis of all the information submitted 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 facts before it do not reveal that the complainant's return to Sri Lanka would entail a violation of article 3 of the Convention.³⁰ Furthermore, the complainant has not demonstrated that the authorities of the State party failed to conduct a proper investigation into his allegations.

10. The Committee therefore concludes that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to Sri Lanka.

11. 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.

²⁹ *H.M.H.I v. Australia* (CAT/C/28/D/177/2001), para. 6.5.

³⁰ Committee against Torture, general comment No. 4, para. 38; *S.P. v. Australia* (CAT/C/68/D/718/2015), para. 8; *Susith Wasitha Ranawaka v. Australia* (CAT/C/68/D/855/2017), para. 10; and *G.W.J. v. Australia* (CAT/C/72/D/856/2017), para. 10.10.