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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. 723/2015*, **

Communication submitted by:	V.M. (represented by counsel, John Sweeney)
Alleged victim:	The complainant
State party:	Australia
Date of complaint:	30 December 2015 (initial submission)
Document references:	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 30 December 2015 (not issued in document form)
Date of adoption of decision:	2 August 2019
Subject matter:	Deportation to Sri Lanka
Procedural issue:	Admissibility – manifestly ill-founded
Substantive issue:	Risk of torture in the event of deportation to country of origin (non-refoulement)
Article of the Convention:	3

1.1 The complainant is V.M., a national of Sri Lanka born in 1967. His request for asylum in Australia was rejected, and he is facing deportation to Sri Lanka. The complainant asserts that, if Australia were to proceed with his deportation, that would violate its obligations under article 3 of the Convention. The State party made the declaration under article 22 (1) of the Convention on 28 January 1993. The complainant is represented by counsel.

1.2 On 30 December 2015, pursuant to rule 114, paragraph 1, 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 to Sri Lanka while the communication was being considered by the Committee. On 20 December 2016, the Committee granted the request of the State party to lift the interim measures.

* Adopted by the Committee at its sixty-seventh session (22 July–9 August 2019).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

The facts as submitted by the complainant

2.1 The complainant was born in the village of Udappu, North Western province, Sri Lanka. He is a citizen of Sri Lanka of Tamil ethnicity. He worked as a fisherman from 1997 to 2012. The complainant asserts that he was assaulted by members of the Sri Lanka Army and the Sri Lanka Navy several times. He asserts in particular that, each time he went fishing between 2001 and 2012, he was detained and assaulted by members of the security services of Sri Lanka, the purpose of these assaults being to identify whether members of the Liberation Tigers of Tamil Eelam (Tamil Tigers) were joining fishing expeditions.

2.2 The complainant submits that, in 2011, intruders known as "grease men" were regularly breaking into homes in his village. They would attack the residents and harass women sexually or physically. In September 2011, the complainant and another person came across a grease man. The complainant accosted the grease man, attempted to apprehend him and struck him with a wooden pole. The grease man escaped, however, and the complainant chased him into a nearby naval camp, where he disappeared.

2.3 The complainant claims that he was then surrounded by Navy officers, who questioned him, took down his details and told him to leave. After this incident, the officers repeatedly summoned him to the above-mentioned Navy camp. On another occasion, he was detained for a whole day and was told that he had been lying about chasing a grease man into the camp. The officers threatened to kill him. In 2012, while he was fishing, his nets drifted into an area restricted for the use of Sinhalese fishermen. Although the nets were returned to the complainant, he was then threatened by a group of Sinhalese fishermen.

2.4 After the incident involving the fishing nets, which was aggravated by the general mistreatment of the Tamils by the Government of Sri Lanka, the complainant decided to flee Sri Lanka for Australia. The complainant claims that, after his departure, the State Intelligence Service of Sri Lanka periodically visited his house, inquiring about his whereabouts.[1]

2.5 On 16 July 2012, the complainant arrived at Christmas Island by boat. On 14 February 2013, he lodged an application for a protection visa, which was refused by a delegate of the Minister for Immigration, Multicultural Affairs and Citizenship on 7 September 2013. The complainant then applied for a review before the Refugee Review Tribunal. On 22 July 2014, the Tribunal refused to grant the complainant a protection visa.

2.6 The complainant sought a review of that decision at the Federal Circuit Court, but that application was dismissed on 4 June 2015. He appealed against this decision, but the Federal Court of Australia rejected that appeal on 27 August 2015. On 8 December 2015, the Minister for Immigration and Border Protection declined to exercise his power to grant a protection visa. The complainant therefore claims that he has exhausted all domestic remedies.

The complaint

3.1 The complainant claims that his deportation to Sri Lanka would constitute a violation of his rights under article 3 of the Convention. He claims that there are substantial grounds for believing that he would suffer torture or cruel, inhuman or degrading treatment or punishment at the hands of the authorities of Sri Lanka. In particular, the complainant alleges that he was a witness to the Sri Lanka Navy covering for an individual involved in the above-mentioned grease man activities. He further claims to be at risk of being tortured and killed by the Sri Lanka Army and Navy because of his status as a witness to war crimes. He mentions in particular that, on an unspecified date, which may be presumed to be in 2009, he witnessed Tamil civilians being forced to run from the Army and being shot from behind. Referring to several newspaper articles, he asserts that the then Prime Minister of Sri Lanka rejected the proposal that an international probe be launched into allegations of war crimes. Hence, according to the complainant, there is a high risk of his being pressured by the Army not to testify should an international investigation commence.

[1] The complainant refers to a letter written by his wife, evidencing these visits.

3.2 The complainant claims that he is at risk of harm also because of his illegal departure from Sri Lanka and his profile as a failed asylum seeker. He asserts that there is no safe place for him in Sri Lanka, since the Government is in control of the whole territory. Therefore, if he is forcibly returned there, he will be detained upon arrival and held at the Negombo remand prison for interrogation as an asylum seeker who left the country illegally and returned without a passport. According to the complainant, it is well documented that the prison is cramped, unsanitary and unhygienic, and that it is overcrowded to the point that prisoners must take turns to sleep, which in itself constitutes degrading treatment or punishment, regardless of the length of time spent there on remand.

3.3 The complainant makes reference to certain changes to the Migration Act 1958, which, according to him, show an alarming tendency on the part of legislators to weaken the State party's non-refoulement obligations under international law.

State party's observations on admissibility and the merits

4.1 On 12 June 2016, the State party challenged the admissibility of the communication. The State party argues that the complainant's claim under article 3 is manifestly unfounded and should therefore be declared inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure for lack of sufficient substantiation. The State party submits that, for the purposes of the Committee's consideration of the merits of the complaint, the complainant's claims are without merit, as they have not been supported by evidence of substantial grounds for believing that the complainant would be in danger of being tortured, as defined by article 1 of the Convention, upon his return to Sri Lanka. The State party requests the Committee to lift the request for interim measures under rule 114 of the rules of procedure.

4.2 As to the issue of admissibility, the State party submits that most of the complainant's claims have been thoroughly considered in a series of domestic decision-making processes and, not being credible, they have been found not to engage its non-refoulement obligations under the Convention. Even though the State party acknowledges that complete accuracy is seldom to be expected by victims of torture,[2] and submits that this principle was duly taken into account by the decision maker in forming views on the complainant's credibility, the authorities nonetheless found the complainant's claims to have been fabricated for the occasion. The State party further refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 in the context of article 22 (para. 9),[3] in which the Committee states that, as it is not an appellate or quasi-judicial body, it gives considerable weight to findings of fact that are made by organs of a State party.

4.3 The State party provides thorough information on the holdings adopted by its domestic authorities. With regard to the proceedings before the Department of Immigration and Border Protection, the State party notes that the decision maker accepted the complainant's claim that he had no involvement with the Tamil Tigers in Sri Lanka and that he does not know anyone who was involved with the Tamil Tigers. The decision maker also considered country information indicating that the authorities of Sri Lanka and the Tamil Tigers were engaged in conflict in and around Mullaitivu in 2015. The decision maker accepted the complainant's claim that he had been questioned by the Sri Lanka Army along with other Tamil fishermen around 2005, and that he had been physically assaulted on that occasion. However, the decision maker did not accept, given the absence of any links to the Tamil Tigers, that the complainant remained of any ongoing interest to the authorities of Sri Lanka. The Department examined the complainant's claims relating to the alleged grease man incident in September 2011. It noted a number of inconsistencies in the complainant's statements, and thus it did not accept as a fact that the complainant had been involved in an altercation with a grease man, as claimed, nor did it accept that he would be of interest to the authorities of Sri Lanka as a result of the incident. Furthermore, the Department did not find it credible that the complainant had been threatened by a group

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

[3] At its sixty-second session, the Committee adopted general comment No. 4 (2017) on the implementation of article 3 in the context of article 22, which supersedes general comment No. 1.

of Sinhalese fishermen. The decision maker indicated that the complainant had failed to mention the Sinhalese fishermen incident, despite the fact that it was supposedly the most recent event prior to his departure from Sri Lanka, and that he had been asked on two separate occasions if he had any reason for leaving Sri Lanka other than the grease man incident. Having also considered the available country information, the Department concluded that there were no reasons for the authorities of Sri Lanka to believe that the complainant had any connections with the Tamil Tigers and that there were no reasons to consider that ethnic Tamils were subject at the time of the decision to a real chance of persecution by the authorities of Sri Lanka on account of their ethnicity alone. In the light of those considerations, the Department was not convinced that the complainant would be at general or personal risk of harm if he were returned to Sri Lanka.

4.4 The State party submits that, on appeal, the Refugee Review Tribunal did not find most of the complainant's statements credible, in particular as to what he had experienced in Sri Lanka and as to the reasons for his departure from the country in June 2012. This includes his accounts relating to the grease man incident.[4] The Tribunal affirmed the conclusions reached by the Department of Immigration and Border Protection regarding other aspects of the complainant's claims. With regard to the procedure before the Federal Circuit Court, the State party submits that the Court considered the complainant's assertion regarding his Tamil ethnicity and his newly submitted claim that, as a failed asylum seeker who had departed from Sri Lanka illegally, he would be harmed upon his return. The Federal Circuit Court dismissed his application for judicial review, however, and the complainant's claim was further rejected by the Federal Court of Australia and by the Minister for Immigration and Border Protection.

4.5 The State party also submits that several of the complainant's claims that have been brought before the Committee had not been raised before the domestic authorities. In particular, the complainant alleges that he witnessed war crimes committed by the Sri Lanka Army and that, upon return to Sri Lanka, he would face serious harm and pressure not to offer his testimony in the event of a United Nations-led investigation being launched. In that regard, the State party submits that, if the complainant had witnessed war crimes, it would be implausible that, upon his arrival in Australia, he would not have raised his fear of harm by the Sri Lanka Army. It is also implausible that the complainant resided in Sri Lanka for another three years after witnessing the incident concerned without being identified or targeted by the Army. Furthermore, there is minimal information or evidence supporting the complainant's claim. In addition, the State party notes that a national election was held in Sri Lanka on 17 August 2015, resulting in an alliance led by the United National Party coming into power and the Tamil National Alliance winning a number of seats. In this context, the State party considers it particularly unlikely that the complainant would be at risk of harm in Sri Lanka for having been a witness to the alleged commission of war crimes by the Army, which occurred while the previous Government was in power.

4.6 Regarding the complainant's assertion that there is no safe place for him in Sri Lanka, the State party submits that the complainant has not raised any credible claims to indicate that he is at risk of being harmed or tortured by the authorities of Sri Lanka in his home region or any other region. In claiming that there is no safe place for him in Sri Lanka, the complainant made references to new section 5J (1) of the Migration Act 1958 and the decision of the High Court of Australia in *SZATV v. Minister for Immigration and Citizenship*.[5] In this respect, the State party observes that the competence of the Committee under the Optional Protocol is to consider communications relating to the situation or circumstances of a particular complainant or a particular group of complainants.[6] Furthermore, the State party argues that, even though it acknowledges that section 5J (1) of the Migration Act removes the test for reasonableness in the context of internal relocation, as was set out by the High Court in the *SZATV* case, the amended law remains consistent with the international obligations of Australia under the Convention relating to the Status of

[4] During his hearing, the complainant referred on one occasion to the Sri Lanka Navy as having been involved in the grease man incident, whereas on other occasions he referred to the Sri Lanka Army, despite affirming that he could differentiate between the two institutions.

[5] 233 CLR 18, case No. S62/2007, 30 August 2007.

[6] See *Khan v. Canada* (CAT/C/13/D/15/1994).

Refugees, and the State party emphasizes that it is entitled to make domestic laws contrary to existing jurisprudence.

4.7 The State party notes the complainant's new claim of having been detained, physically assaulted and questioned by the Sri Lanka Army and the Sri Lanka Navy each time he went fishing between 2001 and 2012. The State party contests these claims and submits that, during the protection visa interview conducted on 19 August 2013 and the Refugee Review Tribunal hearing on 30 January 2014, the complainant claimed that he had been physically assaulted and questioned by the Sri Lanka Army on one occasion in 2005, while fishing in Mullaitivu. The complainant did not articulate that he had been ill-treated by the Army at any other time between 2001 and 2012. Furthermore, the complainant did not express at any point during the domestic processes that he had been physically assaulted by members of the Sri Lanka Navy as well as the Sri Lanka Army. Therefore, the State party refutes that the alleged physical assaults occurred as frequently as the complainant claims before the Committee and that both the Army and the Navy were involved in these incidents. The State party also notes that, had the complainant been detained, physically assaulted and questioned each time he went fishing between 2001 and 2012, there would be no reasonable explanation as to why he did not provide details of those incidents at an earlier stage of the domestic processes.

4.8 In response to the complainant's new assertions regarding recent changes to the Migration Act, the State party reiterates that the competence of the Committee is to consider communications relating to the situation or circumstances of a particular complainant or group of complainants. The State party further notes that the complainant does not assert or show that he is personally affected by the impugned provisions. In any event, the State party contends that, while it is stated in new section 197C of the Act that non-refoulement obligations are not relevant in the context of an officer's duty to remove an unlawful non-citizen under section 198, the explanation has been offered that the State party will continue to meet its non-refoulement obligations through other mechanisms, such as a protection visa application or the use of the relevant minister's powers under the Act, rather than through the removal powers set out in section 198. In sum, the State party is of the view that the complainant's claims are unsubstantiated and are not relevant to his claims for protection.

4.9 In response to the complainant's new evidence in support of his claim that the authorities of Sri Lanka were looking for him as a result of the grease man incident, the State party notes that the letter dated 24 September 2015 purports to prove the visits of the authorities to the complainant's house on 1, 5 and 26 July and 15 August 2012. The State party emphasizes that, had the officers of the State Intelligence Service of Sri Lanka visited the complainant's house as he presently claims – and if these visits had occurred as frequently as detailed in the newly submitted letter – it is implausible that the complainant would not have provided this supporting evidence at the time of, or soon after, his arrival in Australia. Even if the State Intelligence Service had in fact visited the complainant's house on the above occasions in 2012, there is no reason to believe, on the basis of the available country information, that the authorities of Sri Lanka would be interested in the complainant many years after the alleged incidents occurred.

4.10 The State party notes that the complainant provided new country information to support his claims of a present, personal and real danger of torture. The State party reiterates that relevant country information has already been considered under domestic processes, and that the newly submitted reports do not establish the existence of additional grounds to show that the complainant would be at a foreseeable, real and personal risk of torture if returned to Sri Lanka.

Complainant's comments on the State party's observations

5.1 On 30 December 2016, the complainant commented on the State party's observations. In response to the State party's statement that his claims have been examined in robust domestic proceedings, he submits that the Refugee Review Tribunal did not consider his accounts credible primarily because it found the grease man incident implausible. The complainant argues that, in spite of the consideration given at numerous court instances, his accounts of the facts could not be reviewed at the highest levels, as

neither the Federal Circuit Court nor the Federal Court of Australia has the power to review findings of facts.

5.2 In relation to his supposed lack of credibility, the complainant asserts that, even though the Refugee Review Tribunal has explicitly enunciated that credibility should be assessed in a liberal manner and not based on uncovering small discrepancies, certain omissions were weighed heavily against his credibility. The complainant submits that he provided explanations for these omissions. In particular, he referred to his low level of education, to his high level of stress and anxiety at the time when he gave his accounts of the facts, and to the fact that he did not understand the importance of some questions at the beginning of the process. He claims that he provided consistent testimonies throughout the proceedings, except at the very first "biodata" interview, the primary purpose of which was not to assess claims, and thus that doubts cannot be cast on his credibility on that basis.

5.3 With respect to the State party's observation that he inconsistently referred to the Sri Lanka Navy and the Sri Lanka Army, he notes that the word he used in Tamil meant the equivalent of "armed forces", making no distinction between the army and the navy. His explanation was accepted by the Refugee Review Tribunal, and it would therefore be unfair on the part of the State party to make adverse inferences on that basis before the Committee.

5.4 As regards the State party's statement that the complainant failed to mention in the course of domestic proceedings that he had witnessed war crimes committed by the Sri Lanka Army three years prior to his departure, the complainant notes that it was the grease man incident that provoked his hiding and departure. The implications of the preceding events could not be realized at the time of the proceedings, as they occurred in Mullaitivu, which was then a war zone. Therefore, the complainant did not think at that time that he, as a witness to these events, could be of interest to the Sri Lanka Army. Moreover, the prospect of an investigation into these incidents only became a serious one for the Government of Sri Lanka in 2010, when an investigative committee was set up. In sum, the complainant did not raise the claim of having witnessed war crimes during the domestic proceedings because he could not foresee that witnessing such events could have such serious personal implications in the future.

5.5 Regarding the State party's assertion that there had been a change of Government in Sri Lanka since the above-mentioned incidents occurred, the complainant contends that this does not mean that the military would not have recourse to intimidation and violence to conceal their unlawful terrorist activities during wartime.

5.6 As regards the State party's observation concerning the complainant's statement that there was no safe place for him to return to in Sri Lanka, the complainant submits that he raised this claim before the Department of Immigration and Border Protection and before the Refugee Review Tribunal. He also submits that, contrary to the arguments of the State party, he did mention during his protection interview that he had been severely beaten in 2005 and from then onwards, almost on a weekly basis, in Sri Lanka. Furthermore, it was set out in the decision of the Refugee Review Tribunal that the complainant had been beaten frequently. With regard to the power of the relevant minister, which would allegedly ensure respect for the State party's non-refoulement obligations, the complainant notes that jurisprudence clearly shows that, instead of being granted protection visas, applicants have been sent back from Australia to their country of origin, with reference made to the aim of serving the public interest. The complainant therefore argues that ministerial power may be easily abused. As to the newly presented evidence in the form of a letter written by the complainant's wife, the complainant notes that the reason why he did not submit it earlier is that he could not have foreseen that the letter could prove so useful for him.

5.7 In sum, the complainant claims that he continues to be of interest to the military of Sri Lanka because he would be able to testify about the links between the grease man activities and the military, as well as about war crimes committed by the Sri Lanka Army. Although recent political changes have been accompanied by assurances of proper investigation into war crimes, there have been no real developments in this regard.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground. Accordingly, the Committee considers that it is not precluded by article 22 (5) (b) from examining the present communication.

6.3 The Committee notes the State party's argument that the communication is inadmissible as manifestly unfounded since the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of harm, including torture, if he were returned to Sri Lanka. The Committee considers, however, that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently detailed the facts and the basis of the claim for a decision by the Committee. As the Committee finds no obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

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

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon his 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 the country of return. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[7]

7.3 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the 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 a 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 author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is

[7] See, inter alia, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

foreseeable, present, personal and real (ibid., para. 38).[8] The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

7.4 In assessing the risk of torture in the present case, the Committee notes the complainant's claim that he would face a risk of torture by the Sri Lanka Army and Navy if he were returned to Sri Lanka because he was a witness to an incident evidencing that the Sri Lanka Navy was involved in grease man activities. The Committee also notes his allegation that he witnessed war crimes committed by the Sri Lanka Army and that he would be intimidated or even killed by the Sri Lanka Army to prevent him from offering his testimony in the course of any investigative mechanism. In that respect, the Committee further notes the complainant's explanation that he did not raise this claim before the domestic authorities, as he could not foresee at the time that witnessing these events could have such serious implications for him personally. The Committee takes note of the complainant's assertion that he was detained and assaulted by the security forces of Sri Lanka every time he went fishing between 2001 and 2012. The Committee also notes the complainant's complaint that he is at risk of harm because of his illegal departure from Sri Lanka and his profile as a failed asylum seeker. The Committee is mindful of the references made to the changes to the Migration Act, which, according to the complainant, illustrate an alarming trend to weaken the State party's non-refoulement obligations. The Committee further notes the complainant's contention that his claims have not been properly assessed by the domestic authorities because, in spite of the consideration given at numerous court instances, his accounts of the facts could not be reassessed at the higher instances, and because minor discrepancies in his statements were weighed against his credibility.

7.5 The Committee notes the State party's submission that the complainant's allegations have been thoroughly considered under the domestic decision-making processes and have all been found to be non-credible, and that they therefore could not engage the State party's non-refoulement obligations under the Convention. The Committee also takes note of the State party's submission that the domestic authorities accepted that the complainant was questioned by the Sri Lanka Army, along with other Tamil fishermen, and was physically assaulted during an incident in Mullaitivu in 2005. However, given that the complainant could not be perceived as having any links to the Tamil Tigers and that there have been inconsistencies in his accounts of the grease man incident, which were not accepted as facts, the domestic authorities did not consider that he remained of any ongoing interest to the authorities of Sri Lanka. The Committee further notes the State party's submission that the authorities, considering the available country information, could not satisfy themselves that ethnic Tamils were subject to a real chance of persecution by the authorities of Sri Lanka on account of their ethnicity alone, or that the complainant was subject to a real chance of persecution because of his status as a failed asylum seeker. The Committee notes the State party's submission, regarding the complainant's claim of witnessing war crimes, that such claim was not raised before the domestic authorities. In any event, it is implausible that the complainant resided in Sri Lanka for another three years after witnessing that incident without being identified or targeted by the Sri Lanka Army and that he would not have raised this claim upon his arrival in Australia. Furthermore, there is minimal information or evidence supporting the complainant's claim. As concerns the newly submitted letter by the complainant, the Committee notes the State party's argument that, if officers of the State Intelligence Service had visited the complainant's house in Sri Lanka as he claims – and particularly if these visits occurred as frequently as his wife details in the letter – it is implausible that he would not have provided supporting evidence in that regard at the time of, or soon after, his arrival in Australia. Regarding the complainant's submission concerning changes to the Migration Act, the Committee notes the State party's statement that the complainant does not assert or show how he is personally affected by the impugned provisions.

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

7.6 The Committee recalls that it must ascertain whether the complainant would currently be at risk of being subjected to torture if he were returned to Sri Lanka. The Committee notes that, even though the State party has acknowledged that complete accuracy is seldom to be expected by victims of torture, the domestic authorities found the complainant's story relating to the grease man incident, which is the most central element of his claim and the incident that was said to have eventually triggered his departure from Sri Lanka, to be non-credible, because of inconsistencies in the complainant's statements on the matter. In addition, the authorities could not accept as a fact that the complainant had been threatened against continuing fishing by a group of Sinhalese fishermen.

7.7 The Committee further notes that some of the complainant's claims and pieces of corroborating evidence were submitted only to the Committee, after his refugee claim had been rejected at the domestic level. The Committee notes, however, that the complainant had ample opportunity to provide supporting evidence and further details of his claims in the course of domestic processes. Nonetheless, he failed to raise at an earlier stage his claims relating to witnessing war crimes and the subsequent risks he might face on that ground. The Committee notes that the complainant himself indicated that it was not until 2010 that the war crime allegations became a serious matter for the Government of Sri Lanka. However, the domestic proceedings were ongoing from February 2013 until August 2015, and it is implausible that the complainant would not have come forward with his alleged fear during that period. Furthermore, there is minimal information or evidence supporting the complainant's claim in that regard. As to the complainant's claim that he was assaulted between 2001 and 2012, the Committee notes that he indeed mentioned before the domestic courts that he had been subjected to ill-treatment on a weekly basis. However, those allegations clearly referred only to a period of three months when the complainant was staying in Mullaitivu for work. The Committee notes that the complainant failed to provide any details of further incidents of ill-treatment. The Committee observes that no reasonable explanation was given by the complainant as to why he failed to present any evidence to the domestic courts, similar to the letter submitted only to the Committee, in support of his statement that the authorities of Sri Lanka were looking for him in his house on several occasions in 2012 as a result of the grease man incident. With regard to the changes to the Migration Act that have been challenged by the complainant, the Committee notes that the complainant has failed to show that he is personally affected by the impugned provisions.

7.8 Regarding the complainant's claim that he risks being subjected to torture upon return to Sri Lanka owing to his status as a Tamil with real or perceived links with the Tamil Tigers and as a failed asylum seeker, the Committee agrees that Sri Lankans of Tamil ethnicity with a real or perceived prior personal or familial connection to the Tamil Tigers and facing forcible return to Sri Lanka may face a risk of torture. In this connection, the Committee notes the current human rights situation in Sri Lanka and refers to its concluding observations on the fifth periodic report of Sri Lanka, in which it expressed concern, inter alia, about reports regarding the persistence of abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including the military and the police,[9] which had continued in many parts of the country after the conflict with the Tamil Tigers ended in May 2009. It also refers to credible reports by non-governmental organizations[10] concerning the treatment of individuals returned to Sri Lanka by the authorities of Sri Lanka.[11] However, the Committee recalls that the occurrence of human rights violations in a complainant's country of origin is not sufficient in itself to conclude that he or she runs a personal risk of torture on return to that country.[12] 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

[9] CAT/C/LKA/CO/5, paras. 9–12.

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

[11] *J.N. v. Denmark* (CAT/C/57/D/628/2014), para. 7.9.

[12] See, for example, *R.D. v. Switzerland* (CAT/C/51/D/426/2010), para. 9.2.

Lanka.[13] In that respect, the Committee is mindful of the length of time (at least seven years) that has elapsed since the alleged incidents concerned. The Committee therefore considers that the complainant has failed to adduce sufficient evidence and to adequately substantiate his contention that the alleged past events would attract the real interest of the authorities of Sri Lanka. Having also considered the general situation of human rights in Sri Lanka, the Committee is of the view that the complainant has failed to substantiate his claims that his extradition to Sri Lanka would expose him to treatment contrary to article 3 of the Convention.

8. 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.

9. 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.

[13] See, for example, *X, Y and Z v. Sweden* (CAT/C/20/D/61/1996), para. 11.2; *G.B.M. v. Sweden* (CAT/C/49/D/435/2010), para. 7.7; and *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.5.