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Human Rights Committee

Communication No. 2272/2013

Views adopted by the Committee at its 113th session (16 March–2 April 2015)

<i>Submitted by:</i>	P.T. (represented by counsel, the Danish Refugee Council)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	15 July 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 17 July 2013 (not issued in a document form)
<i>Date of adoption of Views:</i>	1 April 2015
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Substantive issues:</i>	Risk of torture and ill-treatment
<i>Procedural issues:</i>	Insufficient substantiation of claims
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (113th session)

concerning

Communication No. 2272/2013*

Submitted by: P.T. (represented by counsel, the Danish Refugee Council)
Alleged victim: The author
State party: Denmark
Date of communication: 16 July 2013 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 1 April 2015,

Having concluded its consideration of communication No. 2272/2013, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol¹

1.1 The author of the communication is P.T., a Sri Lankan national born on 12 May 1976. He claims that by deporting him to Sri Lanka, Denmark would violate his rights under article 7 of the International Covenant on Civil and Political Rights (hereinafter “the Covenant”). The author is represented by counsel, Louise Schødt, from the Danish Refugee Council.

1.2 When registering the communication on 17 July 2013, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Sri Lanka while his case is under consideration by the Committee.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ The Optional Protocol entered into force for Denmark on 6 April 1972.

The facts as presented by the author

2.1 The author used to live with his aunt in a village of the Jaffna peninsula in the northern part of Sri Lanka. His two brothers were killed by the Eelam People's Democratic Party (hereinafter "EPDP") and the military in 1990. During the period between 1994 and 1997, he participated in meetings and demonstrations supporting the Liberation Tigers of Tamil Eelam (hereinafter "LTTE"). As other Tamils were, during this period, he was regularly stopped and harassed and even beaten at checkpoints established by the Sri Lankan Army and EPDP.

2.2 In 2007, the author was working in his cousin's tailor shop and, during the conflict between LTTE and the Sri Lankan Army, they provided clothes and food free of charge to some LTTE members. One night, EPDP paramilitaries burnt down his cousin's shop and other shops in the same neighbourhood and shot at people. The following morning, the author and his cousin went to the local police station to complain about the arson. The police made a report but did not take further action. The author's cousin reopened his shop a few weeks later. However, shortly after, two persons, whom the author identified as EPDP members, came to the shop and asked the author's cousin to close it and to follow them. The author was told by his cousin to go home. On his way across the fields, the author saw his cousin being shot dead. Shortly after his cousin's death, the author was approached by some people in a grocery store who asked him if he knew who had killed his cousin. The author assumed they were EPDP members and denied any knowledge about the murder and stressed that he had not complained about it to the police.

2.3 Following this incident, fearing harassment by EPDP, the author moved with his wife and two daughters to another village, Point Pedro, where no one knew him. After one year in Point Pedro, hearing that someone had enquired with his aunt as to his whereabouts, the author moved with his family to another village, Palai, located at roughly two hours by bus from his village of origin. He settled in Palai with his family, at his in-laws' house, where his wife and children are still living. The author alleges that, in spite of the distance from his village, he did not feel safe and still wished to leave the country. He tried to save enough money to do so, but did not manage to save enough to buy a plane ticket, so he went to his native village at the beginning of 2012 to borrow money from his aunt who was still living there. On 1 February 2012, the author left Sri Lanka via Bandaranaike International Airport, with a passport obtained from an agent paid by the author. The author's aunt subsequently reported that, following his last visit in 2012, two persons came to look for him.²

2.4 The author arrived in Denmark on 30 May 2012.³ He was interviewed by the police on 8 June 2012 and applied for asylum on 11 June 2012.⁴ The author was interviewed by the Danish Immigration Service on 16 November 2012. On 18 December 2012, the author's asylum request was rejected. On 13 May 2013, the Refugee Appeals Board rejected his appeal and confirmed the decision of the Danish Immigration Service not to grant him asylum. On 10 June 2012, the Ministry of Justice refused to grant him a residence permit on humanitarian grounds.

² The author does not specify the date. He states that his aunt reported that two persons came to see her and asked for him but "without mentioning his name".

³ The author does not provide further details about his journey between Sri Lanka and Denmark.

⁴ In its observations, the State party indicates that the author filed his asylum application on the day of his arrival, 30 May 2012.

The complaint

3.1 The author alleges that, by deporting him to Sri Lanka, Denmark would violate his rights under article 7 of the Covenant. He claims that he fears he will be killed by EPDP, as his two brothers and his cousin were. He also fears that, as he witnessed the murder of his cousin by two EPDP paramilitaries, EPDP has an interest in preventing him from identifying the perpetrators, and will therefore look for him if he returns to Sri Lanka. He also alleges that, in the light of the human rights situation in Sri Lanka and of his Tamil origins, he cannot seek protection from the State party authorities against EPDP.

3.2 The author also alleges that any Tamil perceived to have been linked to LTTE, even in a very tenuous manner, is at risk, upon return to Sri Lanka, of being subjected to torture or ill-treatment by the State party's security forces. He recalls that he had provided food and clothes free of charge to some LTTE members while assisting his cousin in his shop, and that his brothers and cousin were killed by EPDP.

3.3 The author also stresses that recent reports refer to cases of former Sri Lankan (in particular Tamil) asylum seekers who were detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims, or after their voluntary return to Sri Lanka.⁵ These persons were questioned by the Sri Lankan authorities about their activities abroad, including alleged peaceful criticism of the Government of Sri Lanka. He adds that the United Kingdom of Great Britain and Northern Ireland has suspended the removal of a group of failed Tamil asylum seekers to Sri Lanka as it was concerned about their safety. He claims that, by forcibly returning him to Sri Lanka, the State party would put him at risk, as failed asylum seeker, of being detained, interrogated and ill-treated or tortured by the Sri Lankan authorities upon his arrival.

State party's observations on admissibility and merits

4.1 On 21 January 2014, the State party submitted its observations on the admissibility and merits of the communication. The State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility of his communication under article 7 of the Covenant. It considers that the author has not established that there are substantial grounds for believing that he will be in danger of being subjected to torture if returned to Sri Lanka. The State party therefore considers that the communication is inadmissible.

4.2 The State party notes that the torture and assaults cases to which the author refers concern persons suspected of having links to LTTE, possibly through family members, and that it is not the author's case.

4.3 The State party observes that the Refugee Appeals Board based its decision on the principles stressed in the European Court of Human Rights judgement, *N. A. v. the United Kingdom*,⁶ in which the Court stated *inter alia* that the deterioration of the security situation in Sri Lanka resulting in an increase in the number of human rights violations did not create a general risk to all Tamils returning to Sri Lanka. The Court further observed that both the assessment of the risk to ethnic Tamils with certain profiles and the assessment of whether individual acts of harassment would cumulatively amount to serious violations of human rights could be made only on a specific and individual basis. The State party also refers to five cases submitted to the European Court by ethnic Tamils challenging the decisions of

⁵ The authors refers to the Office of the United Nations High Commissioner for Refugees (UNHCR) Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, p. 8.

⁶ Application No. 25904/07, judgement of 17 July 2008.

the Danish authorities to deport them to Sri Lanka. In all those decisions, dated 20 January 2011, the European Court held that returning them to their country of origin would not constitute a violation of the European Convention, as ethnic Tamils returned to Sri Lanka could not be considered to risk ill-treatment on the sole ground of their ethnic origin.⁷ The State party affirms that the situation in Sri Lanka at the time that the Board took its decision on the author's asylum was not of a different nature, and that a specific assessment of the author's situation and personal risk was required.

4.4 The State party further notes that the Refugee Appeals Board made the requisite specific and individual assessment of the author's situation against background material concerning the situation of ethnic Tamils in Sri Lanka. As a result, the Board concluded that, prior to leaving his country of origin, the author had lived an "unremarkable and non-profiled life", without affiliation with or activity for LTTE. The Board observed that neither the author nor any of his close relatives had joined political or religious associations or organizations or been politically active in a way that would make the author remarkable in the eyes of the Sri Lankan authorities or other groups, including EPDP. The Board also raised the fact that, although the author and his cousin provided food and clothes free of charge to some LTTE members during the civil war, this was not sufficient for the author to be perceived as affiliated to LTTE, as this was a common practice for retailers in the region, and therefore did not give rise to a personal risk for the authors. The Board noted that, at the end of the civil war in 2009, the author had difficult experiences, including harassment at a checkpoint, as all other Tamils did when the Sri Lankan authorities cracked down on LTTE. However, the Board considered that this did not create a specific risk for the author if returned to Sri Lanka.

4.5 With regard to the author's allegations that, having witnessed his cousin's murder, he would be at risk of being persecuted by EPDP, the Board noted that the EPDP members who killed his cousin let the author go. The author was not visited at his home by EPDP members but was questioned, shortly after the murder, at a grocery store by some persons who he assumed to be EPDP members. However, during this incident, the author stated that he had no information as to his cousin's murder and no action has been taken against the author following this incident. The Board also noted that, during the nine months between his cousin's murder and his move to Point Pedro, the author was not approached by EPDP or the Sri Lankan authorities. The Board concluded that there was no link between the alleged harassment and his departure from his village of origin. Furthermore, between the questioning in 2007 at the grocery store and his departure from Sri Lanka in 2012, the author has not been contacted by anyone about the murder. While the author mentioned that some persons tried to contact him after his visit to his aunt in 2012, there is no information about the purpose of their visit.

4.6 The State party finally considers that there is no reason to question the thorough assessment of the author's situation made by the Refugee Appeals Board, which concluded that there is no indication that he will be subjected to torture or to cruel, inhuman or degrading treatment or punishment upon return to Sri Lanka. The State party finally reiterates that the current background material on Sri Lanka does not contain any basis which enables it to assume that Tamils who did not have links to LTTE, or whose family members are not high-profile members of LTTE, will be at risk of persecution as a

⁷ *T.N. v. Denmark*, application No. 20594/08; *T. N. and S.N. v. Denmark*, application No. 36517/08; *S.S. and others v. Denmark*, application No. 54703/08; *P.K. v. Denmark*, application No. 54705/08 and *N.S. v. Denmark*, application No. 58359/08.

consequence of their ethnicity.⁸ The State party concludes that returning the author to Sri Lanka would not constitute a violation of the article 7 of the Covenant.

Author's comments on the State party's observations

5.1 On 20 March 2014, the author submitted his comments on the State party's observations. He stresses that it was indeed EPDP members who questioned him about his cousin's murder at the grocery shop and that it was again EPDP members who were looking for him at his aunt's house after he visited her in 2012. He thinks that his cousin was murdered because of his support for LTTE and their joint activities to help some LTTE members. He reiterates that as a former LTTE supporter who witnessed his cousin's murder by EPDP paramilitaries, he is at risk of being persecuted if he returns to Sri Lanka, both by the Sri Lankan authorities and EPDP.

5.2 The author refers to the UNHCR guidelines, according to which former LTTE supporters who may never have undergone military training but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for LTTE, are recognized as individuals at risk of persecution in Sri Lanka.⁹

5.3 The author further considers that, since the European Court's decision *N.A. v. the United Kingdom* of 2008, the situation of ethnic Tamils in Sri Lanka has further deteriorated and, as of today, even a small link to LTTE puts Tamil returnees at risk of being subjected to torture or ill-treatment by the Sri Lankan security forces. He stresses that Swiss authorities have decided to stop all deportations to Sri Lanka because of the numerous reports of arrest and torture of Sri Lankans who returned to their country after a few years abroad, including when they did so on a voluntary basis.¹⁰ He also mentions some other cases where Sri Lankan returnees of Tamil origins have been arrested and subsequently tortured by the Sri Lankan security forces.¹¹ He states that the Swiss Refugee Council highlighted that the Sri Lankan authorities are extremely paranoid and try to contain by any means any possible resurgence of LTTE, directing their suspicions to all Tamils, even those without a high profile or direct links with LTTE. Therefore, any person returning from abroad is likely to be suspected by the authorities of maintaining links with the LTTE diaspora and suffer persecution.¹²

5.4 The author reiterates that his deportation to Sri Lanka by Denmark would constitute a violation of the article 7 of the Covenant.

⁸ The State party refers in this respect to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, dated 21 December 2012.

⁹ Ibid.

¹⁰ The Federal Department of Migration suspended all deportations to Sri Lanka on 26 August 2013. On 26 May 2014, it announced that this measure was lifted and that all asylum requests presented by Sri Lanka nationals would be reviewed on the basis of updated criteria enabling the determination of their current level of risk and in line with the UNHCR guidelines.

¹¹ He refers to the cases of two rejected Tamil asylum seekers from the Netherlands expelled to Sri Lanka in August 2012 and one from Cyprus (no date). Two of the three persons were subsequently granted asylum when they managed to flee again from Sri Lanka.

¹² The Swiss Refugee Council, *Sri Lanka: current situation update*, 15 November 2012, 4.4 Profile of risk groups.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, in so far as such remedies appear to be effective in the given case and are de facto available to the author.¹³ The Committee has noted that the author unsuccessfully appealed the decision to refuse asylum of the Danish Immigration Services to the Refugee Appeals Board and that the State party does not challenge the exhaustion of domestic remedies by the author.

6.4 The Committee notes the State party's argument that the author's claim with respect to article 7 of the Covenant should be held inadmissible owing to insufficient substantiation. However, the Committee considers that the author has adequately explained the reasons for which he fears that forcible return to Sri Lanka would result in a risk of treatment incompatible with article 7 of the Covenant. The Committee is therefore of the opinion that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under article 7 with plausible arguments in support thereof.

6.5 In the light of the foregoing, the Committee considers that, under article 5 (2) (b) of the Optional Protocol, the communication is admissible in so far as it raises issues relating to article 7 of the Covenant.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee recalls its general comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by article 7 of the Covenant.¹⁴ The Committee has also indicated that the risk must be personal¹⁵ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm

¹³ See communications No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4, and No. 1003/2001, *P.L. v. Germany*, inadmissibility decision adopted on 22 October 2003, para. 6.5.

¹⁴ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹⁵ Communications No. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2, and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6. See also Committee against Torture, communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

exists.¹⁶ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁷

7.3 The Committee recalls its jurisprudence that important weight should be given to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,¹⁸ and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.¹⁹ In this connection, the Committee notes the assessment made by the State party authorities that the author did not face personal risk if returned to Sri Lanka, which is based on the lack of evidence of his affiliation with or activity for LTTE, and of indication that the Sri Lanka authorities or EPDP would have been looking for him.

7.4 The Committee also notes that the author remained in Sri Lanka from 2007, when his cousin was murdered, until 2012, and that he did not indicate that he had any kind of political activity while abroad or that he could be perceived as having a link, even tenuous, with LTTE, that would go beyond the contact that any retailer had with LTTE members in the Jaffna Peninsula during the civil war. The author disagrees with the factual conclusions of the State party, but does not demonstrate that they are manifestly unreasonable. In the light of the above, the Committee cannot conclude that the information before it shows that the author will face a real risk of treatment contrary to article 7 of the Covenant if he were removed to Sri Lanka.

8. The Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the removal of the author to Sri Lanka, would not violate his rights under article 7 of the Covenant.

¹⁶ Communications No. 2007/2010, *J.J.N. v. Denmark*, para. 9.2, and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹⁷ *Ibid.*

¹⁸ See, inter alia, *ibid.* and communication No. 541/1993, *Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

¹⁹ See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4, and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

Appendices

Appendix I

Joint opinion of Committee members Sarah Cleveland, Sir Nigel Rodley, and Víctor Rodríguez-Rescia (dissenting)

1. The author alleges that he is an ethnic Tamil from the North of Sri Lanka whose two brothers and cousin were killed by EPDP, and that he participated in various activities of LTTE. The State party has presented a detailed assessment of this evidence in its observations.

2. However, the author also presented recent evidence that returned Tamil asylum seekers who are perceived to have a link with LTTE continue to face a real risk of torture or ill-treatment contrary to article 7 upon return to Sri Lanka (see paras. 3.3 and 5.3). Reports available at the time when State authorities examined the author's asylum request, as well as more recent reports, indicate that rejected asylum seekers and returnees may be at risk of torture if believed to have real or perceived links to LTTE. This evidence includes guidelines issued by UNHCR in December 2012 that documented "recent cases of former Sri Lankan (in particular Tamil) asylum-seekers who were allegedly detained and ill-treated or tortured after having been forcibly returned to Sri Lanka upon rejection of their asylum claims or who voluntarily returned to Sri Lanka".¹ The information available to the Committee indicates that these concerns continue.²

3. The State party's observations in the case under review never meaningfully engage with the risk attached to being a failed asylum seeker. In evaluating a case alleging a real risk of treatment contrary to article 7 upon return to another country, the Committee takes into account relevant and available information at the time that it makes its decision. In the light of the information provided by the author, the information presently available to the Committee, and the lengthy record of human rights violations in Sri Lanka, we believe that the State party's authorities have not given appropriate consideration to the author's claim that he would be at risk of being subject to torture or ill-treatment if returned to his country

¹ See UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, pp. 8 and 18.

² See UNHCR, "Sri Lanka: Country Of Origin Information Relating To The Targeting Of Ex-LTTE Members/Combatants", 3 February 2014; Human Rights Watch, *World Report*, 20 February 2015: "The government's treatment of Tamils forcibly returned to Sri Lanka after being denied asylum overseas continues to be a significant concern ... Human Rights Watch and others have documented the authorities' use of torture against people suspected of links to the LTTE, including those returned as failed asylum seekers from the United Kingdom and other countries." A Human Rights Law Centre report of 30 September 2014 ("Australia's hasty return of Sri Lankan asylum seekers puts them at risk of torture, rape and other mistreatment") documented the serious risk of torture that failed asylum seekers suspected of links to LTTE may continue to encounter when returned to Sri Lanka, as did Freedom from Torture's updated submission to the Human Rights Committee for the fifth periodic review of Sri Lanka in October 2014, which observed that "people of Tamil ethnicity with even minimal or merely suspected links to the LTTE have been detained and tortured and that these practices continue in the *post-conflict* period" (emphasis in original). See also *Gaksakuman v. US Attorney General*, 767 F.3d 1164, 1170, United States Court of Appeals, Eleventh Circuit, 2014 ("the evidence tended to prove that officials in Sri Lanka tortured at least some failed asylum seekers, particularly if they had an actual or perceived association with the Liberation Tigers").

of origin because of his failed asylum seeker status, both by itself and in conjunction with the other evidence presented by the author.

4. Under these circumstances, we believe that the author's removal to Sri Lanka in the absence of further consideration of his claim that he faces a real risk of ill-treatment as a failed asylum seeker would violate article 7 of the Covenant.

Appendix II

[Original: Spanish]

Individual opinion of Committee member Fabián Salvioli

1. I understand that in the present communication the Committee could have found that the author would still face a risk if deported from Denmark to Sri Lanka, in which case deportation would be in violation of article 7 of the Covenant.
 2. While the present situation in Sri Lanka is different from the one that existed when the author left the country, change is still in its early stages — as in all post-conflict transition situations. It is therefore premature to rule out the possibility that a person such as the author could face a real and serious risk if deported to Sri Lanka, given his proven link with the Tamils and the killing of two members of his family by EPDP.
 3. I understand that, as a general approach to interpreting the matters submitted to it, the Committee must decide for the option most favourable to the alleged victim in case of doubt. This is an example of a borderline case that warranted being considered from a *pro persona* perspective.
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