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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 628/2014

Decision adopted by the Committee at its fifty-seventh session (18 April-13 May 2016)

Submitted by:	J. N. (represented by counsel Michala Bendixen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	15 September 2014 (initial submission)
Date of present decision:	13 May 2016
Subject matter:	Deportation to Sri Lanka
Procedural issue:	Lack of substantiation
Substantive issue:	Non-refoulement
Articles of the Convention:	3, 22

Decision under article 22, paragraph 7, of the Convention against Torture*

1.1 The complainant is Mr. J.N., a Sri Lankan national, born in 1960. His request for asylum in Denmark was rejected and at the time of submission of the complaint, he was in detention awaiting deportation to Sri Lanka. He claims that his deportation would be contrary to article 3 of the Convention as he would be at risk of being subjected to torture in Sri Lanka. No date has been set for his deportation. The complainant is represented by counsel.

1.2 On [redacted] 2014, pursuant to rule 114, paragraph 1, of its rules of procedure (CAT/C/3/Rev.6), the Committee requested the State party not to deport the complainant to Sri Lanka while the communication was being considered by the Committee.

Facts as presented by the complainant

2.1 The complainant was born in Jaffna, Sri Lanka. He is married and has two sons and two daughters. His brother is living in Norway, where he was granted asylum based on his connections with the LTTE. In the past, the complainant helped the Sea Tigers (part of LTTE) using his boat in connection to fighting. However, the main reason for the complainant's asylum claim is a conflict opposing him to the Eelam People's Democratic Party (EPDP) in connection to his son V. [redacted] his sons were forced to train with the LTTE for a period of 15 days in 2004 in return for support provided after the tsunami. In 2008, the EPDP found out about this, took his son V. for interrogation and tortured him. V. was released in a very bad condition and could hardly walk. After his son was treated in a hospital, the complainant brought him to the Human Rights Commission camp. The complainant visited V. in the camp 15 days later; but thereafter lost any contact with him. A couple of months later, in [redacted] 2008, the complainant was called for a meeting in the EPDP camp, where he was interrogated about his son and beaten 10 times in different parts of the body. He was released because he promised to turn his son over to the EPDP. After this, the EPDP searched his house 3-4 times, the last time on [redacted] 2008. The EPDP requested that the complainant bring V. to them by [redacted] 2008 and threatened that the complainant would be executed if he did not do so.

2.2 On [redacted] 2008, the complainant left Sri Lanka illegally with the help of an agent. He has never had a passport issued by the authorities. He arrived in Denmark on [redacted] and applied for asylum in [redacted] on the same day on grounds of having a connection with the EPDP. On [redacted] 2010, his asylum request was rejected by the Danish Immigration Service. On [redacted] 2010, the Refugee Appeals Board had a hearing but postponed the decision as it was awaiting information from the ICRC and the Human Rights Commission in Sri Lanka. On [redacted] 2012, the Refugee Appeals Board rejected the appeal and ordered the complainant to leave the country within two weeks. On [redacted] 2012, the complainant requested the immigration authorities to reconsider his case but on [redacted] 2012, the Refugee Appeals Board informed him that his request would not suspend his deportation and that the time-frame for the Board's reply was 9 to 10 months. After this, the complainant left Denmark and lived in France for 14 months and in Switzerland for 8 months. He returned to Denmark in [redacted] 2014. On [redacted] 2014, he was summoned

* The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Sapana Pradhan-Malla, Ana Racu, Claude Heller Rouassant and Kening Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig did not participate in the consideration of the present communication.

for a meeting with the Danish Immigration police and placed in immigration detention while his deportation was being prepared. The complainant asserts that the Refugee Appeals Board did not consider his request for reconsideration of his case as he was not in Denmark at that time.

2.3 After the final rejection from the Danish Refugee Appeals Board, the complainant has established contact with his wife, who had to change her place of residence in Sri Lanka. He has also learned that his son V. was sent from the Human Rights Commission camp to a refugee camp in India.

The complaint

3. The complainant claims that if returned to Sri Lanka, he would face a risk of torture, inhuman or degrading treatment by the EPDP, who threatened him with death. He also alleges that he would be at a risk of torture by the authorities as a Tamil returning from abroad he would automatically be suspected to be connected with the LTTE. He refers to media and governmental reports to substantiate the risk faced by returning Tamils in Sri Lanka and the murder, abduction and extortions by the EPDP in Jaffna, often covered up or supported by public security forces.

State party's observations on the merits

4.1 On [redacted] 2015, the State party submits, first, that the communication is inadmissible and without merit. Next, it describes the structure and composition of the Refugee appeals Board (R.A.B.). The R.A:B. activities are based on section 53a of the Aliens Act. Decisions of the Danish Immigration Service refusing asylum are automatically appealed to the Board unless the application has been considered manifestly unfounded by the Danish Immigration Service. Appeal to the Board stay execution of deportation. The R.A.B. is an independent, quasi-judicial body and is considered a court within the meaning of Article 39 of the Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005/85/EC). Under the Danish Aliens Act, R.A.B. members are independent and cannot seek directions from the appointing or nominating authority. The R.A.B. decisions are final. Aliens may, however, bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, the ordinary courts' review of decisions made by the Refugee Appeals Board is limited to a review on points of law, including any inadequacy in the basis for the relevant decision and the unlawful exercise of discretion, whereas the Board's assessment of evidence is not subject to review.

4.2 The State party indicates that a residence permit can be granted to an alien if the person's circumstances fall within the provisions of the Convention relating to the Status of Refugees (the Geneva Convention). Article 1 (A) of that Convention is incorporated into Danish law. A residence permit will further be issued to an alien upon application if s/he risks the death penalty or being subjected to torture or other serious ill-treatment or punishment in case of return to his country of origin (protection status). Section 7(2) of the Aliens Act is very similar to article 3 of the European Convention on Human Rights and according to the explanatory notes on this section, the immigration authorities must comply with the case-law of the European Court of Human Rights and the State party's international obligations when applying this provision. In practice, the Refugee Appeals Board will generally consider the conditions for issuing a residence permit to be met when there are specific and individual factors substantiating that the asylum-seeker will be exposed to a real risk of the death penalty or ill-treatment upon return. Furthermore, pursuant to section 31(1) of the Aliens Act, an alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to serious ill-treatment, or

where the alien will not be protected against being sent on to such country (the principle of *non-refoulement*). This obligation is absolute and protects all aliens. In this connection, the State party notes that the Refugee Appeals Board and the Danish Immigration Service have jointly drafted a number of memoranda describing in detail the legal protection of asylum-seekers afforded by international law, in particular the Geneva Convention, CAT, the ECHR and the ICCPR.

4.3 The Refugee Appeals Board assigns a counsel free of charge in all cases and all the case materials and documents are sent to the counsel well in advance before the hearing. Proceedings before the Board are oral and, inter alia an asylum-seeker, his/her counsel and an interpreter are present. At the hearing, an asylum-seeker is allowed to make a statement and answer questions. After the closing statements of the counsel and the representative of the Danish Immigration Service, an asylum-seeker can make a final statement. The Board's decision will normally be served to an asylum-seeker immediately after the hearing, and, at the same time, the chairman of the hearing will briefly explain the reasoning of the decision. The State party notes that decisions are based on an individual and specific assessment of the relevant case and that an asylum-seeker's statements regarding his grounds for asylum are assessed in light of all relevant evidence, including in light of the background information on the respective country of origin. Background reports are obtained from various sources, including the Danish Refugee Council, other governments, the Office of the United Nations High Commissioner for Refugees, Amnesty International, Human Rights Watch, etc.

4.4 In light of the above, the State party notes that an asylum-seeker must provide all required information in order to be able to decide whether s/he falls within section 7 of the Aliens Act and it is thus incumbent upon an asylum-seeker to substantiate that the conditions for granting asylum are met. The Board may also hear witnesses. If an asylum-seeker's statements appear coherent and consistent, the Board will normally consider them as facts, while in cases in which an asylum-seeker's statements throughout the proceedings are inconsistent, the Board will seek clarifications. However, inconsistent statements about crucial parts of an asylum-seeker's grounds for seeking asylum may weaken his/her credibility. In line with the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, the Refugee Appeals Board will generally be less demanding when it comes to the burden of proof in cases of minor asylum-seekers or asylum-seekers with a mental disorder or impairment. In addition, if there are doubts as to the credibility of an asylum-seeker's story, the Board will always, assess to what extent the principle of the benefit of the doubt could be applied.

4.5 The State party further notes that article 1 A of the Geneva Convention does not list torture as one of the grounds warranting asylum; however the fact that an asylum-seeker has been subjected to torture or similar ill-treatment in his country of origin may be essential in the assessment of whether the conditions for granting the asylum-seeker residence under section 7(1) of the Aliens Act are met. In this regard, the State party notes that according to the case-law of the Refugee Appeals Board, the conditions for granting asylum or protection status cannot be considered to be satisfied in all cases where an asylum-seeker has been subjected to torture in his country of origin. This approach is also supported by the practice of the Committee.[1] Where the Refugee Appeals Board considers it a fact that an asylum-seeker has been subjected to torture and risks being subjected to torture in connection with persecution for reasons falling within the Geneva Convention in case of return to his country of origin, the Board will grant residence under section 7(1) of

[1] The State party refers to the decision adopted by the Committee on 29 November 2006 in *N.Z.S. v. Sweden* (communication No. 227/2005) and the decision adopted by the Committee on 14 May 2014 in *Nicmeddin Alp v. Denmark* (communication No. 466/2011).

the Aliens Act (Convention status). In addition, the Board will find that the conditions for granting residence under section 7(2) of the Aliens Act (protection status) are met if specific and individual factors render it probable that the asylum-seeker would be at a real risk of being subjected to torture in case of return to his country of origin.

4.6 Where torture is invoked as one of the grounds for asylum, the Board may sometimes find it necessary to obtain further details in that regard. As part of the appeals procedure, the Board may, *e.g.*, order an examination of an asylum-seeker for signs of torture. The Board normally does not order an examination if an asylum-seeker's story lacked credibility throughout the proceedings and the Board had to reject claim of torture in its entirety. In this regard, the State party refers to the Committee's case of *Milo Otman v. Denmark*,[2] wherein the complainant's statements on torture and the medical information provided were set aside due to the complainant's general lack of credibility. The State party also refers to the case of *Nicmeddin Alp v. Denmark*,[3] where the Committee noted that the State party's authorities thoroughly evaluated all the evidence presented by the complainant even though the authorities did not consider it necessary to order a medical examination as the complainant lacked credibility. In this connection, the State party also refers to the pertinent jurisprudence of the European Court of Human Rights.

4.7 The State party further notes the case of *X, Y and Z v. Sweden*,[4] where the Committee observed that "past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but that the aim of the Committee's examination of the communication is to find whether the authors would risk being subjected to torture now, if returned to the Democratic Republic of the Congo". In this regard, it also notes the case *M.C.M.V.F. v. Sweden*,[5] where the Committee noted that the crucial point is the situation in the country of origin at the time of the potential return of the asylum-seeker to the country of origin.

4.8 The State party further recalls the facts of the case and adds that at the national level the complainant claimed that his sons were forced to undertake a 15-days training by the LTTE in 2006 and not in 2004 as stated by him before the Committee. It also notes that contrary to what the complainant claims, the Human Rights Commission in Sri Lanka did not provide any information whatsoever. The State party further maintains that the complainant has failed to establish a *prima facie* case for the purpose of admissibility of his complaint under article 3 of the Convention as it has not been sufficiently substantiated that there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to Sri Lanka. The complaint is therefore manifestly unfounded and should be declared inadmissible. Should the Committee find the complainant's complaint admissible, the State party submits that the complainant has not sufficiently established that his return to Sri Lanka will constitute a violation of article 3 of the Convention.

4.9 The State party observes that no new information has been provided in the complainant's communication to the Committee on his or his son's conflicts in Sri Lanka. It notes that according to the practice of the Refugee Appeals Board, the aspect that an asylum-seeker has been subjected to torture in his country of origin does not lead to granting asylum or protection status in all cases. The decisive factor in an assessment is whether the respective asylum-seeker risks torture upon return to his country of origin. In this connection, the State party observes that in its decision on [redacted] 2012, the Refugee

[2] Communication No. 209/2002, *Milo Otman v. Denmark*, decision of 12 November 2003, paras 6.4-6.6.

[3] Communication No. 466/2011, *Nicmeddin Alp v. Denmark*, decision of 14 May 2014.

[4] Communication No. 61/1996, *X, Y and Z v. Sweden*, Views of 6 May 1998, para. 11.2.

[5] Communication No. 237/2003, *M.C.M.V.F. v. Sweden*, decision of 12 December 2005, para 6.4.

Appeals Board essentially found the complainant's statement as facts; but in view of the background information concerning the change in the situation in Sri Lanka after the complainant's departure in [redacted] 2008, including the fact that the EPDP had ceased to be an element of the policy of the Sri Lankan government, the Board found that the complainant would not risk being subjected to persecution or ill-treatment within the meaning of section 7 of the Aliens Act upon return. Even though the complainant satisfied the conditions for being granted residence under section 7 of the Aliens Act at the time of his departure in [redacted] 2008, this does not entail that he would automatically be eligible for residence under this provision at the time when the Danish Immigration Service or the Refugee Appeals Board rendered the decision given that the conditions for residence were no longer met and ceased to exist. In other words, the basis for the assessment whether an alien risks persecution or abuse justifying asylum is the information available at the time when the respective decision is made.

4.10 In light of the mentioned, the State party refers to the European Court's conclusions in the case *Ashkan Panjeheighalehei against Denmark*[6] where the Court stated that "the existence of the risk (of being subjected to torture or to inhuman or degrading treatment) must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion [...] and should not be evaluated with the wisdom of hindsight." In this context, the State party further relies on the jurisprudence of the European Court of Human Rights[7] and the Committee's decision in *A.A.R. v. Denmark*[8] and asserts that in the present case when assessing the complainant's actual risk upon his return to Sri Lanka, the Refugee Appeals Board took into account the information on the complainant's personal circumstances, including his and his family's profiling in light of the available background information on the conditions of Tamils in Sri Lanka. This assessment was made in accordance with the principles set out by the European Court in *N.A. v. the United Kingdom* (application No. 25904/07), where the Court stated, *inter alia*, that regardless of the deterioration of the security situation in Sri Lanka and the resulting increase in human rights violations this did not create a general risk to all Tamils returning to Sri Lanka. The European Court further concluded that both the assessment of the risk to ethnic Tamils with certain characteristics and the assessment of whether individual acts of harassment could cumulatively amount to a serious violation of human rights had to be made specifically and individually in every case.

4.11 The State party further notes five cases submitted by ethnic Tamils from Sri Lanka against Denmark,[9] where the European Court of Human Rights reached a conclusion that returning the applicants to Sri Lanka would not constitute a violation of the European Convention on Human Rights. The European Court maintained its conclusion from *N.A. v. the United Kingdom* that ethnic Tamils could not be considered to risk ill-treatment if returned to Sri Lanka and found that the background material concerning the situation in Sri Lanka was not of such nature that any returning Tamil would risk ill-treatment. The Court also stated that the protection under article 3 of the European Convention would only be applicable when an applicant could establish that there were serious reasons to believe that

[6] *Ashkan Panjeheighalehei against Denmark*, European Court of Human Rights, application No.11230/07, decision as to the admissibility of 13 October 2009.

[7] See *Cruz Varas and Others v. Sweden*, European Court of Human Rights, application No. 15576/89, judgement of 20 March 1999, paras. 77-82 ; *Vilvarajah and Others v. the United Kingdom*, European Court of Human Rights, applications Nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, judgment of 30 October 1991, para.107.

[8] See communication No. 412/2010, *A.A.R. v. Denmark*, decision adopted on 13 November 2012.

[9] *N.S. v. Denmark* (application No. 58359/08), *P.K. v. Denmark* (application No. 54705/08), *S.S. and Others v. Denmark* (application No. 54703/08), *T.N. and S.N. v. Denmark* (application No. 36517/08) and *T.N. v. Denmark* (application No. 20594/08),

s/he would be of sufficient interest to the authorities and would be detained and interrogated upon return on that account.

4.12 In the present case, according to its decision of [redacted] 2013, the Refugee Appeals Board also assessed the matter in the light of the most recent background information on conditions in Sri Lanka at that time, including the information in the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka* which lists certain groups of persons with particular connections to the LTTE who may need international protection. In this connection, the State party notes that the complainant has stated before the State party's authorities that he was a member of the Sea Tigers, the naval unit of the LTTE, from 1992 to 2000 and that this has not caused any problems to him. Further, none of the complainant's sons has been a member of the LTTE and they only received military training for two weeks as consideration for the aid received from the LTTE in connection with the tsunami in 2004. As regards his brother's situation, the complainant had stated at the domestic level that his brother was a member of the LTTE, but experienced some problems when the Indian troops arrived in Sri Lanka in 1987 and that he then fled and was subsequently granted asylum in Norway. In this regard, the State party observes that the complainant had stated that his family had no problems when his brother left the country. In addition, the complainant did not invoke his brother's situation during the asylum proceedings. Consequently, the State party supports the assessment made by the Refugee Appeals Board that the complainant would not be a high-profile individual to the Sri Lankan authorities because of his own or other family members' connections to the LTTE.

4.13 As regards the news and reports referred to by the complainant about acts of abuse committed by the Sri Lankan security forces against Tamils, the State party reiterates that the complainant and his family members are not high-profile individuals, and there is no information that the complainant's family living in Sri Lanka, including his spouse or his children, have experienced any ill-treatment following the complainant's departure. The State party also reiterates that the EPDP no longer serves any military function in Sri Lanka, but has, to an increasing extent, taken on the characteristics of a criminal gang, committing extortion and corruption and performing violence against civilians in the Jaffna area. Accordingly, the State party maintains that the complainant has not rendered probable that he faced a real risk of being ill-treated by the EPDP because of his son's training by the LTTE in 2006 at the time when the Refugee Appeals Board rendered its decision, nor that he faces any such risk currently.

4.14 Moreover, the State party notes inconsistencies in the complainant's story. In particular, during the interview of [redacted] 2008, the complainant stated that he had travelled from the village of [redacted] to Colombo on [redacted] 2008, that he had experienced no problems during his journey, that he had in his possession a temporary ID card, which he had presented to the Sri Lankan authorities during his journey, and that he had departed from Colombo Airport on [redacted] 2008 using a temporary Sri Lankan passport issued in his own name. The complainant then stated in his asylum application form of [redacted] 2008 and when interviewed on [redacted] 2009 that he had departed from Colombo Airport on [redacted] 2008 and that he had used a passport issued in a different name. In addition, during the Board's hearing on [redacted] 2010, the complainant stated that he had stayed together with the LTTE on the Jaffna [redacted] for about 20 or 21 days after the EPDP's last visit on [redacted] 2008, and that he had then been accompanied by someone to [redacted] at [redacted] from where he had continued his journey to Colombo. Thus, the State party maintains that the complainant, who left Sri Lanka more than six years ago and who is not a high-profile individual, will not risk being subjected to ill-treatment in violation of article 3 of the Convention if returned to Sri Lanka.

Further submissions by the parties

5.1 On [redacted] 2015, the complainant submitted that he disagrees with the State party's assertion that his complaint is inadmissible. Concerning the merits, he acknowledges that he has not presented any new information to the Committee; however, he refers to a number of reports which confirm that Tamils are still being subjected to ill-treatment in Sri Lanka.[10] The complainant further notes that even if he is not a "high-profile person" in Sri Lanka, he had been arrested, interrogated and beaten by the EPDP and was released only after he had promised to hand over his son. He failed to do so and therefore he was threatened to be killed. Consequently, he fled Sri Lanka illegally with a passport which was not issued in his name. For these reasons he has a well-founded fear that he would be ill-treated upon return. The complainant further submits that the domestic authorities actually found that he was in need of protection at the time when he left Sri Lanka in 2008 and that only on account of the fact that the EPDP had lost its influence in Jaffna, the authorities concluded that he no longer requires protection. He also adds that the EPDP is still active as a paramilitary group and exerts control in Jaffna with a tacit approval of the Sri Lankan army.[11]

5.2 On [redacted] 2016, the State party reiterated its view that the present complaint is inadmissible due to lack of substantiation and is without merit. It observes that in his comments of [redacted] 2015, the complainant confirmed that he has not provided any new information in the context of his complaint before the Committee. It further notes that it appears that the complainant claims that he had left Sri Lanka illegally. In this regard, the State party notes that the complainant travelled to Colombo without experiencing any problems; that he left Colombo airport without any difficulty and that he could stay in Colombo prior to his departure without experiencing any problems. As regards the background information on Sri Lanka, the State party notes that the current background information does not provide any basis for reaching a different assessment of the complainant's asylum case. In this respect, the State party refers to the *Country Information and Guidance – Sri Lanka: Tamil Separatism* (UK Home Office, 28 August 2014), where it is stated that a Tamil's low-level membership of or participation in the LTTE is not sufficient to create a real risk or a reasonable degree of likelihood that the relevant person would attract adverse attention on his return to Sri Lanka. Further, according to the thematic memorandum published by the Norwegian Country of Origin Information Centre on 3 July 2015,[12] the overall security situation in Sri Lanka has significantly improved since May 2009, although the country is still under tight military control, and that Landinfo has not received any information that Tamils returning to Sri Lanka have been exposed to particular security arrangements, subjected to torture or otherwise ill-treated.

5.3 In support of its assertion that the present complaint is unfounded and without merit, the State party finally refers to the recent jurisprudence of the Human Rights Committee. In the case of *P.T. v. Denmark*, this Committee noted that "important weight should be given

[10] The complainant refers to the report of Human Rights Watch "*We will teach you a lesson. Sexual Violence against Tamils by Sri Lankan Security Forces*" (released on 26 February 2013); Sri Lanka Campaign for Peace & Justice report by N. Sivathasan: "*Tamil political prisoners in Sri Lanka, March 2013*; UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Sri Lanka, 21 December 2012; UK Home Office July 2013: "Operational Guidance note Sri Lanka".

[11] The complainant refers to an article from the Colombo Telegraph of September 2013; (https://www.colombotelegraph.com/index.php/wikileaks-epdps-targeted-killing-method-with-govtmilitary-jaffna-government-agent-reveals-secrets/)

[12] *Sri Lanka: Sikkerhetssituasjonen, LTTE og retur til hjem-landet* (Sri Lanka: Security Situation, the LTTE and Return to Country of Origin), 3 July 2015.

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 (...)".[13] Further, in the case *K. v. Denmark*, it stated that "the Danish Refugee Appeals Board thoroughly examined each of the author's claims, and particularly analysed the alleged threats allegedly received by the author in [his country of origin], and found them to be inconsistent and implausible on several grounds. The author challenges the assessment of evidence and the factual conclusions reached by the RAB, but he does not explain why that assessment would be arbitrary or otherwise amount to a denial of justice".[14] In addition, in the *case N. v. Denmark*, the Human Rights Committee concluded that "the author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to the Islamic Republic of Iran would expose him to a real risk of irreparable harm in violation of article 7 of the Covenant. The Committee accordingly concludes that the author has failed to sufficiently substantiate his claim of violation of article 7 for purposes of admissibility and finds his communication inadmissible pursuant to article 2 of the Optional Protocol."[15]

5.4 On [redacted] 2016, the complainant submitted that his complaint is admissible. He maintains that he has well-founded fears that he would risk being subjected to torture upon return to Sri Lanka and notes that the State party's authorities based the decision to deport him on "outdated and insufficient background information" failing to reopen his asylum case when "new reports and recommendations came forward after [redacted] 2012". The complainant further notes that the decision of the Danish Refugee Appeals Board is not subjected to further appeals and submits that it was based on "information which was later proved to be wrong" and thereby amounted to "denial of justice" in the complainant's case. In this connection, the complainant submits that his explanations before the State party's authorities in general were considered to be consistent and credible and he was actually found to be in need of protection when he left Sri Lanka in 2008.

5.5 The complainant states that the State party's immigration authorities decided to reject his asylum application on grounds that the EPDP was no longer connected to the Sri Lankan authorities and that the general risk of torture of returned Tamils was at the time considered to be low. However, he argues that "many reports have later proved both [grounds] to be questionable". Therefore, the State party's immigration authorities should reopen his asylum case and examine his application in light of the most recent background information on Sri Lanka. The complainant maintains that there has been "no change of power" in Sri Lanka after he left the country and that "the Board" has not presented any evidence that he would not face any danger upon return. In this regard, the complainant submits that in 2013 and 2014 the State party granted asylum to "10 out of 16 asylum seekers from Sri Lanka"; five rejections were based on lack of credibility, which, according to the complainant, indicates that "the Board in similar cases now acknowledges a strong need for protection".

5.6 The complainant submits that torture and other forms of ill-treatment are still widespread in Sri Lanka and given his background, he is at risk of being subjected to torture or other degrading treatment upon return. He adds that in its submission to the Committee, the State party has omitted important facts. According to the Norwegian Landinfo (2015) on Sri Lanka "arbitrary arrests and detention are still reported and that the Sri Lankan government still considers the LTTE as "a security risk". According to the UK

[13] The Human Rights Committee, communication No. 2272/2013, *P.T. v. Denmark*, adopted on 1 April 2015, para. 7.3.

[14] Communication No. 2393/2014, *K v. Denmark* , adopted on 16 July 2015, paras 7.4 and 7.5.

[15] Communication No. 2426/2014, *N v. Denmark*, adopted on 23 July 2015, para. 6.6.

based organisation "Freedom from Torture", it has gathered "evidence of 160 (torture) cases up (until) September 2014". The complainant further provides extracts from a number of "sources"[16] demonstrating a "different picture" of Sri Lanka than the one provided by the State party. The complainant reiterates that he was not a "high profile person" in Sri Lanka, but that he had assisted the LTTE Sea Tigers. In this regard, he reiterates his story[17] and submits that he had left Sri Lanka illegally and that he was able to leave Sri Lanka without any problems as he was not a "highly profile person". In conclusion, he notes that all returnees in Sri Lanka are thoroughly questioned upon return and later detained and that a mere suspicion of being connected to the LTTE can lead to "severe torture and degrading treatment".

5.7 On [redacted] 2016, the State party submitted further observations. It refers to its previous observations and specific argumentation concerning the present case and reiterates that the complainant has failed to establish a *prima facie* case for the purpose of admissibility of his complaint under article 3 of Convention and that the complaint is therefore manifestly ill-founded and should be considered inadmissible. In the alternative, the State party maintains that it has not been established that there are substantial grounds for believing that the author's return to Sri Lanka would constitute a violation of article 3 of the Convention. The State party further refers to the case-law of the Danish immigration authorities which demonstrates *inter alia* the high recognition rates for asylum claims between 2013 and 2015.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, 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, paragraph 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, paragraph 5 (b), of the Convention, it shall not consider any complaint unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground.

6.3 The Committee notes the State party's argument that the complaint should be held inadmissible for lack of substantiation. The Committee, however, considers that the communication has been sufficiently substantiated for the purposes of admissibility, as the allegations of a risk of torture or ill-treatment in case of the complainant's forced removal to Sri Lanka raise issues under article 3 of the Convention. As the Committee finds no further obstacles to admissibility, it declares the present complaint admissible.

Consideration of the merits

7.1 The Committee has considered the present complaint in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

[16] Amnesty International, US Home Office, Swiss Refugee Council, Canadian authorities, UNHCR, Human Rights Watch.

[17] See paras 2.1 and 2.2 above.

7.2 The issue before the Committee is whether the complainant's forced removal to Sri Lanka would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (refouler) a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 The Committee must verify whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. 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.[18]

7.4 The Committee recalls its general comment No. 1 (1997)[19] on the implementation of article 3 of the Convention, in which it states that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable", the burden of proof normally falls upon the complainant, who must present an arguable case establishing that he or she runs a "foreseeable, real and personal" risk.[20] The Committee gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead had the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[21]

7.5 The Committee notes the complainant's claim that his forcible removal would amount to a violation of his rights under article 3 of the Convention as he would be exposed to a risk of being tortured in Sri Lanka. The Committee also notes the complainant's claim, which the State party has accepted, that in 2008 he was detained and beaten by members of the EPDP paramilitary group who sought information about his son's whereabouts and prior association with the LTTE. The complainant also claimed that he was personally associated with the LTTE Sea Tigers from 1992 to 2000, although he did not participate in any combat.

7.6 The Committee notes that in its decision on [redacted] 2012, the State party's Refugee Appeals Board considered the complainant's claims regarding his prior abuse by

[18] See e.g. communication No. 467/2011, *Y.B.F., S.A.Q. and Y.Y. v. Switzerland*, decision adopted on 31 May 2013, para. 7.2, Communication No. 392/2009, *R.S.M. v. Canada*, decision adopted on 24 May 2013, para. 7.3, Communication No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

[19] General comment No. 1, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX.

[20] See, for example, communications No. 203/2002, *A.R. v. Netherlands*, Views adopted on 14 November 2003, para. 7.3; No. 285/2006. *A.A. et al. v. Switzerland*, decision adopted on 10 November 2008, para. 7.6; No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.4.; and No. 343/2008, *Arthur Kasombola Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 9.3.; and No. 414/2010, *N.T.W. v. Switzerland*, decision adopted on 16 May 2012, para. 7.3.

[21] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

members of the EPDP and affiliation with the Sea Tigers to be facts, yet nevertheless, the Board determined that these factors no longer gave rise to a real risk that he would be subjected to torture if returned to Sri Lanka. In this connection, the Committee observes that the Board considered that the EPDP is no longer affiliated with the government as a paramilitary force but rather has lost influence and holds a status akin to that of a criminal gang, and therefore does not pose the same threat to the complainant as it might have in the past. Moreover, in the view of the State party, the complainant's prior low-level affiliation with the LTTE Sea Tigers was insufficient to create a reasonable likelihood that he would attract adverse attention upon his return to Sri Lanka. The Committee also recalls that the State party has raised concerns about several alleged inconsistencies and omissions in the complainant's claims to its asylum authorities.

7.7 In this connection, while the Committee notes that the State party's asylum authorities have considered the complainant's allegations and have concluded that the complainant would not risk being subjected to persecution or ill-treatment upon return to Sri Lanka. The Committee recalls that while it gives considerable weight to findings of fact that are made by organs of the State party concerned, it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[22]

7.8 Further, as to the complainant's general claim that he risks to be subjected to torture upon return to Sri Lanka as all returning Tamils are automatically considered to be linked to the LTTE, the Committee recalls that the occurrence of a consistent pattern of gross human rights violations in his/her country of origin is not sufficient in itself for it to be concluded that a complainant runs a personal risk of torture there.[23] In this context, the Committee refers to its concluding observations following its 2011 examination of the combined third and fourth periodic reports of Sri Lanka,[24] where it expressed serious concern about reports suggesting that torture and ill-treatment perpetrated by State actors in Sri Lanka, both the military and the police, had continued in many parts of the country after the conflict with the LTTE ended in May 2009.[25] The Committee also refers to its concluding observations following its 2013 examination of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, in which the Committee noted evidence that some Sri Lankan Tamils had been victims of torture and ill-treatment following their forced or voluntary removal from the State party to Sri Lanka.[26] The Committee further refers to the Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment following the official joint visit with the Special Rapporteur on the independence of judges and lawyers to Sri Lanka from 29 April to 7 May 2016, wherein it was noted that "torture is a common practice" and that the "current legal framework and the lack of reform within the structures of the armed forces, police, Attorney-General's Office and judiciary perpetuate the real risk that the practice of torture will still continue."[27]

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[22] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

[23] See for example No. 426/2010, *R.D.* v. *Switzerland*, decision of 8 November 2013, para. 9.2; communication No.591/2014, *K. v. Australia*, decision of 25 November 2015, para.10.11.

[24] Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture Sri Lanka, CAT/C/LKA/CO/3-4, 8 December 2011

[25] Ibid, para 6.

[26] See Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture United Kingdom of Great Britain and Northern Ireland, CAT/C/GBR/CO/5, 24 June 2013, para 20; pp. 23-24.

[27] Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez, on the Official joint visit to Sri

7.9 The Committee further notes that a credible report published by a non-governmental organization in 2015 documents 55 cases in which individuals who returned to Sri Lanka from the United Kingdom from 2009-2015 alleged that they were subsequently detained and tortured by the Sri Lankan authorities, and notes that in 54 of the 55 cases a past connection with the LTTE, either low-level or high-level and either directly or through a family member or acquaintance, appeared to have been at least a contributory factor in their detention[28]. The report also notes that the fact that the victims had returned from abroad might have particularly attracted the attention of the authorities. This report is consistent with other non-governmental reports published in recent years, including one documenting 40 cases in which individuals connected or perceived as having been connected to the LTTE were subjected to abduction, arbitrary detention, torture, rape and sexual violence by Sri Lankan authorities between 2009 and 2014 for the purpose of extracting confessions and/or information about the LTTE and to punish the victims for their involvement with the organization.[29] In addition, according to the latter report, the EPDP remains involved in cases of torture perpetrated by the authorities, often brokering the release of persons detained by the authorities in exchange for money.[30] The Committee considers that all the above shows that Sri Lankans of Tamil ethnicity with a prior personal or familial connection to the LTTE facing forcible return to Sri Lanka may face a risk of torture

7.10 In the present case, the complainant has alleged, and this remained unrefuted by the State party, that he has both a prior personal and a prior family connection to the LTTE, and that he previously was detained and tortured by a paramilitary group associated with the Sri Lankan authorities because of the perceived LTTE family connection. Accordingly, the Committee finds that, taking into account all the factors in this particular case read as a whole, and in light of the reports regarding the current human rights situation in Sri Lanka, which do not appear to have been sufficiently taken into account by the State party's authorities, including in the context of the present communication, and given the complainant's previous ill-treatment in Sri Lanka in 2008, there are substantial grounds for believing that the complainant would face a real, personal and substantial risk of being subjected to torture in case of forcible return to Sri Lanka.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that there are substantial grounds for believing that the complainant would face a foreseeable, real and personal risk of being subjected to torture by the authorities if returned to Sri Lanka. The Committee therefore concludes that the deportation of the complainant to Sri Lanka would amount to a breach of article 3 of the Convention by the State party.

9. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Sri Lanka or to any other country where there is a real risk of him being expelled or returned to Sri Lanka. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee

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Lanka - 29 April - 7 May 2016, Colombo, 7 May 2016.

[28] Freedom from Torture, *Tainted Peace: Torture in Sri Lanka since May 2009*, August 2015, available at: http://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf

[29] Yasmin Sooka, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth and Justice Project, Sri Lanka; *An Unfinished War, Torture and Sexual Violence in Sri Lanka 2009-2014*, March 2014, available at: https://barhumanrights.org.uk/sites/default/files/documents/news/an_unfinihsed_war._torture_and_sexual_violence_in_sri_lanka_2009-2014_0.pdf.

[30] Ibid., p. 31.

invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in response to the present decision.