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Communication No. 2258/2013

**Views adopted by the Committee at its 115th session
(19 October-6 November 2015)**

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| <i>Submitted by:</i> | J. R. and J. R. (represented by counsel, Michala Bendixen from Refugees Welcome) |
| <i>Alleged victim:</i> | The authors |
| <i>State Party:</i> | Denmark |
| <i>Date of communication:</i> | 3 June 2013 (initial submission) |
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| <i>Subject matter:</i> | Deportation to Sri Lanka of unaccompanied minor |
| <i>Procedural issues:</i> | Failure to sufficiently substantiate allegations |
| <i>Substantive issues:</i> | Risk of torture or cruel, inhuman or degrading treatment |
| <i>Articles of the Covenant:</i> | 7 |
| <i>Articles of the Optional Protocol:</i> | 2 |

Annex

Views of the Human Rights Committee under article 5, paragraph 4, the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2258/2013*

Submitted by: J. R. and J. R. (represented by counsel, Michala Bendixen from Refugees Welcome)

Alleged victim: The authors

State Party: Denmark

Date of communication: 3 June 2013 (initial submission)

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

Meeting on 4 November 2015,

Having concluded its consideration of communication No. 2258/2013, submitted to the Human Rights Committee on behalf of J. R. and J. R. 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 authors of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communication are J. R. and J. R., Sri Lankan nationals, born on 28 November 1992. They claim that their return to Sri Lanka by the State party would constitute a violation of article 7 of the Covenant. They are represented by counsel.

1.2 On 14 June 2013, pursuant to rule 92 of the Committee's 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 authors to Sri Lanka while the communication was being examined. On 17 June 2013, the Danish Ministry of Justice extended the authors' time limit for departure until further notice, in accordance to the Committee's request.

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. A joint opinion by Committee members Yuval Shany, Anja Seibert-Fohr and Konstantine Vardzelashvili (dissenting) is appended to the present Views.

Factual background

2.1 The authors are twin brothers, ethnic Tamils and of Christian faith. They claim that their father was a member of the Liberation Tigers of Tamil Eelam (LTTE) until he got married, that he was “border guard” and that he called himself “Karthik”. They were born in Jaffna and when they were 3 years old their family fled to Puthukudiruppu, in the Vanni area, due to the civil war. They grew up and went to primary and lower secondary school there until 2007 when they had to stop attending the school because of the war. Their father worked as a welder, but in 2009 he was abducted by persons who had the LTTE logo. Their father’s fate and whereabouts remain unknown since then. Afterwards, the military forces moved closer to their village and they, together with their mother and sister, fled to Mullivaikatal. However, on an unspecified day, the military forces attacked Mullivaikatal with artillery and also from the air which forced them to flee again. During the flight, they lost contact with their mother and sister. They claim that they were unable to retake contact with them.

2.2 The authors claim that they were taken by the military into the Ramanathan camp, in the city of Vavuniya. The camp was run by the military and nobody could leave or enter it without military authorization. They were accused of having fought for the LTTE. J. was interrogated three or four times and J. once about their connections with the LTTE and their father’s whereabouts. They further claim that when J. denied any connection with the LTTE, he was hit and threatened by the militaries; and that they were afraid to tell them about the kidnapping of their father by the LTTE. After two months, their mother’s brother found them. He went to the camp twice. The second time he managed to take them out of the camp with bribes and brought them to Colombo. He also arranged their trip in order to leave Sri Lanka.

2.3 After going through Thailand and another country, on 11 October 2009 the authors arrived in Denmark without valid travel documents. They claim that they were 16 years old at that time. On 12 October 2009, the Police interviewed them. On 20 and 22 October 2009, respectively, J. and J., filed applications for asylum before the Immigration Service. They claimed that they feared to be persecuted and accused of being LTTE members in light of their Tamil ethnicity, their father’s past membership with this organization, his disappearance and the events they faced in their country. This risk was aggravated by the fact that they left Sri Lanka illegally. They also claimed that prior to their departure from Sri Lanka they had never met their grandparents and most of their relatives since their parents’ families disapproved the marriage; that they had lost contact with their mother’s brother; and that they presumed their mother and sister died during the war.

2.4 On 25 May 2010, the Danish Immigration Service decided that the authors were sufficiently mature to have their asylum applications examined. On 28 May 2010, the Immigration Service rejected the authors’ applications for asylum. It stated that there was no information to presume that their father’s disappearance was linked to the LTTE’s activities; that the authors declared that they were not members of the LTTE; that they were not personally in contact with members of the LTTE; and that they had no problems with the authorities in relation with their father’s previous membership with the LTTE. According to reports on the human rights situation in Sri Lanka, persons that did not support or were not high profile members of the LTTE were not in general under persecution by the authorities. It further noted that the war had stopped in Sri Lanka and that the LTTE had been defeated; that the fact that they had parents and that their village had been exposed to disturbances or bombings could not lead to conclude that they were in need of international protection. The authors appealed the decisions before the Refugee Appeals Board (RAB).

2.5 On 2 July 2010, the Ministry of Justice refused the authors’ applications for a residence permit on humanitarian grounds under section 9b(1) of the Aliens Act.

2.6 On 22 September 2010, the RAB rejected the authors' appeal. The RAB stated that although it found as facts the accounts given by the authors that they were ethnic Tamils from the Vanni area; that they had not been politically active; that their father was taken by the LTTE at some time in 2009; that they fled to Mullivaikal; that they lost contact with their mother and sister; and that they were driven by the military to a camp in Vavuniya, where they were picked up by a maternal uncle after two months. However, the fact that their father was active member of the LTTE could not lead to conclude that the authors were at risk of persecution. It noted that their father's membership with this organization finished when he got married; that after that, he was able to live for a long period without any problem; that there was no basis for assuming that his activities had been of such nature or scope that they had subsequently made the father stand out up to the date of the authors' departure; and that the Sri Lanka's authorities did not inflict any abuses on the authors when they were in the camp in Vavuniya, from which they left without problems. Further, background information on the human rights situation in Sri Lanka noted that persons who are suspected of being LTTE's supporters but not highly profiled were generally not at risk of persecution. Therefore, the RAB concluded that the authors' removal to Sri Lanka would not put them at risk of persecution. The RAB pointed out that no deadline to leave the State party had been established, since the Danish Immigration Service indicated during the hearing that it would consider *ex officio* whether the authors' case fell under section 9c(3)(ii) of the Aliens Act (special residence permit for unaccompanied minors asylum-seeker). However, the authors could be forcibly removed to Sri Lanka, if they were not granted residence permit under this provision.

2.7 Within the proceedings before the Danish Immigration Service under section 9c(3)(ii) of the Aliens Act, the authors claimed that they had no contact with anybody in Sri Lanka and provided psychological reports dated 8 November 2010 stating that they had learning difficulties, low self-esteem, anxiety and depression problems; and that they were in special need of support, guidance and care; as well as J.'s medical records dated 8 September 2011 from the Danish Red Cross, that noted that he suffered from post-traumatic stress disorder and had suicidal thoughts.

2.8 On 5 July 2011, the Danish Immigration Service asked the Ministry of Foreign Affairs to initiate a search of the authors' relatives in Sri Lanka. On 7 July 2011, the Ministry of Foreign Affairs informed the Danish Immigration Service that it was unable to carry out this search for both security and resource reasons.

2.9 On 30 January 2012, the Immigration Service denied granting the authors with residence permit under section 9c (3) (ii) of the Aliens Act. It considered that they failed to show that their low cognitive level and psychological conditions were of such severity to be in need to stay in the State party and that their problems could also be treated in Sri Lanka. Although the search of the authors' parents through the Red Cross was unsuccessful and the Danish Foreign Office was unable to conduct a search in Sri Lanka, there was no evidence to conclude that their parents were no longer alive and living in Sri Lanka. The authors appealed the decision before the Ministry of Justice.

2.10 On 27 February 2013, the Ministry of Justice confirmed the Immigration Service's decision of 30 January 2012 and informed the authors that they should leave the State party's territory on 6 March 2013 at the latest. It pointed out that an unaccompanied minor who claims that he has no family network in his country of origin normally bears the burden of proving this; and stated that the authors were born and raised in Sri Lanka with their parents and siblings; that it must be assumed that their parents and sister were still living in Sri Lanka; and that they may constitute such family network for them that they would not be placed in an emergency situation upon return. It further stated that even if their parents and sister had died, the authors would not meet the conditions for being issued with a residence permit, since they had an uncle who lived in Colombo. The fact that they did not know his exact address in Colombo could not lead to any other result. Accordingly,

the Ministry of Justice found that the authors' situation would not be different from the situation applicable to other persons of the same age in Sri Lanka; and that they would not in fact be placed in an emergency situation upon a return to that country. Finally, it concluded that the information provided regarding the authors' general learning difficulties, low self-esteem and anxiety and depression problems, as well as their special need of support and care could not lead to conclude otherwise.

The complaint

3.1 The authors allege that their deportation to Sri Lanka would constitute a violation of article 7 of the Covenant in view of the circumstances surrounding their Tamil origin, the events they went through prior to their departure, and their father's previous membership with the LTTE and his disappearance.

3.2 The Danish authorities did not assess adequately the risk they will be subject to if returned to Sri Lanka. They are at serious risk of being detained and tortured by the Sri Lankan authorities since they are young Tamils from Jaffna, and their father was a member of the LTTE. Tamils who are returned to Sri Lanka are often detained upon arrival and exposed to acts of torture.¹ In their case, the fact that they left the country illegally and will be returned by the State party with temporary travel documents puts them at further risk.

3.3 They claim that they have been abroad since 2009 and that they had no family or connections left in Sri Lanka. They are very young, have limited cognitive skills and need special support as described in a report issued by a psychologist of the Danish Red Cross.

State party's observations on the admissibility and the merits

4.1 On 16 December 2013, the State party provided observations on the admissibility and merits of the communication. It maintains that the communication should be declared inadmissible for non-substantiation. Should the Committee declare the communication admissible, the State party maintains that the Covenant would not be violated if the authors are returned to Sri Lanka.

4.2 The State party informs the Committee that on 29 August 2013, the RAB refused the authors' request to reopen the asylum proceedings. The RAB stated, *inter alia*, that when it considered cases in which the asylum-seeker was an unaccompanied minor, it would assess the asylum-seeker's procedural capacity, including maturity. In this connection, the RAB referred to its decision of 22 September 2010, in which it assessed that the authors were sufficiently mature to undergo asylum proceedings since they were able to give coherent statements on their grounds for asylum and during the proceedings, before the Danish Immigration Service. Further it had also found as facts the authors' statements about their grounds for asylum. Against that background, the RAB found no basis for reopening the proceedings.

4.3 The State party provides a detailed description of the asylum proceedings under the Aliens Act and in particular as to the organization and competence of the RAB. Decisions of the RAB are based on an individual and specific assessment of the relevant case. The asylum-seeker's statements regarding his grounds for seeking asylum are assessed in light of all relevant evidence, including what is known about conditions in the country of origin (background material). The RAB is responsible not only for examining and bringing out information on the specific facts of the case, but also for providing the necessary

¹ The authors refer to the Human Rights Watch's report "We will teach you a lesson. Sexual Violence against Tamils by Sri Lankan Security Forces" (February 2013).

background material, including information on the situation in the asylum-seeker's country of origin or first country of asylum.²

4.4 The State party provides a detailed description of the provisions of the Aliens Act that regulate the asylum proceedings in cases of unaccompanied minors. It maintains that unaccompanied asylum-seeking minors must meet the same conditions as other asylum-seekers to be granted asylum. However, children are considered a particularly vulnerable group, and special guidelines therefore apply to the examination of their applications. All unaccompanied asylum-seeking minors will have an appropriate adult appointed to them by the State Administration to safeguard their interests until they turn 18 years old. The examination of the child by the RAB is adapted to the child's age and maturity. Normally it is less demanding when it comes to the burden of proof. The State party refers to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (paras. 213-219) and upholds that where a minor has not reached a sufficient degree of maturity to make it possible to establish well-founded fear of persecution in the same way as for an adult, it may be necessary to have greater regard to certain objective factors.

4.5 In the proceedings concerning the request for residence permits for unaccompanied minors, under section 9c (3) (i) or (ii) of the Aliens Act, children under the age of 12 are normally not considered sufficiently mature to undergo ordinary asylum proceedings. As for children between the ages of 12 and 15, a specific assessment is made of the individual child to determine whether it is sufficiently mature to undergo asylum proceedings. Children above the age of 15 are normally considered sufficiently mature, but a specific determination is made in each individual case. In the assessment of the minor's maturity, factors taken into consideration include not only the minor's age, but also other special factors, such as impaired development, illness or severe traumas. The Danish Immigration Service makes the decision on the child's maturity, and the assessment is subject to review by the RAB in connection with the consideration of a refusal of asylum, if relevant.

4.6 Pursuant to section 9c(3)(ii) of the Aliens Act, a residence permit may be issued to an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 (asylum) prior to his 18th birthday if there is reason to assume, in cases other than those mentioned in section 7(1) and (2) of the Aliens Act, that the alien will in fact be placed in an emergency situation upon a return to his country of origin. Under section 9c(3)(ii) of the Aliens Act, the authorities' assessment takes into account both the asylum-seeker's personal circumstances and the general situation in his country of origin. For instance, a residence permit is normally granted in cases where the child's parents are dead, or where there is reliable information that they cannot be found; or where there would be a serious risk that the child would in fact be placed in an emergency situation upon a return. Pursuant to section 40(1), first sentence, of the Aliens Act, an asylum-seeker must provide such information, as is required for deciding whether a residence permit can be issued under the Aliens Act. Accordingly, it follows that an unaccompanied minor who claims that he has no family network in his country of origin normally bears the burden of proving this.

4.7 As to the authors case, the State party maintains that the RAB based its decisions of 22 September 2010 on the principles in the judgment of the European Court of Human Rights (ECtHR) in *NA v. the United Kingdom* (appl. No. 25904/07, judgment of 17 July 2008), inter alia, that regardless of the deterioration of the security situation in Sri Lanka and the resulting increase in the number of human rights violations this did not create a

² As to the background material regarding Sri Lanka, the State party refers to the RAB website: www.fln.dk.

general risk to all Tamils returning to Sri Lanka.³ The State party points out that in its decision of 22 September 2010, the RAB made a specific individual assessment and concluded *inter alia* that the activities for the LTTE carried out by the authors' father went so far back in time and were of such scope and nature that they had not made him (and, consequently, the authors) stand out, and the authors had not previously been subjected to any abuse by the authorities. The RAB further stated *inter alia* that the authors had not been subjected to any abuse by the authorities during their stay in the camp in Vavuniya; that they had also left the camp without any problems; and that it appeared from the background information on the situation in Sri Lanka that persons suspected of being sympathetic to the LTTE, but not high-profile, were generally not at any risk of persecution. The State party submits that there is no reason to question the RAB's assessment and that the authors' individual situations do not in any way indicate that they will be subjected to torture or to cruel, inhuman or degrading treatment or punishment upon return to Sri Lanka.

4.8 The State party maintains that, the authors are in fact trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. However, the Committee must give considerable weight to the findings of the RAB, which is better placed to assess the findings of fact in the authors' cases. In that connection, in February 2013, its authorities determined that there was no specific basis in the background information on Sri Lanka for assuming that Tamils who had not themselves been affiliated with the LTTE and whose family members were not high-profile members of the LTTE would be at any risk of persecution or abuse justifying asylum merely as a consequence of their ethnicity. The State party refers to the 2012 UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka,⁴ and notes that the authors' father does not appear to have had an executive position with the LTTE according to the authors' own statements. Moreover, their father's involvement with the LTTE goes far back in time, and he was able to leave the organisation without experiencing any problems, and to live in peace with his family for many years. Other background material available concerning Sri Lanka, including Freedom House: *Freedom in the World 2013 – Sri Lanka*, published on 10 June 2013, and the report from Human Rights Watch: '*We will teach you a lesson*' of 26 February 2013, to which the authors have referred, does not appear either to contain information to assume that unprofiled Tamils like the authors will be subjected to persecution or abuse upon their re-entry to Sri Lanka as failed asylum-seekers.

4.9 The State party points out that on 27 February 2013, the Ministry of Justice decided not to grant the authors residence permits under section 9c(3)(ii) of the Aliens Act. It stated *inter alia* that there was insufficient basis for assuming that the author's family was not still living in Sri Lanka. Even if their parents and sister had died, the authors had a maternal uncle residing in Colombo and he might constitute such family network for the authors not to be placed in an emergency situation upon return.

4.10 As to the authors' allegations that they are vulnerable and need support due to their age, maturity and health, the State party maintains the Immigration Service and RAB's conclusions that they were sufficiently mature to undergo asylum proceedings. Their situation as unaccompanied asylum-seeking minors was duly taken into account by the authorities. After their asylum requests were denied by the RAB, the Danish Immigration Service and the Ministry of justice assessed *ex officio* whether the authors could be granted

³ The State party also refers to the ECtHR jurisprudence in *N.S. v. Denmark* (appl. No. 58359/08), *P.K. v. Denmark* (appl. No. 54705/08), *S.S. and Others v. Denmark* (appl. No. 54703/08), *T.N. and S.N. v. Denmark* (appl. No. 36517/08) and *T.N. v. Denmark* (appl. No. 20594).

⁴ See UNHCR *Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka*, (21 December 2012), p. 27.

a residence permit under section 9c(3)(ii). The assessment of the asylum-seeker's procedural capacity is made on the basis of personal appearance and the ability to give relevant answers to the questions asked during the Board hearing. During the hearing of the case, the RAB would take into special consideration the asylum-seeker's individual situation, including his age and health. The State party refers to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status⁵ and points out that the RAB would, as its point of departure, be less demanding when it came to the burden of proof in case of minor asylum-seekers or asylum-seekers with a mental disorder or impairment.

Authors' comments on the State party's observations

5.1 On 16 February 2014, the authors submitted their comments on the State party's observations on admissibility and merits. They argue that background material about the human rights situation in Sri Lanka published after 22 September 2010 should have been taken into account by the RAB when considering their request for reopening the asylum proceedings and by the Ministry of Justice's decision of 27 February 2013. This material indicated that Tamils were exposed to massive abuse and arbitrary detention in Sri Lanka. This was enough ground to reopen their asylum proceedings.⁶ In the authors' view, all Tamils are at risk in Sri Lanka.

5.2 The authors submit that the 2012 UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka provides that Tamils with family ties to former LTTE supporters are exposed to treatment which may give rise to a need of international protection.

5.3 The burden of proof should be less demanding when it comes to minor asylum seekers, and health problems or other vulnerabilities should also be considered. In their case, psychological examinations carried out by the Danish Red Cross indicate that the authors have limited cognitive skills, suffer from anxiety and need special support.⁷ However, the authorities have failed to give any special consideration to this. The Ministry of Justice has assumed that their mother and sister are still alive, in spite of the fact that 40,000 persons were killed at the time and place they were last seen, and that the authors have not heard about them since. As to their uncle, they do not know if he still lives in Colombo and had no contact with him or any other relative in the last 5 years. Moreover, the authors claim that their uncle told them that he did not want to take care of them because he was hiding his Tamil origin.

5.4 The authors submit that the State party's observations concerning their accounts are not accurate. They highlight that in the interviews held with the Danish authorities within the asylum proceedings, they mentioned that they left the Ramanathan camp secretly and because their uncle paid a bribe to some of the staff. The military staff accused them of having fought for the LTTE, interrogated them about their father, and hit one of them.

5.5 The authors reiterate that the authorities failed to give due consideration to relevant information, such as the fact that they are Tamils, were taken to a military camp from where they escaped by paying a bribe, left the country illegally, their father was a member of the LTTE, and they come from an area that was controlled by the LTTE for many years.

⁵ See paras. 206-219.

⁶ The authors refer to the UNHCR *Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka*, (21 December 2012); and HRW report "We will teach you a lesson" (26 February 2013).

⁷ The authors do not provide any documentation. It appears that they refer to the report provided by the Red Cross within the proceedings to determine if they met the condition for a residence permit under section 9c(3)(ii) of the Aliens Act.

Nor have the authorities taken into account their young age, limited cognitive skills and mental health.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes that the authors unsuccessfully appealed the negative asylum decision to the Danish Refugee Appeals Board, as well as the denial of residence permit under section 9c(3)(ii) of the Aliens Act to the Ministry of Justice; and that the State party does not challenge the exhaustion of domestic remedies by the authors. The Committee, therefore, considers that domestic remedies have exhausted according to article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee notes the authors' claims under article 7 of the Covenant that if returned to Sri Lanka they would be at risk of being killed or tortured. The Committee also takes note of the State party's argument that the authors' claims under article 7 are unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the authors have provided sufficient substantiation regarding their claims. As no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered this communication in the light of all the information received, in accordance with article 5, paragraph 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 articles 6 and 7 of the Covenant.⁸ The Committee has also indicated that the risk must be personal⁹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹⁰ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹¹

⁸ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

⁹ Communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; 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; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

¹⁰ Communications No. 2007/2010, *X v. Denmark*, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹¹ *Ibid.*

7.3 The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review or evaluate the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.¹²

7.4 The Committee notes the authors' claims under article 7 that if returned to Sri Lanka, they would face risk of persecution as young Tamils from Jaffna whose father was a former LTTE member and as failed asylum-seekers that are returned with temporary travel documents; that the State party's authorities did not give sufficient weight to the events they went through prior to their departure from their country of origin; and that background material allegedly indicate that all Tamils were at serious risk in Sri Lanka. They also claim that the authorities failed to take into due consideration their lack of family ties in Sri Lanka, their limited cognitive skills, and their need for especial support.

7.5 The Committee also notes the State party's arguments that Tamil persons will not be at risk only because of their ethnicity; that according to background material on the human rights situation in Sri Lanka, available at the time that the RAB denied the authors' request for asylum, persons suspected of being sympathetic to the LTTE, but not high-profile, were generally not at any risk of persecution; and that further reports published before February 2013 did not support the conclusion that Tamils who had not themselves been affiliated with the LTTE and whose family members were not high-profile members of the LTTE would be at any risk of persecution. Against this background, the State party maintains that the authors would not be a risk of a treatment contrary to article 7 of the Covenant if returned to Sri Lanka. Further, its immigration authorities, including the RAB, and the Ministry of Justice also took into account their situation as unaccompanied minors and concluded that they were sufficiently mature to undergo asylum proceedings; that their low cognitive level and psychological conditions were not of such severity as to be in need to stay in the State party; and that, if returned, they would not be placed in an emergency situation.

7.6 The Committee observes that: the Danish Immigration Service examined *ex officio* whether special residence permit should be given to the authors as unaccompanied minors under section 9c(3)(ii) of the Aliens Act; the Ministry of Justice confirmed the Immigration Service's decision not to grant them with special residence permit on 27 February 2013 when they were 20 years old; the authors have not provided information regarding the nature and severity of their alleged psychological difficulties; nor have they shown that they have necessary family or medical support in the State party that they could not receive in their country of origin.

7.7 On the other hand, the Committee also observes that the RAB found as facts the following accounts given by the authors: they were ethnic Tamils from the Vanni area; their father was taken away by the LTTE in 2009; the family fled to Mullivaikal; they lost contact with their mother and sister; and they were taken by the military to a camp in Vavuniya, where they were picked up by a maternal uncle after two months. Although the authorities did not refute that their father was an active member of the LTTE, they denied the authors' request for asylum mainly because their father was not a high profile member of the LTTE and his affiliation to it had ended years ago. The RAB's referred to these findings when rejecting the authors' request for reopening the asylum proceedings on 29 August 2013. However, the Committee observes that current reports in the public domain

¹² See, inter alia, communications No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 7.4. and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

concerning the human rights situation in Sri Lanka,¹³ as well as those to which the parties refer,¹⁴ indicate that despite the change of conditions in the country, human rights violations, including torture, continue to occur; and that inter alia certain individuals of Tamil ethnicity who are suspected of having links to the LTTE, such as persons with family links or who are dependent on or otherwise closely related to former LTTE combatants, “cadres” or former LTTE supporters who may never have undergone military training, may be in need of international protection. In the light of the information provided by the authors, the information presently available to the Committee, and the record of human rights violations in Sri Lanka, the Committee considers that the State party’s authorities have not given appropriate consideration to the authors’ claim that they would be at risk of being subject to torture or ill-treatment if removed to Sri Lanka due to the previous affiliation of their father to the LTTE, the fact that they were taken away by this organization in 2009 and the events that the authors went through prior to their departure in Sri Lanka. Under these circumstances, the Committee is of the view that the removal of the authors in the absence of further consideration of their claim would put them to a real risk of irreparable harm such as contemplated in article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the deportation of the authors to Sri Lanka would violate their rights under article 7 of the Covenant.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to proceed to a review of their requests for asylum, taking into account the State party’s obligations under the Covenant and the present Committee’s Views. The State party is also under an obligation to avoid exposing others to similar risks of violation.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee’s Views and to have them translated in the official language of the State party and widely distributed.

¹³ See, for instance, 2014 US Country Reports on Human Rights Practices – Sri Lanka (25 June 2015); and Immigration and Refugee Board of Canada, Sri Lanka: Treatment of suspected members or supporters of the Liberation Tigers of Tamil Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects – 2011-January 2015 (11 February 2015); as well as Freedom from Torture, Tainted Peace – Torture in Sri Lanka since May 2009 (August 2015), and International Crisis Group, Sri Lanka between elections (12 August 2015).

¹⁴ See *supra* footnotes 4 and 5.

Appendix

Joint opinion of Committee members Yuval Shany, Anja Seibert-Fohr and Konstantine Vardzelashvili (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that in deciding to deport the author Denmark would violate its obligations under article 7 of the Covenant.
2. In paragraph 7.3 of the Views, the Committee recalls: “that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice”. Yet in paragraph 7.7 it holds that “that the State party’s authorities have not given appropriate consideration to the authors’ claim that they would be at risk of being subject to torture or ill-treatment if removed to Sri Lanka due to the previous affiliation of their father to the LTTE, the fact that they were taken away by this organization in 2009 and the events that the authors went through prior to their departure in Sri Lanka”
3. In past cases in which the decision of state organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee attempted to base its position on inadequacies in the domestic decision-making process, which had been taken by the domestic organs of the State party, leading to the decision to the deport or where the final decision was manifestly unreasonable or arbitrary in nature because available evidence was not taken properly into account or inadequate consideration was given in domestic proceedings to the specific rights of the author under the Covenant.^a Procedural inadequacies consisted, at times, of serious procedural flaws in the conduct of the domestic review proceedings,^b or on the inability of the State party to provide a reasonable justification for its decision.^c
4. Still, in the present case, the Committee merely notes that “current reports in the public domain concerning the human rights situation in Sri Lanka, as well as those to which the parties refer, indicate that despite the change of conditions in the country, human rights violations, including torture, continue to occur; and that inter alia certain individuals of Tamil ethnicity who are suspected of having links to the LTTE, such as persons with family links or who are dependent on or otherwise closely related to former LTTE combatants, “cadres” or former LTTE supporters who may never have undergone military training, may be in need of international protection.” Note that the said “current reports” in the public domain, which were published only after asylum proceedings in the State party had been concluded (and therefore could not have been considered by the State party’s authorities), do not suggest a worsening of the human rights situation in Sri Lanka, nor do they establish a new personal risk to the authors, which was not included in the information which was before the State party’s authorities when reviewing the authors’ request for asylum.

^a See e.g., Communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 Mar. 2010, at paras. 8.4-8.6.

^b See e.g., Communication No. 1908/2009, *X v. Republic of Korea*, Views adopted on 25 May 2014, para. 11.5.

^c See e.g., Communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 Nov. 2004, para. 11.3-11.4.

5. The majority of the Committee did not point to any procedural flaw, failure to consider an important piece of information or lack of motivation of the decision to deport. More specifically, we do not find a basis in the case file, including in the current reports found in the public domain cited in paragraph 7.7 of the Views, to regard the State party's authorities' conclusion that individuals such as the authors, who were not high-profile LTTE activists and were not related to such high-profile activists, as arbitrary or amounting to a manifest error or denial of justice. In fact, we are of the view that had there been new relevant information in the current reports, the proper course of action for the Committee would have been to suspend its proceedings and request the parties' comments on the said reports, before drawing any factual conclusions therefrom.

6. We therefore respectfully dissent from the position taken by the majority on the Committee in this case.
