



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

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Committee against Torture

Communication No. 429/2010

**Decision adopted by the Committee at its fifty-first session
28 October to 22 November 2013**

<i>Submitted by:</i>	Mallikathevi Sivagnanaratnam (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Denmark
<i>Date of complaint:</i>	18 August 2010 (initial submission)
<i>Date of decision:</i>	11 November 2013
<i>Subject matter:</i>	Deportation of complainant to Sri Lanka
<i>Procedural issue:</i>	Non-substantiation
<i>Substantive issue:</i>	Deportation of a person to another State where there are substantial grounds for believing that she would be in danger of being subjected to torture
<i>Articles of the Convention:</i>	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-first session)

concerning

Communication No. 429/2010

Submitted by: Mallikathevi Sivagnanaratnam (represented by counsel, Niels-Erik Hansen)

Alleged victim: The complainant

State party: Denmark

Date of complaint: 18 August 2010 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 November 2013,

Having concluded its consideration of complaint No. 429/2010, submitted to the Committee against Torture by Mallikathevi Sivagnanaratnam under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

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

1.1 The complainant is Mallikathevi Sivagnanaratnam, a national of Sri Lanka, born on 1 February 1957, at the time of the communication awaiting deportation from Denmark. She claims that the State party would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment if it were to deport her. She is represented by counsel, Niels-Erik Hansen.

1.2 On 19 August 2010, in application of rule 108, paragraph 1, of its rules of procedure,¹ the Committee asked the State party not to expel the complainant to Sri Lanka while her complaint was being considered.

The facts as presented by the complainant

2.1 The complainant submits that if returned to Sri Lanka she will be subjected to torture because of her affiliation with the Liberation Tigers of Tamil Eelam. She is a Tamil

¹ This rule now appears as rule 114, paragraph 1, of the Committee's revised rules of procedure.

herself. Although she was never a Tamil Tiger, her nephew was a prominent Tamil Tiger militant. He was killed in 1999 and the complainant organized his funeral and surrounding events in the town of Vanni, which was then under the control of the Liberation Tigers of Tamil Eelam. The complainant's nephew was declared a "martyr" and numerous Tamil Tigers came to the event. The funeral was widely advertised, including through distribution of flyers.

2.2 The complainant also submits that, if returned to Sri Lanka, she will be targeted by the authorities, also because her husband lent the Tamil Tigers a fishing boat; she and her husband sheltered militants in their house and served them food on many occasions.

2.3 The complainant submits that in the past she has been arrested on several occasions by the police and beaten. On one occasion in 2003, after she moved to Karaveddy, which was under government control, she was detained for three days and beaten until all her teeth were knocked out of her mouth. She maintains that other members of her family were also targeted by the authorities and that her niece was killed in 2009.

2.4 The complainant submits that she obtained a passport through paying a bribe and eventually managed to flee to Denmark with the assistance of relatives who lived abroad and friends in Colombo.

2.5 The complainant arrived in Denmark on 11 October 2008 and sought asylum on 25 February 2009. The Immigration Service rejected her application on 19 January 2010, because they did not find the account of the events that led to her seeking asylum coherent and credible. Following an appeal, the Refugee Board confirmed the decision of the Immigration Service on 19 May 2010 and the complainant was ordered to leave Denmark immediately. On an unspecified date in August 2010 the complainant was detained by the Danish police with the purpose of deporting her to Sri Lanka on 20 August 2010. The complainant claims that she has exhausted domestic remedies.

The complaint

3. The complainant contends that if deported to Sri Lanka she would face detention and torture, in violation of article 3 of the Convention.

State party's observations on admissibility and the merits

4.1 On 20 August 2010, the State party informed the Committee that the complainant's deadline for departure had been suspended while her complaint was under consideration by the Committee.

4.2 On 15 October 2010, the State party submitted that the complainant entered the country on 11 October 2008 on a visitor's visa, valid until 4 January 2009, granted to visit her daughter and other relatives living in Denmark. On 10 February 2009, the Danish Immigration Service refused her application for family reunification. On 25 February 2009, the complainant applied for asylum. On 29 January 2010, her application was rejected by the Immigration Service. On 19 May 2010, the Refugee Appeals Board upheld the decision of the Immigration Service refusing asylum.

4.3 The State party submits that the complainant was motivated to make her asylum request because her husband had assisted the Liberation Tigers of Tamil Eelam by lending them boats and engines and that she organized the funeral of her nephew, an active member of the Liberation Tigers of Tamil Eelam, who was killed in 1999 and declared a "martyr". She also claimed that the spouses of her nieces were members of the Liberation Tigers of Tamil Eelam, that one of her nieces had been killed by the army and that the Sri Lankan army was aware of her family connections and of her organizing the funeral, which became a big Tamil Tiger event. She also claimed that her husband and other family members were

actively sought by the army in 2009, that the army had discovered that she had left the country and that based on the above facts they considered her to be a member of the Liberation Tigers of Tamil Eelam. The State party also submits that the complainant made conflicting statements in relation to her being detained and tortured by the authorities in 2003.² The State party points out that the complainant only disclosed that she had had problems with the authorities in Colombo in November 2009, while her initial application for asylum was made in May 2009, and that according to her she was not sought individually, but because the authorities persecuted all Tamils. The State party further points out numerous inconsistencies in her statements regarding the problems she had with the authorities while in Colombo, the reasons why she was allowed to leave the country to go to Canada in 2007 and the reasons why she feared to return to Sri Lanka in 2009.

4.4 The State party further reiterates the content of the decision of the Refugee Appeals Board and the reasons why the complainant's asylum request was rejected, namely that her activities in Sri Lanka were limited and took place many years ago; the "extended information" that she had given in her different statements regarding the instances of her detention and torture; that she was able to freely leave the country and return; that she had not applied for asylum when she visited Canada in 2007; that she applied for asylum in Denmark only after her application for family reunification had been rejected. Accordingly the Board did not consider that she would be exposed to a risk of persecution if she returned to Sri Lanka.

4.5 The State party further describes the structure and the functioning of the Refugee Appeals Board, namely that it comprises a chairman and a deputy chairmen, who are judges, and other members, who must be attorneys or serve with the Ministry of Social Affairs, Children and Integration and that they are appointed by the Executive Committee of the Board. According to the Aliens Act, the members are independent and cannot seek directions from the appointing or nominating authority. Usually the Board assigns a counsel to the applicant and the counsel is allowed to meet with the applicant and to study the case file. Proceedings before the Board are oral; the hearing is attended by an interpreter and a representative of the Immigration Service. The applicant is allowed to make a statement and answer questions; the counsel and the representative of the Immigration Service can make concluding comments and then the applicant can make a final statement. The Board issues a written decision, which is not subject to judicial review. Decisions of the Immigration Service refusing asylum are brought before the Board and the appeal suspends the return of the individual to his country.

4.6 The State party notes that pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although this article does not mention torture as one of the grounds justifying asylum, it may be an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to the State party, and where his/her substantial fear resulting from the outrages is considered well-founded. This permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his/her country

² The State party points out that the complainant had omitted the incident in her initial asylum application, that she later stated that she had forgotten to write about it and amended her statement concerning where she was when she was arrested and regarding the reasons for her release and other details.

of origin. In practice, the Refugee Appeals Board considers that these conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to a real risk.

4.7 Decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding the motive for seeking asylum are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular whether systematic gross, flagrant or mass violations of human rights occur. Background material is obtained from various sources, including country reports prepared by other Governments, and information available from the Office of the United Nations High Commissioner for Refugees (UNHCR) and prominent non-governmental organizations. In particular the State party refers to a UNHCR report dated 5 July 2010, which states that Sri Lankans originating from the north of the country are no longer in need of international protection under broader refugee criteria or complementary forms of protection solely on the basis of the risk of discriminatory harm and that there is no longer a need for group-based protection mechanisms or for a presumption of eligibility for Sri Lankans of Tamil ethnicity originating from the north of the country. The report also concludes that "at the time of writing the generally improved situation in Sri Lanka is still evolving".

4.8 In cases where torture is invoked as part of the basis for asylum, the Refugee Appeals Board may request that the asylum seeker be examined for signs of torture. The decision as to whether it is necessary to undertake a medical examination is made at a Board hearing and depends on the circumstances of the specific case, such as the credibility of the asylum seeker's statement about torture.

4.9 The State party submits that it is the responsibility of the complainant to establish a prima facie case for the purpose of admissibility of the complaint under article 22 of the Convention. In the present complaint, it has not been established that there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Sri Lanka. The complaint is manifestly unfounded and therefore it should be declared inadmissible.

4.10 The purpose of the complaint is to use the Committee as an appellate body to have the factual circumstances advocated in support of her claim of asylum reassessed by the Committee. The State party recalls the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention³ and points out that the Committee should give considerable weight to findings of fact made by the State party concerned. In the present case, the complainant had the opportunity to present her views, both in writing and orally, with the assistance of legal counsel. Subsequently, the Refugee Appeals Board conducted a comprehensive and thorough examination of the evidence in the case. Therefore, it submits that the Committee must give considerable weight to the findings of the Board.

4.11 The State party submits that it was unnecessary to initiate an examination of the complainant for signs of torture, since her statements were not credible. It further states that article 3, paragraph 1, of the Convention requires that the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which she is to be returned and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.⁴

³ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

⁴ The State party refers inter alia to communications No. 270/2005 and 271/2005, *E.R.K. and Y.K. v. Sweden*, decision adopted on 30 April 2007, paras. 7.2 and 7.3; No. 282/2005, *S.P.A. v. Canada*,

The existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not, as such, constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his/her return to that country.⁵

4.12 The State party submits that the applicant has failed to establish a prima facie case for the purpose of admissibility of her communication under article 22 of the Convention and that the communication is therefore manifestly unfounded and should be declared inadmissible.

4.13 Should the Committee find the complaint admissible, the State party argues that the complainant has not established that her return to Sri Lanka would constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations

5.1 On 3 January 2011, the complainant submitted that the information regarding the use of torture in the country of return was the first and most important issue at that stage. She argues that the State party has a duty to collect information about the use of torture. She points out, however, that the State Party in its submission has made a reference to a report issued in July 2010,⁶ but that the assessment of her case by the authorities took place in 2009 and the final decision was taken by the Refugee Appeals Board in May 2010, two months before the report in question had been issued. She maintains that at the time the decision was taken, systematic, gross, flagrant and mass violations of human rights were taking place in Sri Lanka against Tamils from the north and that the UNHCR guidelines recommended that such individuals not be returned. She submits that the Board's decision was thus a clear-cut violation of the Convention, since according to UNHCR the risk of torture was too high. She further submits that, even though the situation might have improved after the decision had been taken by the Danish authorities, torture and human rights violations still took place against Tamils from the north and refers to a report by Amnesty International.⁷ She maintains that if it had followed the UNHCR guidelines, the State party should have granted her protection status in 2009 and should have reassessed her case on an individual basis in 2010.

5.2 The complainant further submits that, according to section 7(1) of the Aliens act, refugee status is granted in cases when an individual had been tortured and risks being subjected to torture in the future. In cases where an applicant has been tortured, but does not risk being tortured in future, the individual may still be granted a residence permit. The complainant further argues that it was the duty of the State party to establish whether she had been subjected to torture in the past, also in order to correctly assess her evidence, because torture victims often have difficulties talking about their experiences and may only talk about these when they feel very secure. She argues that the fact that she recounted the torture which she had suffered only at the interview with the Immigration Service, should not undermine her credibility. She maintains that in that instance she not only informed the authorities that she had been subjected to torture, but showed them scars on her body and demonstrated that she had no teeth in her mouth. She argues that at that point she should

decision adopted on 7 November 2006, paras. 7.1 and 7.2; No. 180/2001, *F.F.Z. v. Denmark*, Views adopted on 30 April 2002, paras. 9 and 10; and No. 143/1999, *S.C. v. Denmark*, Views adopted on 10 May 2000, paras. 6.4 and 6.6. It also refers to the Committee's general comment No. 1.

⁵ The State party refers to communications No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, para. 8.2; No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.3; *E.R.K. and Y.K. v. Sweden*, para. 7.2; and No. 286/2006, *M.R.A. v. Sweden*, decision adopted on 17 November 2006, para. 7.3.

⁶ See para. 4.7 above.

⁷ The complainant referred to the Amnesty International Annual Report 2010, pp. 301 to 303.

have been offered a form to sign authorizing a medical examination, which she maintains she was ready to do. Rather than doing that, the authorities chose to base their decision on a “credibility test” based on the written material and the interview.

5.3 The complainant also argues that the Refugee Appeals Board failed to order a medical examination based on the exact same arguments as the Immigration Service. She submits, however, that the authorities, in assessing the credibility of asylum seekers, rely on the forms the latter fill out when applying and on their statements during the interview with the Immigration Service. She maintains that in her case she filled out the respective form in her native language and that it was subsequently translated, but during the Board hearing at least one mistake in the translation was detected and there could have been more. She also reiterates that torture victims often have difficulties recounting their experiences. She maintains that the Immigration Service and the Refugee Board were obliged to conduct a medical examination to verify her account of having been tortured. She further submits that her statements were consistent during the entire process and that the fact that no medical examination of her scars and health condition was conducted deprived her of the opportunity to prove that she had suffered from torture.

5.4 The complainant further makes reference to a case of the European Court of Human Rights, in which an applicant, who had scars on his body, was found to be in danger of torture upon return, since the Court considered it likely that the airport authorities would detain him, strip search him, discover the scars and conclude that he was a Tamil Tiger.⁸ She further submits that even though in her appeal to the Refugee Appeals Board she explicitly described the incident when she was detained and her teeth were knocked out of her mouth, the decision of the Board does not mention it.

5.5 The complainant reiterates that if she is forcibly returned to Sri Lanka, the Danish authorities would be in violation of article 3, paragraph 1 of the Convention, since she would be at risk of torture and in violation of article 3, paragraph 2 of the Convention, since the authorities failed to investigate whether she had indeed been subjected to torture.

5.6 The complainant submits that she has established a prima facie case for the purposes of admissibility under article 22 of the Convention. She further submits that the decision to deport her is a violation of article 3 of the Convention, firstly because the general information regarding human rights in Sri Lanka, the UNHCR guidelines and the European Court of Human Rights jurisprudence clearly prove that no forced deportation of Tamils from the north of Sri Lanka should take place due to the risk of persecution or torture; and secondly, because in a case-by-case assessment of the complainant’s claim, in order to establish if substantial grounds to fear torture existed, the authorities should have allowed for an examination of the claimant.

State party’s further observations

6.1 On 30 May 2011, the State party submitted with regard to the relevance of the UNHCR eligibility guidelines, that the latter are of a general nature and do not contain any specific assessment of the personal circumstances of the individual asylum seeker, whereas the Refugee Appeals Board decides on individual cases. The Board applies the Convention and other international human rights treaties based on the personal circumstances of the applicant, together with all background information available on the conditions in the

⁸ The complainant refers to the European Court of Human Rights case *N.A. v. U.K.*, application No. 25904/07, judgment of 17 July 2008. The author also refers to other Court cases where Tamils were found to be in danger of torture: *T.N. v. Denmark*, appl. No. 20594/08; *T.N. and S.N. v. Denmark*, appl. No. 36517/08; *S.S. and others v. Denmark*, appl. No. 54703/08; *P.K. v. Denmark*, appl. No. 54705/08; and *N.S. v. Denmark*, appl. No. 58359/08.

country. The UNHCR guidelines thus have no decisive influence in themselves. Nevertheless, the State party maintains that recommendations and background material from UNHCR formed a crucial element of the Board's processing of the case and were accorded material importance. The State party maintains that such understanding is in line with the views of the European Court.⁹ It further refers to the Committee's own practice 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. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be in danger to be subjected to torture in his or her specific circumstances. It further points out that in the case of *N.A. v. the United Kingdom of Great Britain and Northern Ireland*, the European Court established that there was no general risk of treatment contrary to article 3 to all Tamils returning to Sri Lanka¹⁰ and notes that the above decision was taken before the decision of the Board of 19 May 2010 in the complainant's case.

6.2 The State party further maintains that the complainant must establish that there are substantial grounds for believing that she would be in danger of torture were she to be expelled at present, namely at the time of the assessment of the case by the Committee. The State party maintains that the present case is clearly distinguishable from the case of *N.A. v. the United Kingdom*, since in that case the applicant had left Sri Lanka clandestinely after being arrested and detained by the army on six different occasions, on at least one occasion he had been ill-treated and scarred and he had been photographed and his fingerprints taken.

6.3 Regarding the complainant's allegation that there were translation errors in her application form, she had submitted previously to the authorities that there had been one error, namely the year of the death of her nephew had been translated mistakenly. The Board took that into consideration. No other typing mistakes or erroneous translation had been detected. In addition the complainant had sent a four-page letter to the Danish Immigration Service, giving a thorough account of her motive for asylum and therefore the State party considers it unlikely that she had tried to suppress information, but on the contrary had tried to adduce information to the case.

6.4 Regarding the torture examination, the State party refers to its previous observations, namely that the incident when she had been detained and beaten and her teeth were knocked out is a central element of her application and that the authorities found it unlikely that she had forgotten to mention it in her initial application, but only remembered about it in November 2009, more than six months later. The State party further reiterates the reasoning of the Board for rejecting the complainant's application (see paragraph 4.4 above).

Complainant's further information

7. On 20 July 2011, the complainant made reference to the Committee's jurisprudence in communication 91/1997, *A. v. the Netherlands*, where the complainant also had scars from past torture and the Committee found that the State party had failed to explain why his claims were considered insufficiently substantial as to warrant a medical examination.¹¹

⁹ The State party made reference to the European Court cases *N.A. v. the United Kingdom*, judgment of 17 July 2008 and *F.H. v. Sweden*, appl. No. 32621/06, judgment of 20 January 2009.

¹⁰ Ibid.

¹¹ Communication No. 91/1997, *A.v. Netherlands*, Views of 13 November 1998, para. 6.6.

Similarly, the complainant in that case was not a member of a persecuted party, but only a supporter and the Committee found that in view of his past history of detention he could be tortured again.¹² The complainant further reiterates her argument that the Refugee Appeals Board should have ordered a medical examination. She maintains that, since in Denmark asylum seekers are not allowed to work she did not have the means to pay for a medical examination herself.

State party's further observations

8. On 21 October 2011, the State party submitted that the case referred to by the complainant, *A.v. the Netherlands*, significantly differs from her case, since in that case the authorities did not dispute that the complainant had been tortured in the past. In the present case, the Refugee Appeals Board has not considered it a fact that the complainant was subjected to torture in her home country, based on her own statement. The State party reiterates that the deportation of the complainant to Sri Lanka would not be in violation of article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it 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.

9.2 The Committee considers that the communication has been substantiated for purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee. Accordingly, the Committee finds that no obstacles to the admissibility of the communication exist and thus declares it admissible.

Consideration of the merits

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

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

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing 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 remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, which have continued in many parts of the country since the conflict ended in May 2009.¹³ However, the Committee recalls that the

¹² Ibid., para. 6.7.

¹³ See CAT/C/LKA/CO/3-4, para. 6.

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; additional grounds must be adduced to show that the individual concerned would be personally at risk.¹⁴

10.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, that “the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable”, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, it 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 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.

10.5 The Committee notes that the complainant claims to have been tortured in the past and that the State party should have ordered a medical examination to prove or disprove her claims. The Committee, however, notes that the responsible organs of the State party had thoroughly evaluated all the evidence presented by the complainant, found it to lack credibility and did not consider it necessary to order a medical examination. The Committee further notes that, even if it were to accept the claim that the complainant was subjected to torture in the past, the question is whether she currently runs a risk of torture if returned to Sri Lanka. It does not necessarily follow that, several years after the alleged events occurred, she would still currently be at risk of being subjected to torture if returned to her country of origin. The Committee has also noted the claim that the complainant would be tortured if deported to Sri Lanka on account of her perceived affiliation with the Liberation Tigers of Tamil Eelam. However, the complainant has not convinced the Committee that the authorities of the State party, which considered the case, did not conduct a proper investigation. In addition, the complainant did not present any evidence that the Sri Lanka authorities had been looking for her or have had any interest in her whereabouts in the recent past.

10.6 As regards the complainant’s past activities, which date back predominantly to 1999, it is not clear that these activities were of such significance as to attract the interest of the authorities if the complainant were to be returned to Sri Lanka in 2010. The Committee recalls paragraph 5 of general comment No. 1, according to which the burden of presenting an arguable case lies with the author of a communication. In the Committee’s opinion, the complainant has not discharged this burden of proof.

11. 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 the decision of the State party to return the complainant to Sri Lanka does not constitute a breach of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

¹⁴ See communications No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.