



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

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 708/2015*, **

<i>Communication submitted by:</i>	P.V. (represented by counsel, Sally Thompson)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	20 October 2015 (initial submission)
<i>Date of present decision:</i>	12 May 2017
<i>Subject matters:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	3

1.1 The complainant is P.V., a Sri Lankan national born on 14 April 1983 and subject to removal from Australia to Sri Lanka. He claims that his deportation would constitute a violation by Australia of his rights under article 3 of the Convention. The complainant is represented by counsel.

1.2 On 27 October 2015, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to issue a request for interim measures under rule 114 (1) of the Committee's rules of procedure and requested the State party not to deport the complainant to Sri Lanka while the complaint was being considered by the Committee. On 31 May 2016, following a request by the State party dated 10 May 2016, the Committee, acting through the Rapporteur, denied the request of the State party to lift interim measures.

The facts as presented by the complainant

2.1 The complainant is a Sri Lankan of Tamil ethnicity born at Palampasy, Mullaitivu, Northern Province, in 1983, the year when the Sri Lankan civil war broke out. He lived in Mullaitivu District, a stronghold of the Liberation Tigers of Tamil Eelam (LTTE) where the genocide of Tamil people at the end of the war took place in 2009.

* Adopted by the Committee at its sixtieth session (18 April-12 May 2017).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Jens Modvig, Claude Heller Rouassant, Ana Racu, Sébastien Touzé and Kening Zhang.



2.2 The author submits that during his childhood, he suffered displacements on repeated occasions due to the war and witnessed many atrocities. He explains that he still experiences flashbacks relating to the atrocities he witnessed.¹

2.3 In 2001 and 2002, the complainant trained and then worked with LTTE² for approximately 18 months, plus a period of “punishment work” that was necessary for him to be able to leave the organization.³ The complainant provides the Committee with a photo of him wearing an LTTE uniform and holding one of their communication devices.

2.4 In 2003, the complainant returned home to his family and remained there until 2004 when he went to Vavuniya village, under the control of the Sri Lankan army, to work for a mining company. In April 2004, the complainant was taken to the notorious Joseph Camp where he was tortured for 15 days. His fingers were broken when they tortured him in an attempt to get him to identify members of LTTE. He then managed to persuade his torturers that he was not a member and was released.⁴

2.5 In 2005 and 2006, the complainant worked with a Danish company removing land mines. Many of the people with whom he worked had also been members of LTTE. After a number of them were arrested and taken away, the complainant left his employment as he feared he would also be arrested and tortured again. As the civil war was still going on, he was unable to return to his home village. The complainant explains that the Sri Lankan army had control of the roads and were actively searching for LTTE members.

2.6 In January 2007, the complainant left Sri Lanka for seven months after paying agents who, in turn, bribed officials.⁵ When he returned, he was told by his sister that his elder brother had been arrested because he was suspected of being an LTTE member. In September 2007, the complainant, fearing that he would also be arrested and again using bribes, travelled to Tamil Nadu in India. In January 2010, he left on a boat for Australia.

2.7 On 7 February 2010, the complainant arrived at Christmas Island, Australia, and was assessed as an irregular maritime arrival. On 12 March 2010, an entry interview was conducted to assess the complainant’s eligibility as a refugee under the Convention relating to the Status of Refugees. On 22 July 2010, he received a negative refugee status assessment.

2.8 On 1 April 2011, the complainant received a negative recommendation from his independent merit review. On 27 June 2011, he received a negative assessment from an international treaties obligation assessment. On 29 September 2011, the Federal Court dismissed the complainant’s application for judicial review. On 1 May 2012, a full Federal Court dismissed the complainant’s application for judicial review. On 7 July 2012, the complainant’s request for a reconsideration of protection claims under section 195A of the Migration Act was rejected. On 6 February 2013, the complainant’s application for judicial review was dismissed again by the Federal Court.

2.9 On 30 April 2015, the complainant received a negative assessment following a second international treaties obligation assessment.⁶ On 1 September 2015, he initiated proceedings before the Federal Circuit Court to appeal the assessment. On 2 September 2015, the complainant was issued with a “notice of intention to remove from Australia” due to take effect on 11 September 2015.

2.10 On 7 September 2015, an injunction was lodged on behalf of the complainant to prevent his removal from Australia until his appeal against his international treaties obligation assessment had been heard. On 8 September 2015, the injunction was upheld for

¹ The complainant provides an assessment report from a psychologist of the Victorian Foundation for Survivors of Torture Inc. (Foundation House), dated 17 March 2014.

² The complainant submits that he has attached a statement at annex 2 outlining the extent of his involvement with LTTE. However annex 2 contains the international treaties obligation assessment of 2015 (see para. 2.9 below).

³ The complainant does not provide further information.

⁴ The complainant does not provide a date.

⁵ The complainant does not provide further information, nor specify where he went.

⁶ The complainant attaches a copy of the assessment dated 30 April 2015.

directions to be given on 18 September 2015. That day, the appeal was dismissed and the injunction of non-removal lifted. The complainant remained under threat of a new removal notice being issued. At the time that he submitted his complaint to the Committee, the complainant was detained at the Yongah Hill immigration detention centre.⁷

2.11 The complainant states that he has been treated by a psychologist from the Queensland programme of assistance to survivors of torture and trauma.⁸ A letter from that institution states that the complainant “reports a history of torture and trauma and presents with symptomatology consistent with these experiences” and that his prolonged detention by Australia has had a negative impact on his mental health.

2.12 The complainant explains that when he was initially interviewed for his refugee claim he was afraid to tell the Department of Immigration officers that he had been a member of LTTE, as he had been told that people identified as LTTE members were detained indefinitely because they were given Australian Security Intelligence Organization negative status. The author also explains that as a consequence, he gave incorrect information as to his experiences in and out of Sri Lanka, which was easily disproved by the Australian authorities. He further indicates that when he finally gave the true version of his situation, his credibility was questioned by the authorities of the State party.

The complaint

3.1 The complainant claims that by removing him to Sri Lanka the State party would violate his rights under article 3 of the Convention, since he faces a risk of being subjected to indefinite detention.

3.2 He claims that due to his involvement with LTTE, if he is returned to Sri Lanka, he will be detained under the 1979 Prevention of Terrorism Act, which mandates the indefinite detention of LTTE members.⁹ The complainant explains that in 2011, new regulations were introduced to strengthen the Act.¹⁰ The complainant refers to current reports that maintain that the Act is still used to detain Tamils.¹¹ He submits that he will be significantly retraumatized both physically and psychologically if he is returned to Sri Lanka. He further states that under the Act, security personnel involved in its implementation are given immunity from prosecution for any human rights abuses they commit.¹²

3.3 The complainant also claims that he would face a risk of physical torture and refers to reports that establish that Tamil detainees are still tortured by the Sri Lankan security forces, despite the fact that the war ended years ago.¹³ The complainant also refers to another report by the International Truth and Justice Project Sri Lanka, which found that “white van” abductions were continuing in 2015.¹⁴ The report documents 115 cases of post-war torture and states that there is evidence of 65 additional similar cases. Individual accounts of torture have been corroborated by forensic medical experts. The researchers also took evidence from Sinhalese security force insiders and government officials.

State party’s observations on admissibility and the merits

4.1 On 27 April 2016, the State party submitted its observations on the complaint. It submits that the complainant’s allegations are inadmissible, pursuant to rule 113 (b) of the

⁷ The complainant does not specify since when he has been detained at the centre.

⁸ The complaint attaches a letter from the programme dated 11 December 2011.

⁹ See article 9 (1) of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, available from www.commonlii.org/lk/legis/num_act/potpa48o1979608.

¹⁰ The complainant attaches a press article from Al-Jazeera, dated 1 September 2011, stating that new government regulations prevent detained Tamil separatist from being released.

¹¹ The author attaches a report by Freedom from Torture, “Tainted peace: torture in Sri Lanka since May 2009”, summary version (August 2015).

¹² See article 26.

¹³ See Annex 8: *The Guardian*, “Sri Lankan security forces have continued to torture Tamil detainees even after the election of reformist president Maithripala Sirisena in January”, 13 August 2015.

¹⁴ See International Truth and Justice Project Sri Lanka, *A Still Unfinished War: Sri Lanka’s Survivors of Torture and Sexual Violence 2009-2015*, July 2015. The report indicates that the findings are based on the testimony of survivors of illegal State-organized abduction in “white vans” by the security forces.

Committee's rules of procedure for being manifestly unfounded and should be dismissed by the Committee without consideration of their merits.

4.2 The State party explains that the complainant's claims have been thoroughly considered by a series of domestic decision makers, including during the refugee status assessment by the Department of Immigration and Citizenship (now the Department of Immigration and Border Protection), an independent merits review and through three administrative protection assessment processes initiated by the Department (including the international treaties obligation assessment and a post-review protection check).

4.3 The State party also indicates that those decisions were subject to judicial review by the Federal Magistrates' Court of Australia, the Federal Court of Australia and again by the Federal Magistrates' Court (by then renamed the Federal Circuit Court of Australia) for any legal error in the decision taken by the Department in its second international treaties obligation assessment decision and in the decision of the independent merits reviewer.

4.4 The State party further indicates that the complainant's claims were also reviewed through ministerial intervention processes. These domestic processes considered the complainant's claims and consistently determined that they were not credible and did not engage the State party's non-refoulement obligations. The State party emphasizes that the author's claims have been assessed under the complementary protection provisions contained in paragraph 36 (2) (aa) of the Migration Act 1958, which reflect the State party's non-refoulement obligations under the Convention and the International Covenant on Civil and Political Rights.

4.5 The State party submits that, with the exception of a new claim and evidence, the author has not provided any new relevant submission to the Committee that would not have been already considered through the domestic administrative and judicial processes.¹⁵ The State party requests the Committee to accept that it has thoroughly assessed the complainant's claims through its domestic proceedings and found that the State party does not owe the complainant protection obligations under the Convention.

4.6 The State party acknowledges that complete accuracy cannot be expected from victims of torture and states that this factor was taken into account by all the domestic authorities involved in the assessment of the complainant's credibility. For example, in the complainant's refugee status assessment, it was acknowledged that "a decision maker must be sensitive to the difficulties often faced by asylum seekers and the benefit of the doubt should be given to those who are generally credible, but are unable of substantiate all of their claims". In addition, the difficulty of assessing credibility was acknowledged by the independent merits reviewer who recognized that assessments of credibility "should not be made on demeanour or reaction at interview".

4.7 In case the Committee considers that all the author's allegations are admissible, the State party submits that they should be dismissed for lack of merit, as reflected in the decisions of the domestic authorities in the complainant's case.

4.8 The State party submits that on 22 July 2010, the complainant was found not to have refugee status. The Department considered different claims made by the complainant to those made in his submission to the Committee.¹⁶ The State party reports that in the refugee status assessment, the complainant claimed that he was in a refugee camp in April 2009 and was regularly interrogated and tortured by the Sri Lankan army, including being asked to identify LTTE members. He claimed that a friend had assisted him to pay a bribe in order to leave the camp and flee the country. The complainant also claimed that his brother had gone missing in 2007 but had reappeared in Switzerland (having been granted protection there) and that his sister's husband had been kidnapped and never reappeared. The State party reports that in his entry interview dated 12 March 2010, the complainant had initially stated that he had one (missing) brother and two sisters, but in his subsequent refugee status

¹⁵ The State party refers to paras. 51-58 of its submission.

¹⁶ The State party refers to the refugee status assessment of 2010. The complainant's claims are outlined on page 2.

assessment interview on 27 April 2010, he stated that he had four sisters and two brothers.¹⁷ The complainant also claimed that he would be accused of being an LTTE member, that his name would be on a list of people having escaped the camp and that he would be killed by the army or the Criminal Investigation Department if he returned to Sri Lanka.

4.9 The State party explains that during his refugee status assessment interview, the author denied ever having been an LTTE member and indicated that he was never forced to join it because he was the eldest child taking care of his family. He later claimed that he was not forced to join because he was married.¹⁸ The decision maker concluded that the complainant would not be viewed as an LTTE member purely on the basis of his ethnicity and place of residence.

4.10 The State party reports that on 4 May 2010, the complainant was interviewed on a second occasion after credible information came to light that he had previously travelled to Viet Nam but had not provided this information in his application. During that interview, the complainant denied that he had a passport and that he had travelled anywhere outside Sri Lanka before coming to Australia. Given those denials, the Department expressed serious concerns about the credibility of the complainant.¹⁹

4.11 The State party submits that considering the complainant's lack of credibility, the lack of a personal history of harassment or a profile of interest, the Department concluded that the author was not someone to whom Australia owed protection obligations under the Convention relating to the Status of Refugees as amended by the 1967 Protocol.²⁰

4.12 The State party also submits that on 28 November 2010, at the interview that took place during the independent merits review, the claimant admitted that during 2007 he had left Sri Lanka, had travelled to Malaysia and Viet Nam for five months and one month respectively and had applied for a visa for the United States of America.²¹ The complainant stated that he had not provided this information before out of fear and because he was told that if he admitted that he had been to another country, he would be deported. The reviewer considered that it would be more reasonable to believe that the complainant had not provided his passport and had not provided information as to where he had been, as it would have an impact on his claim of being detained in Sri Lanka at the end of the fighting in 2009. The reviewer considered it more likely that the complainant had fabricated his claim of detention and was not in Sri Lanka at the time.

4.13 The State party explains that the reviewer did not accept that the complainant had been of interest to the Sri Lankan authorities and noted that he had returned to the country through the international airport of Colombo once before without facing any problems. On 1 April 2011, the reviewer recommended that the complainant should not be recognized as a person entitled to benefit from the State party's protection obligations.

4.14 The State party reports that on 29 September 2011, the Federal Magistrates' Court dismissed the complainant's application for a judicial review of the recommendation of the reviewer, considering that there was no legal error in that regard.²² The State party also reports that on 1 May 2012, the complainant applied to the Federal Court of Australia to request an extension of time to appeal against the decision. The Federal Court found that as both the reviewer and the Federal Magistrates' Court had acted properly, the complainant did not have sufficient prospects of success for an appeal.²³

4.15 The State party also reports that on 6 February 2013, the Federal Magistrates' Court dismissed another complainant's application to appeal the outcome of the independent merits review, as the complainant had failed to appear before the Court.

¹⁷ The State party adds that these inconsistencies were later noted in the independent merits review (2011), paras. 10 and 12.

¹⁸ See the refugee status assessment (2010), p. 8.

¹⁹ *Ibid.*, p. 11.

²⁰ *Ibid.*, pps. 12-14.

²¹ See independent merits review (2011), p. 4.

²² *SZQFU v. Minister for Immigration & Anor*, 2011, FMCA 599, para. 50.

²³ *SZQFU v. Minister for Immigration and Citizenship*, 2012, FCA 477, paras. 10-15.

4.16 It submits that following the complainant's request for an international treaties obligation assessment, he was assessed on 27 June 2011 as not falling within the category of people to whom the State party owes protection obligations. The submission provided by the complainant outlined again his fear of returning to Sri Lanka and his claims that he would be perceived as an LTTE member. The complainant repeated his claim that he was placed in a refugee camp for 10 months in 2009, during which time he was regularly tortured by the Sri Lankan army, including on an occasion when his hand was broken, and interrogated about his suspected involvement in LTTE and that of his family members.²⁴ The complainant also reiterated his claim that he had escaped from the camp thanks to a bribe, that his brother-in-law had been kidnapped and other relatives arrested.

4.17 The State party indicates that according to country information examined by the competent authorities, it is unlikely that a returned asylum seeker would experience adverse treatment upon return, solely on the basis of an illegal departure and bid for protection.²⁵ They further consider that as the complainant was able to leave and return to Sri Lanka without adverse consequences in 2007, he did not have a profile of interest to the Sri Lankan authorities. The State party immigration authorities also noted that there was no evidence that the complainant had ever been involved in political activities, that he had a political profile of any significance, or that he had a criminal record which would make him a target for the authorities in Sri Lanka.

4.18 Regarding the complainant's claims of detention and torture, the State party submits that its authorities considered that if the Sri Lankan army had known or suspected that the complainant was an LTTE member and had been detained in a camp, his movements would have been limited, making his escape almost impossible. The decision maker considered that the type of support that the complainant claimed to have given the LTTE by way of cutting sticks and digging bunkers was no different from the support that many Tamils living in the north were forced to provide. The authorities of the State party also noted that the complainant had not claimed that his family members, who were also released from camps in 2009, had attracted any attention from the Sri Lankan authorities since then. They also considered that according to reliable sources of information on the country, the insecurity faced by Tamils in Sri Lanka had reduced and that the situation had significantly stabilized.

4.19 The State party submits that according to the international treaties obligation assessment carried out in 2011, the author had not submitted any new information that would change the previous assessments of his refugee status and there was no evidence indicating that returning the author to his home country would breach the State party's non-refoulement obligations under the Convention and the International Covenant on Civil and Political Rights.²⁶

4.20 The State party reports that on 7 August 2012 a post-review protection check assessment of the complainant's claims was completed. The Department found that the complainant had provided no evidence or information to indicate that he was of adverse interest to non-State actors or the authorities in Sri Lanka and that as his case did not meet the post-review protection check assessment guidelines of the Minister of Immigration and Border Protection, it was not referred to the Minister for his consideration.²⁷ On 5 October 2011, the complainant submitted documents including a missing person's report filed with the Sri Lanka Red Cross Society by the author's mother;²⁸ a certified report from a Sri Lankan justice of the peace stating that the author was displaced during the war, searched by security forces on suspicion of involvement in LTTE terrorist activities, arrested in May

²⁴ The State party explains that the complainant "has repeated this claim, however the torture in 2009 has been variously attributed to either the SLA (during the SRA assessment in 2010, p. 9) or the CID (ITOA, p. 3) and again to the SLA (ITOA 2015, p. 4). The (complainant) now submits to the Committee that, during the time he claimed to have been tortured, he had already left Sri Lanka (in September 2007) and travelled to Tamil Nadu, where he remained until travelling to Australia in January 2010."

²⁵ See international treaties obligation assessment (2011), p. 9.

²⁶ Ibid., p.10.

²⁷ See post-review protection claims assessment (2012), p. 6.

²⁸ The State party does not provide further information in that regard.

2007, tortured and released after 18 months; and documents from the Red Cross in relation to family tracing. The Department noted that the complainant's claim of having been detained on suspicion of being an LTTE member had not been accepted by the reviewer undertaking the independent merits review. It also noted that following the considerable change to the security situation in Sri Lanka after the end of hostilities in 2009, the level of protection offered in the country "is sufficient to overcome any concerns of serious harm based on suspected involvement with the LTTE or racial profiling".²⁹ The Department further noted the author's statement that he had no connections with the LTTE and was therefore satisfied that the author did not have a profile that would attract adverse attention.

4.21 The State party reports that on 20 September 2012, it was determined³⁰ that the author did not have any unique or compelling circumstances and accordingly, did not meet the guidelines for referral to the Minister for consideration under section 195A of the Migration Act.³¹

4.22 The State party submits that on 30 September 2014, a subsequent international treaties obligation assessment was initiated to assess the complainant's claims under the complementary protection obligations contained in section 36 (2) (aa) of the Migration Act. The complainant reiterated his original claims, including that he would be persecuted because he was a Tamil and would be suspected of being a member of LTTE. On 14 January 2015, during an interview, the complainant admitted that he had lied when he claimed that he was detained in Kathirkaran camp from 2008 to 2010³² and about being tortured in the camp by the Sri Lankan army and the Criminal Investigation Department on suspicion that he was affiliated with LTTE. He also admitted that he had lived in India from 2007 to 2010.

4.23 The State party reports that the complainant also made a number of new claims. For instance, he claimed that, although he was not an LTTE member, he lived in an area where he and all other children were given basic training by LTTE for three months in 2000 and that he had supported LTTE from 2000 to 2004. He also claimed that he had been tortured and sexually abused in Joseph Camp in 2004 and that he had avoided being detained or arrested at Colombo international airport because he had paid an agent with whom he was travelling to bribe airport officials.

4.24 The State party explains that in order to ensure procedural fairness, the Department provided several opportunities for the complainant to explain these inconsistencies, including inviting him to make further submissions and to clarify these doubts during the interviews throughout the process.³³ The Department considered that the author displayed a significant lack of credibility. In respect of the new claims, the decision maker accepted that the complainant was living in an area controlled by LTTE, was provided with basic training, along with the rest of the villagers, and was required to provide basic aid to LTTE. Nonetheless, it did not accept that the complainant had worked for the Danish demining group or that he had been forced by torture or otherwise to support LTTE. The Department did not consider it logical that the complainant would have forgotten about the experience he claimed to have had in Joseph Camp, nor that he would have been released by the authorities within 15-20 days if he were considered an LTTE member. It found that the complainant was not accompanied by an agent, nor had he bribed the authorities at the airport every time he left Sri Lanka. It also emphasized that when he travelled to Australia, he had departed Sri Lanka legally and had not faced any difficulties.³⁴

4.25 The State party explains that in the 2015 international treaties obligation assessment decision, the Department considered that the author had fabricated new claims specifically for the purpose of engaging the State party's international treaty obligations. The

²⁹ See post-review protection claims assessment (2012), p. 6.

³⁰ The State party does not specify which authority took the decision.

³¹ Under section 195 (A), the Minister has the power to intervene to grant a visa to a person in immigration detention, if he or she thinks it is in the public interest to do so.

³² See international treaties obligation assessment (2015), p.8.

³³ Ibid., pp. 9-10.

³⁴ Ibid., pp. 17-18.

complainant's lack of credibility was central in determining that his claims were not genuine and did not engage the State party's non-refoulement obligations.

4.26 On 18 September 2015, the Federal Circuit Court of Australia dismissed the complainant's application for review of the 2015 international treaties obligation assessment decision as it found that the information provided did not demonstrate that the assessment was carried out in violation of procedural fairness, or that there had been an error of law.

4.27 In relation to the new claim and evidence submitted by the complainant to the Committee that he was a member of LTTE, the State party submits that on the occasion of the international treaties obligation assessment, the Department accepted that the complainant supported LTTE, but that he did not have a profile of significance.³⁵ The State party reports that the Department has assessed the new evidence provided by the complainant, a photograph of the author holding an LTTE communication device and wearing an LTTE uniform. It found that it does not raise any new claim or change the complainant's profile in terms of his past involvement with LTTE.

4.28 Regarding the new evidence as to the complainant's mental health, the State party submits that the complainant requested an extension of time to submit the psychological report of reference to the Department for consideration in his subsequent international treaties obligation assessment. That request was denied because, based on an older psychological report provided by the complainant, it had already been accepted that his mental health had contributed to the inconsistencies in his claims and a new report would not have any bearing on his case. The State party submits that it considers that the new evidence is not substantially different to the information provided during the assessment.

4.29 As regards the author's new claim regarding his detention and the personal risk of torture he would face if he returned to Sri Lanka, the State party submits that the complainant's reliance on general country information does not establish a prima facie personal risk of torture for him. The State party reports that the Department has assessed the country information provided by the complainant and the most recent country information, and that there has been no relevant adverse change since his claims were last assessed to indicate that the State party's non-refoulement obligations would be engaged in his case.

4.30 The State party considers that the author has not established the existence of additional grounds demonstrating that he would face a foreseeable, real and personal risk of torture if returned to Sri Lanka. The complainant's submissions relating to the human rights violations in Sri Lanka and the return of asylum seekers there have been carefully considered throughout the domestic processes. Relevant decision makers considered extensive country information and concluded that the complainant did not have a profile which might draw adverse attention.

4.31 The State party concludes that the complainant has not provided sufficient evidence to indicate that he would be personally at risk of torture that would amount to a violation of the Convention.

Complainant's comments on the State party's observations

5.1 The complainant submits that he accepts that the Department of Immigration and Border Protection questions his credibility because of the incorrect information he gave in his early submissions and interviews. He explains that he denied being a member of LTTE because of his fear of how that membership would be perceived by the State party.

5.2 The complainant also submits that his allegations do not relate to the past assessments of his refugee status, but to the issue of whether, as he considers, he would be at risk of torture if he returned to Sri Lanka.

5.3 The author submits that the State party's submission demonstrates that the competent authorities have implicitly accepted that he was a victim of torture in Sri

³⁵ See international treaties obligation assessment (2015), pp. 21 and 27.

Lanka.³⁶ He submits that he has visible scars on his fingers and forehead that were the result of the torture inflicted on him in Joseph Camp in April 2004. He explains that while he has been inconsistent as to the dates of his incarceration and torture, he has always been extremely consistent as to the nature of the torture inflicted on him and as to the fact that it was inflicted with the approval of the Government of Sri Lanka.

5.4 The complainant submits that he did not present the torture and trauma report of the Victorian Foundation for Survivors of Torture Inc. (Foundation House) to the Committee as a way of excusing his inconsistencies, but as corroborative evidence of the torture he was subjected to in Sri Lanka. He states that according to the report, he described a direct experience of violence when he was captured and detained and that his main source of fear is to be forcibly returned to the country where that torture occurred. The complainant notes that the State party has not addressed that issue.

5.5 The complainant further refers to the third torture and trauma assessment report from the Association for Services to Torture and Trauma Survivors, dated 24 May 2016, finding that he is at risk level 3 on the Harvard trauma questionnaire. He submits that the report states that “the results indicate that Pratheepan suffers from severe level of symptoms associated with post-traumatic stress disorder. His symptoms are as a result of past traumatic events that occurred before fleeing Sri Lanka and mostly due to torture which he endured. He remains affected by the events both physically and psychologically to this day”.³⁷

5.6 The author submits that the photograph presented in his submission confirms that he was a known and active member of LTTE in 2001-2002. He refers to the State party’s submission that the photograph has been assessed as having no bearing on the State party’s non-refoulement obligations in his case.³⁸ The complainant submits that he has not been involved in any assessment process of the photograph and that there is no transparency as to the way such an assessment was carried out. The complainant notes that the State party does accept that he “supported LTTE”.³⁹

5.7 The complainant refers to the report by the International Truth and Justice Project Sri Lanka published in January 2016,⁴⁰ stating that “Tamils with tenuous links to the LTTE or low-level cadres continue to be targeted, along with their families”, and that he would therefore be at risk if he returned to Sri Lanka.

5.8 The complainant also refers to the key findings of the report by Freedom from Torture according to which: (a) the Sri Lankan military, police and intelligence services have continued to practise torture, including rape and other forms of sexual torture and extensive burning, in the years of “peace” since the end of the armed conflict; (b) there is a network of torture facilities across Sri Lanka including unofficial detention centres; (c) those at particular ongoing risk of torture include Tamils with a real or perceived association with LTTE at any level, whether current or historic; (d) the Sri Lankan authorities take a strong interest in the activities of the Tamil diaspora in the United Kingdom of Great Britain and Northern Ireland and many returning to Sri Lanka with a real or perceived past connection to LTTE, at whatever level and whether directly and/or through a family member or acquaintance, have been tortured and interrogated about their activities and contacts there; (e) perpetrators appear to commit torture without fear of the consequences, as suggested by the lack of due process and heavy scarring left on the bodies of victims; and (f) torture has had a devastating impact on the survivors.⁴¹

³⁶ The author refers to the first sentence of paragraph 21 of the State party’s submission.

³⁷ A copy of the report from the Association is attached.

³⁸ The complainant refers to the State party’s submission, para. 52.

³⁹ Ibid.

⁴⁰ International Truth and Justice Project “Silenced: survivors of torture and sexual violence in 2015” (January 2016), pp. 9 and 47.

⁴¹ Freedom from Torture, “Tainted peace: torture in Sri Lanka since May 2009”, p. 9. Evidence of significant psychological impact was found in all 148 cases referred to in the report, including a high proportion of survivors suffering ongoing symptoms of post-traumatic stress disorder and depression.

5.9 The complainant submits that, while all these points are of relevance to his situation, he would particularly emphasize that real or perceived links with LTTE, or even indirect links through family members, put a returning person of Tamil ethnicity at a real and substantial risk of future torture.

5.10 The complainant also refers to an update of the Freedom from Torture report, published in May 2016, stating that: “In light of this evidence from Freedom from Torture and others about torture and persecution of people returning to Sri Lanka after the end of the civil war, the UN has called upon member states to ensure ‘a policy of non-refoulement of Tamils who have suffered torture and other human rights violations until guarantees of non-recurrence are sufficient to ensure that they will not be subject to further abuse, in particular torture and sexual violence’.”⁴²

5.11 The complainant submits that the most recent assessment of his situation was an international treaties obligation assessment, handed over on 30 April 2015, according to which the State party does not have non-refoulement obligations in his case. He states that, despite providing the photograph which confirms that he was an LTTE supporter to the authorities in October 2015, those obligations were not reassessed. He also claims that the country information he submitted to the Committee was made public after the international treaties obligation assessment decision in April 2015 and that this information demonstrates that he would be personally at risk of torture if he returned to Sri Lanka. The complainant also submits that he has a brother who is now a refugee in Switzerland and that the State party would violate his rights under article 3 of the Convention should he be forcibly returned to Sri Lanka.

State party’s additional information

6. On 21 September 2016, the State party referred to the complainant’s submission dated 31 July 2016 and submitted that it did not contain any information which could change the assessment that the complainant’s claims did not engage the State party’s non-refoulement obligations under article 3 of the Convention. The State party further reiterated its submissions of 27 April 2016.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee notes the State party’s submission that the present communication is manifestly unfounded and thus inadmissible pursuant to rule 113 (b) of the Committee’s rules of procedure. The Committee considers that the communication has been substantiated for the purpose of admissibility, as the complainant has sufficiently detailed the facts and the basis of the claim for a decision by the Committee.

7.3 The Committee further recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case, the State party has not contested that the complainant has exhausted all available domestic remedies. The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.4 As the Committee finds no further obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

⁴² The Freedom from Torture report, updated on 4 May 2016, refers to the report on the OHCHR investigation into Sri Lanka (A/HRC/30/CRP.2, recommendation No. 37, p. 251).

Consideration of the merits

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

8.2 In the present case, the issue before the Committee is whether the forcible removal 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 ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be, personally, at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country: additional grounds must be adduced to show that the individual concerned would be personally at risk.⁴³

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.⁴⁴ The Committee further recalls that in accordance with its general comment No. 1, it gives considerable weight to the 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.

8.5 The Committee notes the complainant's claim that his forcible removal to Sri Lanka would amount to a violation of his rights under article 3 of the Convention as he would be exposed to a risk of being subjected to indefinite detention and torture by the Sri Lankan authorities owing to his past involvement with LTTE. In that connection, the Committee notes the complainant's submission that during 2001 and 2002 he was obliged to train and then worked with LTTE for approximately 18 months, plus a period of "punishment work", and that in April 2004, he was taken to Joseph Camp, where he was tortured for 15 days in an attempt to get him to identify members of LTTE. The Committee also notes that the complainant is of Tamil ethnicity from Mullaitivu and that his elder brother was arrested on suspicion of being an LTTE member.

8.6 The Committee notes the State party's arguments that the complainant's claims have been thoroughly considered by the competent domestic authorities and that they consistently determined that the complainant lacked credibility and did not engage the State party's non-refoulement obligations. In that connection, the Committee notes, inter alia, the State party's arguments that in the refugee status assessment, the complainant claimed that in April 2009 he was in a refugee camp and was regularly interrogated and tortured by the Sri Lankan army, including being asked to identify LTTE members, but that he denied being a member of LTTE; and that during the 2015 international treaties obligation assessment interview, the complainant admitted that he had lied when he claimed that he had been detained and tortured in a camp from 2008 to 2010 and claimed instead that he had supported LTTE from 2000 to 2004 and that he had been tortured in Joseph Camp in

⁴³ See, for example, 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; No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015.

⁴⁴ See communication No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003, para. 7.3.

2004. It also takes note of the State party's argument that the complainant first denied having travelled out of Sri Lanka before travelling to Australia, but that during the independent merits review on 28 November 2010, he admitted that he had travelled to India in 2007.

8.7 The Committee notes the complainant's explanation that he initially denied being a member of LTTE because of his fear of the way his membership would be perceived by the State party. It also notes the complainant's contention that while he has been inconsistent as to the dates of his incarceration and torture, he has been consistent as to the torture he suffered with the approval of the Government of Sri Lanka. In that regard the Committee notes that the torture and trauma assessment report from the Association for Services to Torture and Trauma Survivors, dated 24 May 2016, found that the complainant was at risk level 3 on the Harvard trauma questionnaire and that the results indicated that the complainant was suffering from a severe level of symptoms associated with post-traumatic stress disorder and that his symptoms were mostly due to the torture he had endured. However, the Committee considers that, while the report gives indications that the complainant may have experienced traumatic events in the past, it cannot be considered as conclusive evidence that the complainant has been a victim of torture. The Committee therefore considers that the complainant has failed to provide conclusive evidence that he was subjected to torture in the past.

8.8 The Committee notes the complainant's submission that, according to public reports, Tamils with real or perceived links with LTTE, at any level and whether current or historic, are at particular ongoing risk of torture. While not underestimating the concerns that may be legitimately expressed with respect to the current human rights situation in Sri Lanka, the Committee recalls that the occurrence of human rights violations in his or her country of origin is not sufficient in itself to conclude that a complainant runs a personal risk of torture.⁴⁵ In that context, the Committee refers to its concluding observations following its examination of the fifth periodic report of Sri Lanka in 2015, in which it expressed concern about reports regarding the persistence of torture and ill-treatment perpetrated by State actors (both the military and the police) in Sri Lanka.⁴⁶ The Committee also refers to the report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment following an official visit to Sri Lanka from 29 April to 7 May 2016, in which he noted that torture and ill-treatment, including of a sexual nature, were still occurring and that the current legal framework and the lack of reform within the structures of the armed forces, the police, the Office of the Attorney-General and the judiciary perpetuated the risk of torture.⁴⁷

8.9 The Committee also takes note of credible reports published by non-governmental organizations concerning the treatment given by the Sri Lankan authorities to individuals who have returned to Sri Lanka.⁴⁸ The Committee considers that all of the above shows that Sri Lankans of Tamil ethnicity with a prior personal or familial connection to LTTE facing forcible return to Sri Lanka may face a risk of torture.⁴⁹

8.10 In the present case, the Committee notes the complainant's argument that the photograph he presented in his submission confirms that he was a member of LTTE. However, it also notes the State party's contention that its authorities have accepted that the complainant supported LTTE in the past, but that he did not have a profile of significance that would put him at risk if he returned to Sri Lanka. In that connection, the Committee notes the State party's submission that the complainant was able to leave and return to Sri Lanka in 2007 through the international airport in Colombo and did not raise the interest of the Sri Lankan authorities. Nor did he face any persecution on that occasion. While noting

⁴⁵ See, for example, communication No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2.

⁴⁶ See CAT/C/LKA/CO/5, paras. 9-12.

⁴⁷ See A/HRC/34/54/Add.2, paras. 110 and 113.

⁴⁸ See, for example, Human Rights Watch, "UK: suspend deportations of Tamils to Sri Lanka", 29 May 2012, available from www.hrw.org/print/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka; and Freedom from Torture, "Tainted peace: torture in Sri Lanka since May 2009".

⁴⁹ See communication No. 628/2014, *J.N. v. Denmark*, decision adopted on 13 May 2016, para. 7.9.

the complainant's argument that he left Sri Lanka using bribes, the Committee considers that he has not sufficiently substantiated his allegations in that regard.

8.11 The Committee also notes the State party's contention that there is no evidence that the complainant has ever been involved in political activities, that he has a political profile of any significance, or that he has a criminal record, which would make him a target in Sri Lanka. The Committee considers that the complainant has failed to provide credible evidence and sufficient substantiation to enable it to conclude to the contrary and to establish that there is a foreseeable, real and personal risk that owing to his past support for LTTE, he would be subjected to torture by the authorities if returned to Sri Lanka.

8.12 In the light of those considerations, read as a whole, the Committee concludes that the complainant has not adduced sufficient grounds for it to conclude that he runs a real, foreseeable, personal and present risk of being subjected to torture upon return to Sri Lanka. The Committee thus considers that the material before it does not enable it to conclude that the return of the complainant would constitute a violation of article 3 of the Convention.

9. In the light of the foregoing, the Committee against Torture, acting under article 22 (7) of the Convention, concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.
