



# 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. 761/2016\*, \*\*

<i>Communication submitted by:</i>	S.H. (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	28 June 2016 (initial submission)
<i>Date of present decision:</i>	23 November 2018
<i>Subject matters:</i>	Risk of torture in the event of deportation to country of origin (non-refoulement); prevention of torture
<i>Procedural issue:</i>	Deportation of the complainant from Australia to Sri Lanka
<i>Substantive issue:</i>	Admissibility – manifestly unfounded
<i>Articles of the Convention:</i>	3 and 22

1. The complainant is S.H., a national of Sri Lanka born in 1974. He is facing deportation to Sri Lanka, following the rejection of his application for refugee status in Australia. The complainant asserts that if Australia were to proceed with his deportation, it would violate its obligations under article 3 of the Convention. Australia made the declaration under article 22 of the Convention on 28 January 1993. The complainant is represented by counsel.

#### The facts as presented by the complainant

2.1 The complainant was born in Manthuvil, Mullaitivu, a district controlled by the Liberation Tigers of Tamil Eelam during the internal armed conflict. Before the end of the conflict in 2009, everyone living in that area was expected to undergo training with the Tamil Tigers and to protect the borders of the area they lived in. The complainant bribed his way out of the obligation to protect borders, although he completed a basic self-defence training course lasting two weeks. He also had to assist in organizing any operations of the Tamil Tigers in the area in his capacity as a carpenter. The complainant's brother went to complete his border protection duty on one occasion. In 2009, his brother was summoned for the second time and managed to escape, and since then his family has not heard from

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).

\*\* The following members of the Committee participated in the consideration of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Honghong Zhang.



him or known his whereabouts. Later in 2009, the complainant and his family were moved to the Chettikulam camp in an area controlled by the army. There, on several occasions, the complainant was interrogated by the Sri Lanka Army and the Criminal Investigation Department, mostly about his brother's whereabouts. In July 2010, his father-in-law arranged the complainant's release from the camp by paying a bribe. In November 2010, the complainant's father-in-law was found dead in his house, allegedly having committed suicide. Initially, the police informed the family that he had died as a result of foul play. However, when the complainant's sister-in-law went to identify and collect the body, she was forced by the Sri Lanka Army to sign a form to say that he had died as a result of suicide. The complainant believes that his father-in-law was murdered by the Sri Lanka Army or the Criminal Investigation Department, in retaliation for helping him to escape. The complainant's wife, two daughters and her two sisters with their children currently live in the family house in Manthuvil, having being released from the Chettikulam camp in 2012. The complainant claims that the authorities periodically visit his family inquiring about his whereabouts, the last visit being in March 2016.

2.2 On 7 July 2010, the complainant left Sri Lanka by plane on a false passport, first travelling to Malaysia and then to Indonesia. On 7 November 2010, he arrived on Christmas Island without a valid visa. On 22 January 2011, he lodged an application for a protection visa, which was refused on 21 April 2011. That decision was reviewed by an independent merits reviewer on 2 February 2012, who upheld the original refusal. The complainant sought a review of that decision at the Federal Circuit Court on 6 March 2012, but that application was dismissed on 23 October 2012. On 16 November 2012, a request was made to the Minister for Immigration and Citizenship, who declined to exercise his power to grant a protection visa. On 12 March 2015, an International Treaties Obligations Assessment found that the complainant was not owed protection by Australia. He then applied for judicial review of that decision and his application was dismissed extempore on 5 June 2015. An appeal made to the Federal Court of Australia was rejected on 13 May 2016. The complainant therefore claims that he has exhausted all domestic remedies.

### **The complaint**

3.1 The complainant claims that his deportation to Sri Lanka would constitute a violation of his rights under article 3 of the Convention. He claims that there are substantial grounds for believing that he would suffer torture at the hands of the Sri Lanka Army or the Criminal Investigation Department because he has suspected connections with the Tamil Tigers, he escaped the Chettikulam camp in Sri Lanka, and he is a witness to a possible crime committed by either the Sri Lanka Army or the Criminal Investigation Department (the alleged killing of his father-in-law). He argues that the poor legal processes in Sri Lanka, especially in the context of what many Tamils who were caught between the Tamil Tigers and the Sri Lanka Army suffered in the closing stages of the conflict, provide a serious context for his claims. He refers to a number of reports, showing, according to him, that there is sufficient evidence of a consistent pattern of gross, flagrant or mass violations of human rights in Sri Lanka, and that his profile coincides with a number of characteristics of those who have been targeted by the Sri Lanka Army or the Criminal Investigation Department.<sup>1</sup>

3.2 The complainant further claims that, if he is forcibly returned to Sri Lanka, he will be detained and held at Negombo Remand Prison for further interrogation as an asylum seeker who left the country illegally and returned without a passport. According to the complainant, it is well documented that the prison is cramped, unsanitary and unhygienic, and that there is little chance to exercise, and that it is overcrowded to the point that prisoners have to take turns to sleep, which in itself constitutes degrading treatment or punishment regardless of the length of time spent there on remand.

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<sup>1</sup> See, for example, International Truth and Justice Project Sri Lanka, "Silenced: survivors of torture and sexual violence in 2015" (January 2016); Freedom from Torture, "Tainted peace: torture in Sri Lanka since May 2009" (August 2015); Edmund Rice Centre, "Australia sponsored torture in Sri Lanka? The foreseen consequences of supporting a brutal regime to stop the boats at any cost" (August 2015).

### State party's observations on admissibility

4.1 On 27 October 2016, the State party challenged the admissibility of the complaint, stating that the complainant's claims was manifestly unfounded and the case was inadmissible *ratione materiae*.

4.2 The State party contends that the complainant's claim that he would be at risk of torture by the authorities if he were returned to Sri Lanka is inadmissible pursuant to rule 113 (b) of the Committee's rules of procedure, because the complainant relies on general information and does not demonstrate a personal risk. The State party submits that the complainant makes his claims on the basis of generalized information from the report by the International Truth and Justice Project Sri Lanka,<sup>1</sup> and refers to other general information on Sri Lanka, claiming that it demonstrates a consistent pattern of gross, flagrant or mass violations of human rights in the country. However, the existence of a general risk of violence does not substantiate an individual and personal risk of a violation of article 3 of the Convention, and according to the State party, the complainant has failed to adduce evidence that he would be personally at risk of torture. Therefore, the State party submits that the complainant's claims are inadmissible as manifestly unfounded.

4.3 The State party considers that the obligation of non-refoulement under article 3 of the Convention is confined to situations where the returnee would be in danger of being subjected to torture as defined in article 1 of the Convention, and does not apply if the returnee would be at risk of cruel, inhuman or degrading treatment or punishment.<sup>2</sup> Therefore, the State party submits that the complainant's allegations that he would be at risk of such treatment at the hands of the Sri Lankan authorities or by virtue of his possible detention in Negombo Remand Prison should be found inadmissible *ratione materiae*.

4.4 The State party submits that all of the complainant's claims have been thoroughly considered in a series of domestic decision-making processes and they have been found not to engage its non-refoulement obligations under the Convention or under the International Covenant on Civil and Political Rights. Robust domestic processes have considered the claims and determined that they are not credible. Furthermore, the complainant has not provided any new claims in his submissions to the Committee, except for the claim that he was a witness to a possible crime committed by either the Sri Lanka Army or the Criminal Investigation Department, that have not already been considered through comprehensive domestic administrative and judicial processes. The State party refers to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (para. 9), in which the Committee states that as it is not an appellate or judicial body, it gives considerable weight to findings of fact that are made by organs of a State party.

### Complainant's comments on the State party's observations

5.1 On 16 January 2017, the complainant commented on the State party's observations. He refers to paragraph 18 of the advisory opinion of the Office of the United Nations High Commissioner for Refugees (UNHCR) on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,<sup>3</sup> and submits that in accordance with the opinion, he only must provide substantial grounds for believing that the danger exists if he is returned; that is, he is not required to show that he will be tortured, but only that the danger exists.

5.2 With regard to his claim that he would be held in Negombo Remand Prison, he notes that his claim in the original complaint may have been improperly framed concerning "degrading treatment". He submits that if he were to be detained in Negombo Remand Prison for a significant period of time, that is, for more than a few days on remand while

<sup>2</sup> General comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, para. 1.

<sup>3</sup> "An explicit non-refoulement provision is contained in article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture."

bail was being arranged, he would be in danger of being interrogated under torture. He argues that he would face prolonged detention because he had already suffered harassment and threats from the Criminal Investigation Department while in the Chettikulam camp due to his and his brother's prior activities and ties with the Tamil Tigers. The complainant submits that while he was in the camp, the harassment continued to escalate, and his escape from the camp and the subsequent probable murder of his father-in-law means that the army would have serious suspicions about him. Therefore, if he were to return, he would be in danger of prolonged detention.

5.3 The complainant further submits that he had reasonable grounds to suspect that the Sri Lanka Army is responsible for his father-in-law's death. His family tried to complain and challenge the official cause of death, however they were silenced by the army. The marks on his father-in-law's neck, which are visible on the photograph taken after his death, could not have been caused by a suicide attempt. The complainant submits that since his credibility has not been questioned by the Australian authorities, due weight should be given to his statement, especially since other types of evidence to support this assertion are extremely difficult to produce, given the situation in the north of Sri Lanka in 2009. Therefore, his claims should be considered reasonable, and not manifestly unfounded as suggested in the State party's submission.

5.4 With regard to the State party's argument that the complainant has gone through robust domestic processes to evaluate his claims, the complainant notes that the refugee status assessment and the independent merits review are not statutory processes. He submits that because he arrived in Australia by boat in 2010, he was not afforded the same rights to a statutory process to assess his claims for protection as those who arrived by aeroplane. The process was advisory in nature and the decision remained within the discretion of the Minister for Immigration and Citizenship. There were very few guarantees offered of the real independence of the reviewers since they were appointed and paid by the Department of Immigration and Citizenship, and their independence was not structurally sound. The complainant further submits that the Federal Magistrates Court only had jurisdiction for the procedural legality of the process and could not find against errors of judgment made by the independent merits review. Only in March 2014, after the case of *Minister for Immigration and Citizenship v. SZQRB* at the High Court of Australia, did the so-called complementary protection measure become law in Australia, and the distinction between arrivals by aeroplane and arrivals by boat was abolished. This meant that persons who arrived by boat, such as the complainant, were now afforded a statutory process in which a delegate of the Minister made an assessment and decided whether or not to approve their protection claim, rather than merely offering advice to the Minister. This decision can now be reviewed by the Refugee Review Tribunal,<sup>4</sup> a statutory body with greater independence than the Department of Immigration and Citizenship. The complainant submits that after the changes in the law, he was offered a "revamped" International Treaties Obligations Assessment, which by then was virtually an empty process. Later, the International Treaties Obligations Assessment was abolished by the State party altogether, and people who were affected were offered the chance to make a fresh protection visa application. The complainant submits that his claims have not been properly assessed, and that the processes he was subjected to were far from "robust" as claimed by the State party.

#### **State party's additional observations on the merits**

6.1 By a note verbale dated 15 June 2017, the State party submitted its observations on the merits. The State party reiterates that the complainant's claims are inadmissible *ratione materiae* and manifestly unfounded. It notes that a transparent and reasoned consideration of the admissibility of a complainant's claims is a key procedural element of the individual complaints process and essential to the success of the complaints framework. It further notes that in certain recent views adopted by the Committee, in response to detailed submissions by the State party that the complainants' claims were inadmissible *ratione materiae* or manifestly unfounded, the Committee had observed that the issues raised with regard to admissibility were closely related to the merits. The State party notes that it is

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<sup>4</sup> In July 2015, the Refugee Review Tribunal became the Administrative Appeals Tribunal.

necessary for the Committee to consider and determine the State party's submission, as required under the rules of procedure, that complaints raising allegations that clearly do not fall within the definition of torture in article 1 of the Convention, or that are manifestly unfounded, are inadmissible. On this basis, the State party requests that the Committee specifically consider and respond in its views to the arguments made by the State party with regard to the admissibility of the complaint.

6.2 The State party refers to the complainant's submission, in which he states that he is not required to show that he will be tortured if he is returned, but only that the danger exists. The State party submits that this is not an accurate characterization of the threshold set in the Convention, which is that there must be substantial grounds for believing that the danger of torture exists<sup>5</sup> and the danger must be personal and faced by the complainant.<sup>6</sup> The State party notes that the complainant's comments do not provide any relevant new evidence or information that has not already been considered through comprehensive domestic processes. The State party acknowledges that article 3 (2) of the Convention requires all relevant considerations to be taken into account when determining whether article 3 (1) is engaged, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, additional grounds must exist to show the individual concerned would be personally at risk.<sup>7</sup>

6.3 With regard to the merits of the complaint, the State party notes that the complainant has submitted only a poor-quality photograph and an argument unsupported by medical opinion that his father-in-law's death was not the result of suicide. It observes that the quality of the photograph is such that no conclusions can be drawn from it, and it does not prove the complainant's claims. The State party also notes that the complainant's father-in-law died four months after the complainant's departure from Sri Lanka, so he could not have been a witness to a possible crime as he claims.

6.4 The State party rejects the complainant's claim that there have been no findings made against his credibility. It notes that the domestic decision makers found a number of the complainant's assertions to be not entirely truthful, namely his claims related to the death of his father-in-law and his method of departure from Sri Lanka.

6.5 The State party further rejects the complainant's allegations that the domestic procedures were not robust and submits that the claims made by the complainant in his communication have been thoroughly considered by a number of domestic decision makers and they have been found not to engage the State party's non-refoulement obligations. It provides a brief description of each stage of the process.

6.6 The State party notes that at the initial stage, a refugee status assessment, an interview was conducted with the complainant. Based on the information provided and other relevant considerations, including various pieces of country information and the UNHCR eligibility guidelines for assessing the international protection needs of asylum seekers from Sri Lanka, the decision maker found there to be no evidence that the complainant would be at risk of serious harm if he were returned to Sri Lanka, nor that he had a well-founded fear of persecution.

6.7 Then, during the independent merits review, the reviewer considered the complainant's claims afresh and again found that they did not engage the State party's protection obligations. After reviewing several pieces of country information, including information from Amnesty International, International Crisis Group and Human Rights Watch, the reviewer found that the complainant would not be accused of supporting the Tamil Tigers, nor harmed on account of his Tamil ethnicity.

6.8 Later, a judicial review of the recommendations from the independent merits review was conducted on appeal to the Federal Magistrates Court. It was argued by the complainant that jurisdictional error had been committed in failing to consider all claims and relevant material, that the reviewer had failed to ask the correct questions, and that the

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<sup>5</sup> *Paez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5.

<sup>6</sup> *G.R. v. Australia* (CAT/C/57/D/605/2014), para. 9.4.

<sup>7</sup> *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.3.

reviewer had made a finding for which there was no evidence. In rejecting each of the arguments, the Court found that that complainant had not demonstrated that the review was procedurally unfair, nor that it had not been conducted in accordance with the correct legal principles.

6.9 An International Treaties Obligations Assessment was then conducted to reassess whether the complainant's claims engaged the non-refoulement obligations of Australia, following the decision in the case of *Minister for Immigration and Citizenship v. SZQRB*.<sup>8</sup> The State party rejects the complainant's characterization of that case in relation to the procedural fairness of the International Treaties Obligations Assessment process. The assessment conducted in the complainant's case did not give rise to the same concerns identified in *Minister for Immigration and Citizenship v. SZQRB*. The State party notes that the complainant's claim that the International Treaties Obligations Assessment process has now been abolished altogether is also not accurate. In his further submissions to the assessor, the complainant argued that he would be at risk after returning to his home area, due to his status as a failed asylum seeker, his illegal departure from Sri Lanka and his contact with the Australian Tamil Congress in Sydney. At this stage, he submitted a new claim that his wife and children had been photographed since his departure, and that he believed the Criminal Investigation Department was looking for him. The complainant also claimed that he had been tortured while held in the Chettikulam camp in 2009. When asked to clarify the torture he experienced, he said that he was questioned and threatened with beatings. The assessor concluded that the complainant did not face a real risk of persecution, nor a real risk of suffering significant harm upon his return to Sri Lanka for any of the reasons raised in his submissions.

6.10 A judicial review of the recommendations from the International Treaties Obligations Assessment was then conducted by the Federal Circuit Court, and it found that after considering the assessor's report as a whole, no legal error had occurred and that there had been no failure on the part of the assessor to consider the information before her. The complainant's application for injunctive relief was therefore dismissed.

6.11 Finally, a judicial review of the decision of the Federal Circuit Court was heard by the Federal Court of Australia, in which the Court looked into whether the assessor had asked incorrect questions or used an incorrect test when considering country information provided by the complainant in relation to persons with links to the Tamil Tigers. In considering these grounds of appeal, the Court undertook a further review of the complainant's full claims history. The Court held that the complainant had failed to identify any specific error in the way in which the country information had been applied. The Court separately considered whether there was any error evident or whether the assessor had failed to consider any of the complainant's claims, and found neither to be true.

6.12 The State party submits that the complainant also made two requests for ministerial intervention. Under this non-compellable power, the Minister for Immigration and Border Protection<sup>9</sup> can intervene in individual cases if he thinks it is in the public interest to do so. Both requests were denied.

### **Complainant's comments on the State party's additional observations**

7.1 On 18 September 2018, the complainant submitted his comments on the State party's observations on the merits of the communication. He reiterates that at this point, he simply insists that he is at risk of prolonged detention in Sri Lanka, that prolonged

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<sup>8</sup> On 20 March 2013, the judgment in the case established that the International Treaties Obligations Assessment and the post-review protection check did not use the correct test to determine whether the State party's non-refoulement obligations were engaged, and that procedural fairness requirements in relation to country information were not met. As such, all illegal maritime arrivals affected by the case had their protection status reassessed through an International Treaties Obligations Assessment, and the assessment process became judicially reviewable. A description of the current temporary protection system in Australia can be found at <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/onshore-protection>.

<sup>9</sup> In 2013, the title of the Minister for Immigration and Citizenship became the Minister for Immigration and Border Protection.

detention in a Sri Lankan prison brings with it the real risk of interrogation, and interrogation brings with it the real risk of torture. He further submits that the risk is personal due to his personal circumstances. It is common practice for the Sri Lankan security forces to hold suspicions and to attempt to resolve those suspicions using interrogation and torture.

7.2 The complainant again draws the Committee's attention to the fact that prior to 2014, and in his own case, people who arrived in Australia by boat were not entitled to any statutory process: an officer of the Department of Immigration and Citizenship made an assessment and then a recommendation to the Minister. If the recommendation was negative, the applicant could file an appeal through what was called an independent merits reviewer, but these reviewers were independent in name only as they were all on the payroll of the Department of Immigration and Citizenship. The complainant further submits that when the independent merits review process was replaced by the International Treaties Obligations Assessment, it was again carried out by an officer of the Department of Immigration and Citizenship. Subsequently, as a result of further litigation and a ruling by the High Court of Australia, the International Treaties Obligations Assessment process has also been discarded. The complainant notes that despite the State party's repeated declarations of robust domestic processes, he has been subjected to processes that have been repeatedly found to be unsound, and have not included a truly independent assessment of his claim that he faces a real risk of torture if he is returned to Sri Lanka.

7.3 With regard to the death of his father-in-law, the complainant notes that he only has the photo he tendered as documentary evidence. There was no better evidence or any method of obtaining better evidence available. He states that the initial opinion of the local police was that his father-in-law had died as a result of foul play, but it was not possible to ask for a post-mortem examination of the body. The complainant submits that his father-in-law's alleged murder goes to show the seriousness with which his escape from the camp was considered at the time. With regard to the fact that he had left before his father-in-law died, the complainant notes that he was a witness not to the death itself, but to the events leading to the death. He submits that he is a witness to his own escape from the camp and the method of that escape. He argues that his participation in any legal process against the Sri Lanka Army or the Criminal Investigation Department would be essential, so his presence in Sri Lanka in these circumstances would represent a threat to those who perpetrated the murder.

7.4 The complainant rejects the State party's assertion that his credibility was disputed by the domestic authorities. He submits that the authorities had conjectures about certain issues, such as his father-in-law's death, and a definite conclusion in those situations was not possible. However, this cannot and should not be regarded as evidence of the complainant's deceitfulness. With regard to his departure from Sri Lanka, the complainant notes that there was no investigation as to how he obtained his passport and visa, and the issue of whether his departure was legal or not did not even arise until the International Treaty Obligations Assessment process. His father-in-law made the arrangements for his travel documents, so the complainant submits that he simply was not sure whether his departure from Sri Lanka was legal or not. With further expert opinion, the complainant affirms now that the process of obtaining his passport and visa was fraudulent, and therefore his departure was illegal.

7.5 With regard to the judicial review of migration decisions in Australia, the complainant notes that authorities cannot question negative credibility findings, nor can they make conclusions based on inconclusive evidence, except in very extreme cases where the appellant can show unreasonableness. The standard of proof is high. The review is restricted to deciding whether the independent merits review and the International Treaty Obligations Assessment were conducted according to the law, not whether the conclusions they came to were correct. For this reason, the complainant argues that the judicial review was very unlikely to provide him with any relief, even in the unlikely event that the Committee believed the complainant and his conjecture.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (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.

8.2 The Committee 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 challenged the admissibility of the complaint on this ground.

8.3 The Committee notes the State party's argument that the communication is inadmissible *ratione materiae* and manifestly unfounded since the complainant has not substantiated the existence of substantial grounds for believing that he would face a foreseeable, present, personal and real risk of harm, including torture, if he were returned to Sri Lanka. The Committee, however, considers that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently detailed the facts and the basis of the claim for a decision by the Committee. With regard to inadmissibility *ratione materiae*, the Committee notes the complainant's argument that if he were returned to Sri Lanka, he would be in danger of being detained for a significant period of time and interrogated under torture. The Committee considers that these claims raise questions under article 3 of the Convention. Accordingly, the Committee finds the complainant's allegations under article 3 admissible *ratione materiae*. As the Committee finds no obstacles to admissibility, it declares the communication submitted under article 3 of the Convention admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

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

9.2 In the present case, the issue before the Committee is whether the return of the complainant to Sri Lanka would violate 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 or she would be in danger of being subjected to torture. 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 his return to Sri Lanka. In assessing that 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.<sup>10</sup> 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.<sup>11</sup> Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.<sup>12</sup>

9.3 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal,

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<sup>10</sup> *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of a fair treatment and trial; and (d) sentence in absentia (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38).<sup>13</sup> The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however, it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

9.4 The Committee notes the complainant's claim that he would face a risk of torture if he were returned to Sri Lanka because he went through a two-week basic self-defence training course with the Tamil Tigers in the past and assisted in organizing its operations in the area in his capacity as a carpenter. In addition, his brother was summoned by the Tamil Tigers for border protection duty, and since then his family has not heard from him or known his whereabouts, because they, including the complainant, were moved in 2009 to the Chettikulam camp in an area controlled by the army. On several occasions in the camp, the complainant was interrogated by the Sri Lanka Army and the Criminal Investigation Department about his brother's whereabouts. He escaped from the camp in 2010 after his father-in-law arranged for his release by paying a bribe, after which his father-in-law was allegedly murdered. The Committee also notes the complainant's contention that his claims have not been properly assessed by the domestic authorities because the refugee status assessment and the independent merits review, the first two stages of the domestic asylum process, were not carried out by truly independent officials as they had been appointed by the Department of Immigration and Citizenship and they were on the payroll of that Department.

9.5 The Committee also takes note of the State party's submission that the complainant makes his claims on the basis of generalized information from various public reports and refers to general country information on Sri Lanka, failing to adduce evidence that he would be personally at risk of torture if he were returned. It notes the State party's submission that his allegations have been thoroughly considered by a series of domestic decision-making processes and have been found not to engage its non-refoulement obligations under the Convention or under the International Covenant on Civil and Political Rights. The Committee also notes the current human rights situation in Sri Lanka and refers to its concluding observations on the fifth periodic report of Sri Lanka, in which it expressed concern, *inter alia*, about reports regarding the persistence of abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including the military and the police,<sup>14</sup> which had continued in many parts of the country after the conflict with the Tamil Tigers ended in May 2009. It also refers to credible reports by non-governmental organizations<sup>15</sup> concerning the treatment of individuals returned to Sri Lanka by the Sri Lankan authorities.<sup>16</sup> However, the Committee recalls that the occurrence of human rights violations in one's country of origin is not sufficient in itself to conclude that a complainant runs a personal risk of torture.<sup>17</sup> The Committee also recalls that, although past events may be of relevance, the principal question before the Committee is whether the complainant currently runs a risk of torture if he is returned to Sri Lanka.<sup>18</sup>

9.6 In the present communication, the Committee observes that the complainant had not been recruited by the Tamil Tigers, received any substantial military training or participated

<sup>13</sup> *T.Z. v. Switzerland* (CAT/C/62/D/688/2015), para. 8.4.

<sup>14</sup> See CAT/C/LKA/CO/5, paras. 9–12.

<sup>15</sup> See Freedom from Torture, "Tainted Peace: Torture in Sri Lanka since May 2009".

<sup>16</sup> *J.N. v. Denmark* (CAT/C/57/D/628/2014), para. 7.9.

<sup>17</sup> See, for example, *R.D. v. Switzerland* (CAT/C/51/D/426/2010), para. 9.2.

<sup>18</sup> See, for example, *Subakaran R. Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 8.7.

in fighting against the Sri Lanka Army. There is also no evidence of his family's involvement with the Tamil Tigers except for the one time his brother carried out border protection duty, which was followed by his brother's alleged disappearance. The Committee also observes that the complainant's wife and children were released from the Chettikulam camp in 2012 and continue to reside in their house in Manthuvil. Even though the complainant is making allegations of harassment of him while he was in the camp, and of his family after his departure from Sri Lanka, these allegations have not been substantiated by any documentary evidence. The Committee notes that other than a poor quality black-and-white photograph of his allegedly murdered father-in-law, the complainant has not been able to provide any evidence that may suggest how he died or that his death had anything to do with the complainant or his escape from the Chettikulam camp.

9.7 With regard to the complainant's allegation that his claims have not been properly assessed by the domestic authorities, the Committee recalls its general comment No. 4 (2017), in which it states that each case should be individually, impartially and independently examined by the State party through competent administrative or judicial authorities, in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the appeal (para. 13). In the present case, however, the Committee notes, that the complainant has not shown how the fact that the above-mentioned officials were appointed and paid by the Department of Immigration and Citizenship affected their impartiality and independence in assessing his case, or that the assessment in question was clearly arbitrary, unfair or amounted to a denial of justice for him.

10. The Committee refers to its general comment No. 4 (2017), according to which the burden of proof is upon the author of the communication, who must present an arguable case (para. 38). In the Committee's opinion, in the present case, the complainant has not discharged that burden of proof. Furthermore, the complainant has not demonstrated that the authorities of the State party failed to conduct a proper investigation into his allegations.

11. The Committee therefore concludes that the complainant has not adduced sufficient grounds to enable it to believe that he would run a real, foreseeable, personal and present risk of being subjected to torture upon his return to Sri Lanka.

12. The Committee, 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.

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