



**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. 652/2015\* \*\***

<i>Communication submitted by:</i>	E.S. (not represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	19 January 2015 (initial submission)
<i>Date of present decision:</i>	6 December 2016
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issue:</i>	Level of substantiation of claims, <i>ratione materiae</i>
<i>Substantive issues:</i>	Non-refoulement; risk of torture upon return to country of origin
<i>Article of the Convention:</i>	3

1.1 The complainant is E.S., a national of Sri Lanka born in 1973, pending deportation from the State party to Sri Lanka. The complaint raises issues under article 3 of the Convention. He is not represented by counsel. Australia made the declaration under article 22 of the Convention on 28 January 1993.

1.2 On 21 January 2015, pursuant to rule 114, paragraph 1, of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant while his case was being considered by the Committee.

**Factual background**

2.1 The complainant submits that he is a Christian Tamil from Batticaloa District, in the Eastern Province of Sri Lanka. He alleges that his father was taken by the Indian Peacekeeping Force in 1988, during a period of repression against Tamils. He was

\* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

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



eventually released. While searching for his father, his brother was detained by Sri Lankan Task Force personnel in a detention camp. He never returned, and the complainant believes he was killed.

2.2 The complainant submits that on 17 June 1993, while travelling to Colombo, he was stopped by the police at a checkpoint in Peliyagoda, suspected of involvement with the Liberation Tigers of Tamil Eelam (LTTE) because he was a young Tamil male and had no identification papers with him. He was taken to a police station and kept there for three months. While in detention, he was interrogated, beaten and threatened. He denied being involved with LTTE. However, he was forced to sign a document which he did not understand. Later, he discovered that it was a confession. In September 1993, he was transferred to a prison. In December 1994, a court found that there was no sufficient evidence against him and ordered his release without charges.<sup>1</sup>

2.3 Afterwards, the complainant lived in Negombo, near Colombo, where he started a family and worked as a sales assistant and as a bus driver. He alleges that in 1999, he was again arrested by the police, stripped naked, beaten and tortured for one month. The police referred to the confession he had been forced to sign. In 2000, he was again arrested by the Criminal Investigations Division and questioned about his involvement in a bomb blast. He was held at Wellaimpitiya police station for three months, during which time he was again tortured and beaten. He was released after appearing in court. Afterwards, he and his family moved to Chenkalady/Eravur.

2.4 On 4 January 2006, the complainant was issued a passport in Sri Lanka with a date of expiry of January 2011. Later in 2006, the complainant travelled to Dubai, where he lived and worked as a "process worker" for a plastics company. When his visa expired in 2009, he returned to Sri Lanka and purchased a three-wheeled vehicle to work as a taxi driver. At that time, he established his residence in Chenkalady/Eravur and joined the Chenkalady Auto Union.

2.5 The complainant submits that on 10 January 2012, he had an argument with a taxi driver related to their position in the taxi line, and that the driver threatened him by reminding that his brother, R.M., was influential as he was the chair of the local authority and a member of Tamil Makkal Viduthalai Pullikal. He further submits that R.M. worked for Mr. Pilliayan, who was the Chief Minister of the Eastern Province and a member of Tamil Makkal Viduthalai Pullikal.

2.6 The complainant alleges that the next day, R.M., five other persons and a policeman came to the taxi rank, looking for him. He claims that he was beaten, threatened, and had a gun pointed to his chest on the street, in front of many witnesses. He then rushed to the local police station. R.M. followed him, attempted to beat him inside the police station, and told the police that the complainant was working against him. The police advised the complainant not to file a complaint against R.M., as there might be consequences if he did so.

2.7 In the following days the complainant hid at his mother's house out of fear, as his colleagues had told him that R.M. had been searching for him at the taxi rank. On an unspecified date, unknown men arrived at his house and told his wife that they had been

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<sup>1</sup> The complainant submits a letter in Sinhalese dated January 1995, written by the officer in charge of the Security Coordination Division of Kalaniya, with a translation notarized in Sri Lanka. It refers to his arrest in June 1993 in connection with suspected terrorist activities and his release in December 1994 owing to insufficient evidence before the court. He also submits another letter in Sinhalese dated December 1994, written by an official of New Magazines Prison in Colombo, again with a notarized translation. It refers to his detention since September 1993, along with his case number and the date of his subsequent release.

sent by R.M. and were looking for him. After that, he left Sri Lanka illegally and fled to Australia by boat, with the help of smugglers.

2.8 On 11 April 2012, the complainant arrived at Christmas Island, Australia, as an illegal maritime arrival and without a valid passport. He was detained upon arrival under the Australian Migration Act as an “unlawful non-citizen”. On 20 April 2012, he was transferred to an immigration detention centre in Queensland.

2.9 On 4 July 2012, the complainant filed an application for a protection visa before the Department of Immigration and Border Protection. He alleged that he was at serious risk of harm in Sri Lanka by R.M. and other members of Tamil Makkal Viduthalai Pullikal, that he would not be protected by the Sri Lankan police because of his Tamil ethnicity and that he would be accused of having links with LTTE.

2.10 On 16 August 2012, the complainant was granted a bridging visa by the Department of Immigration and Border Protection and released from detention.

2.11 On 27 September 2012, the Department of Immigration and Border Protection rejected the complainant’s request for a protection visa. It found that the complainant did not face a real risk of harm if returned to Sri Lanka on account of his ethnicity or any real or imputed connections to LTTE. Although he was detained by the police from 1993 to 1994 under suspicion of LTTE connections, the complainant was under no ongoing suspicion and had not experienced any difficulties since that time. In support of this finding, the Department considered relevant country information,<sup>2</sup> which did not indicate that Tamils in Sri Lanka faced persecution purely on account of ethnicity. While the complainant might have suffered abuse in the past, there was no evidence that he had personally experienced any problems since 1994. The Department further accepted as credible the complainant’s allegations that he had had a dispute with R.M. in early 2012. However, it was not satisfied that that continued to constitute a real risk for the complainant. It took into account that he and his family had remained in the area for some time after the incident without further harm, and that the incident was therefore a singular event rather than part of an ongoing plan to harm the complainant. Finally, it considered that he did not face a risk of torture owing to his position as a failed asylum seeker, because neither he nor his family possessed any real or imputed LTTE profile. In that regard, the Department noted that the complainant had been able to travel out of the country and to return in the past, without incident.

2.12 The complainant appealed the decision of the Department of Immigration and Border Protection before the Refugee Review Tribunal, reiterating his previous allegations. On the basis of the documents submitted by the complainant to the Committee, it appears that the Tribunal held a hearing on 5 December 2012 and asked several detailed questions concerning the complainant’s accounts and the evidence he had submitted. When asked by the Tribunal whether he had encountered any problems because he was Tamil since 2009, when he returned to Sri Lanka, the complainant replied in the negative. The Tribunal also referred to information raised by the Department that indicated that R.M. had been expelled from his position in Tamil Makkal Viduthalai Pullikal and that he would therefore have less

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<sup>2</sup> In its decision, the Department refers to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers From Sri Lanka, 5 July 2010; United States of America, Department of State, Country Reports on Human Rights Practices for 2011: Sri Lanka, 24 May 2012; Danish Immigration Service, “Human rights and security issues concerning Tamils in Sri Lanka”, October 2010; United Kingdom Border Agency, Operational Guidance Note: Sri Lanka, March 2011; United Kingdom Foreign and Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report*, 2012; United Kingdom Border Agency, *Sri Lanka — Bulletin: Treatment of Returns*, 2012; and International Crisis Group, “Government promises, ground realities”, 1 March 2012.

influence on the complainant, or anyone else. Asked if he would like to respond, the complainant said that the members of Tamil Makkal Viduthalai Pullikal were still operating as an armed group. During the hearing, he added that he had again been detained by the police in 1999 (see paragraph 2.3). When asked why he did not mention this detention before, he said that he did not think it was necessary. The Tribunal asked the complainant whether he had been detained on any other occasion, to which he replied in the negative. When asked about the connection between the alleged second detention and the forced confession, the complainant argued that the police had used the old confession and had searched for him on that account, and that they had referred to it during his arrest. However, after the Tribunal commented that this contradicted his previous statements, the complainant said that the confession was mentioned to him only during the second arrest, and that the police regarded him with suspicion. The complainant also stated that he had been issued a passport in Sri Lanka twice, in 1995 and 2006; that his wife was still living at the same address in Eravur; that he had not had any problems working as a driver between 1990 and 2012; and that he used to go through checkpoints while living in Sri Lanka.

2.13 On 19 February 2013, the Refugee Review Tribunal dismissed the complainant's appeal. The Tribunal stated that it had doubts about the documentary evidence submitted by the complainant concerning his alleged detention in 1993/94, since the documentation allegedly supplied by the court upon the complainant's release was in English rather than Sinhalese or Tamil, and was sympathetic towards him. However, even if the complainant were given the benefit of the doubt and this evidence accepted, any detention during those years had no ongoing negative consequences for him. On the other hand, the Tribunal found that his claim that he had been detained again in 1999 was not credible, as it was raised by the complainant only during the Tribunal hearing, at a late stage in the proceedings, and it contradicted his previous statements. Likewise, his accounts about the incidents with R.M. and his brother were not credible. The Tribunal further noted that after the alleged detentions, he was able to get a genuine passport to travel abroad and return to Sri Lanka without having any problem with the authorities, and that his alleged forced confession in 1993 of membership of LTTE was not used against him after his release. Furthermore, he had not adduced any subsequent problem with the Sri Lankan authorities owing to his ethnicity or alleged suspected links with LTTE. His wife was still living in Sri Lanka in the same house, and she had not been subject to threats or harassment. In coming to its conclusion, the Tribunal also considered relevant country information with regard to the complainant's Tamil ethnicity and the current situation relating to LTTE and Tamil Makkal Viduthalai Pullikal in Sri Lanka.<sup>3</sup> It pointed out, inter alia, that pro-government paramilitary groups (in particular the Eelam People's Democratic Party and Tamil Makkal Viduthalai Pullikal) continued to operate in Sri Lanka; that they had established political parties and that they increasingly took on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources. The complainant filed an application for judicial review of the Tribunal's decision before the Federal Circuit Court.

2.14 On 7 February 2014, the Federal Circuit Court confirmed the Tribunal's decision and dismissed the complainant's appeal. His appeal to the Federal Court was dismissed on 28 May 2014.

2.15 On an unspecified date, the complainant lodged an application for special leave to appeal to the High Court, which was rejected on 16 October 2014. Finally, on 9 November 2014, the complainant filed an application for a waiver under section 48B of the Migration Act to allow him to file a new protection visa application and a humanitarian and compassionate request to the Minister for Immigration and Border Protection, citing exceptional circumstances.

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<sup>3</sup> The Refugee Review Tribunal recalls the country information cited by the Department of Immigration and Border Protection.

2.16 On 9 December 2014, the complainant was informed that the Minister had refused to allow the discretionary remedies. The complainant submits that as a result, the Tribunal's decision is final and that he has exhausted domestic remedies.

### **The complaint**

3. The complainant submits that his deportation to Sri Lanka would constitute a violation of the State party's obligations under the Convention. He is at risk of serious and foreseeable harm if returned to his country of origin, as a Tamil from the Eastern Province of Sri Lanka who was formerly known for LTTE activities. He was accused of having connections with LTTE in the past and had been detained by the authorities for 1 1/2 years, during which he was subjected to torture and inhuman and degrading treatment. While in detention, he forcibly signed a confession of involvement with LTTE, which he fears might be used against him again. He also angered an influential member of Tamil Makkal Viduthalai Pullikal. Finally, he departed Sri Lanka illegally and sought asylum in Australia. He fears that Sri Lankan authorities will detain him upon his return and that he will be tortured, subjected to inhuman and degrading treatment and possibly killed by the Sri Lankan authorities.<sup>4</sup>

### **State party's observations on admissibility and the merits**

4.1 On 12 October 2015, the State party submitted its observations on admissibility and the merits of the complaint. It submits that the complainant's allegations relating to inhuman and degrading treatment are inadmissible *ratione materiae* and should be rejected under article 22 (2) of the Convention and rule 113 (c) of the Committee's rules of procedure. In this regard, it maintains that the obligation of non-refoulement is confined to torture and does not extend to cruel, inhuman or degrading treatment or punishment. The State party further submits that the complaint is manifestly unfounded and therefore inadmissible under rule 113 (b) of the rules of procedure. Should the Committee find that the complainant's allegations are admissible, the State party submits that there is no supported evidence or substantial grounds for believing that the complainant would be in danger of being tortured if returned to Sri Lanka.

4.2 The complainant's claims were considered during the protection visa application procedure by the Department of Immigration and Border Protection, the Refugee Review Tribunal, the Federal Circuit Court, the Federal Court and the High Court of Australia. These robust domestic processes have considered and determined that the claims were not credible and did not engage the State party's non-refoulement obligations. The complainant has not provided any relevant new evidence in his submissions to the Committee that has not already been considered through the extensive domestic judicial proceedings.

4.3 The State party recalls that the Department of Immigration and Border Protection found that the complainant did not face a real risk of harm if returned to Sri Lanka. Subsequently, the Refugee Review Tribunal carried out an external merits review of the Department's decision. The Tribunal received oral submissions from the complainant with the assistance of an interpreter. It raised doubts in relation to the credibility of his claims and the overall evidence he had provided. The Tribunal also expressed doubts about the credibility of the complainant's evidence concerning his detention in 1993-1994. Nevertheless, it found that, even if he were given the benefit of the doubt concerning this allegation, there was no corroboration that the complainant had encountered problems

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<sup>4</sup> The complainant refers to the updated UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers From Sri Lanka, issued in 2012; Human Rights Watch, *World Report 2014: Sri Lanka*; and Amnesty International, *Locked Away: Sri Lanka's Security Detainees*, 2012.

owing to his ethnicity and/or suspected connections with LTTE since 1994. It also found that owing to inconsistencies, the complainant's incident with R.M. was not credible. The Tribunal further noted that the complainant had exited and re-entered Sri Lanka through legal channels since 1994; that he had not faced any adverse attention from the Sri Lankan authorities; and that relevant country information suggested that failed asylum seekers were not arbitrarily detained unless they had an outstanding criminal record, which was not the complainant's case. Accordingly, it concluded that there were no substantial grounds for believing that the complainant would be at risk of serious harm if deported.

4.4 With regard to the complainant's request for ministerial intervention under sections 417 and 48B of the Migration Act, the State party notes that the Minister for Immigration and Border Protection can intervene in individual cases if he considers that it is in the public interest to do so. The complainant's request, however, did not meet the requirements for a ministerial intervention.

4.5 The complainant was questioned on all instances of detention in Sri Lanka, but did not provide any detail or evidence to substantiate his claim that he was detained and mistreated in 2000. In any case, such detention does not appear to have led to any ongoing difficulty for him in Sri Lanka as he was able to travel abroad and to return to Sri Lanka in 2006 and 2009, respectively, and to work until his departure in 2012.

4.6 The State party maintains that its authorities have specifically and carefully considered whether his condition as failed asylum seeker may put him at serious risk of torture, taking into account relevant country information contained in the reports of the Office of the United Nations High Commissioner for Refugees (UNHCR), States and well-known non-governmental organizations, which did not contradict those cited by the complainant.

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

5.1 On 20 January 2016, the complainant provided his comments on the State party's observations. He reiterates his previous allegations and points out that he was severely and repeatedly tortured during his time in prison between 1993 and 1994. He was hung, beaten (causing him to suffer a broken nose on one occasion), burned and stripped naked. He was not allowed to receive visits from his family for three months, until his wounds became less apparent. He was also arrested again in 2000 by the local police, on grounds of suspicion of having a connection with LTTE. During this detention, he was given the strictly minimum amount of food, blindfolded, hung upside down and beaten on the soles of his feet. The officers placed a gun in his mouth and forced him to sniff petrol inside a plastic bag wrapped over his head. As during the previous detention, he was not allowed to receive visits from his family.

5.2 The complainant submits that in 2004 a rift occurred between LTTE and the Karuna faction. In this context, he and other taxi drivers were forced to give their vehicles to members of the Eelam People's Revolutionary Liberation Front, the Karuna group and LTTE, who used them to carry out attacks and kidnappings. A colleague from his three-wheeler taxi company was shot dead by LTTE members, without any subsequent investigation by the Sri Lankan authorities.<sup>5</sup> As he considered his work as a taxi driver dangerous, he decided to leave Sri Lanka and went to Dubai in 2006.

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<sup>5</sup> The complainant provides copies of a death certificate dated 16 June 2005, with a translation into English, which states that a person died by gunshot on 9 June 2005; a copy of a taxi parking permit, in Tamil; and a copy of a half-page newspaper article in Tamil which he claims reports his friend's murder.

5.3 The complainant submits that on 16 January 1988, his brother went to deliver food to his father, who was working. On his way, he was intercepted by members of the Sri Lankan army and taken into custody to an army camp under suspicion of being an LTTE member. Afterwards, he was killed and burned on a tyre pyre.<sup>6</sup>

### **Additional submissions by the parties**

#### *By the State party*

6. On 31 March 2016, the State party pointed out that the complainant's comments on its observations had raised new allegations that were not presented during the visa protection proceedings, in particular the allegations concerning the alleged problems with LTTE, the Eelam People's Revolutionary Liberation Front and the Karuna group in 2004. Nor did he argue that he would be at risk of harm upon return to Sri Lanka as a result of this alleged event. Furthermore, an assessor was unable to assess the untranslated documentary evidence submitted by the complainant. Accordingly, the Department of Immigration and Border Protection concluded that these allegations were not substantiated or credible. Likewise, he did not raise the allegation about the alleged detention and killing of his brother by the Sri Lankan army. The Department accepted that the brother had been killed in a crossfire and took the death certificate into account in assessing his application. However, the complainant did not substantiate how this element specifically related to his return to Sri Lanka or why he would be harmed because of it.

#### *By the complainant*

7. On 9 May 2016, the complainant provided a further submission. He argues that there was an ongoing situation of general violence in Sri Lanka and a denial of responsibility vis-à-vis crimes committed against the Tamils during the civil war. Risks of serious harm still exist for individuals with real or perceived connections to LTTE, as in his case.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 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.

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 contested that the complainant has exhausted all available domestic remedies.<sup>7</sup> The Committee therefore finds that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

8.3 As regards the arguments by the State party that the complaint should be declared inadmissible on the grounds that it is incompatible with the provisions of the Convention or manifestly unfounded, the Committee considers that these arguments are closely related to

<sup>6</sup> The complainant provides a death certificate dated 13 February 1995 stating that a person called C.S. died on 16 January 1988, and giving the cause of death as "being caught in the cross-firing between both parties" and stating that the "place of burial is not known".

<sup>7</sup> See, for example, communication No. 455/2011, *X.Q.L. v. Australia*, decision adopted on 2 May 2014, para. 8.2.

the merits of the case, and that the complainant has sufficiently substantiated his claims for the purposes of admissibility. 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 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.

9.2 In the present case, the issue before the Committee is whether the forced 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.

9.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sri Lanka. In assessing 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 the evaluation 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. 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>8</sup>

9.4 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.<sup>9</sup> Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).<sup>10</sup>

9.5 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 detained and tortured by the Sri Lankan authorities owing to his condition as a Tamil person from the Eastern Province of Sri Lanka; his perceived links with LTTE, for which he was allegedly detained and tortured in the past; his incident with a member of Tamil Makkal Viduthalai Pullikal; and his status as a failed asylum seeker. In particular, he claimed that while in detention between 1993 and 1994 in Sri Lanka, he was forced to sign a confession of involvement with LTTE, which he fears might be used against him again.

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<sup>8</sup> See, for example, communication No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015, para. 7.3.

<sup>9</sup> See also *A.R. v. Netherlands*, para. 7.3.

<sup>10</sup> See, for example, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

9.6 The Committee also takes note of the State party's arguments that its authorities reviewed all the allegations and evidence submitted to them by the complainant and determined that most of the claims were not credible. Its authorities' decisions also relied on reports that indicate that only those Tamils who are suspected of having links to LTTE face persecution in Sri Lanka, and that the complainant has not demonstrated that he is a person suspected of having significant and concrete links with LTTE. Likewise, available country information consulted by the Refugee Review Tribunal indicated that militia and armed groups such as Tamil Makkal Viduthalai Pullikal continue to operate in Sri Lanka, that they have established political parties and that they have increasingly taken on the characteristics of criminal gangs as they sought to solidify their territory and revenue sources.

9.7 Regarding the complainant's claim that he risks being subjected to torture upon return to Sri Lanka owing to his status as a failed asylum seeker of Tamil ethnicity, the Committee, while not underestimating the concerns that may be legitimately expressed with respect to the current human rights situation in Sri Lanka and the treatment of, inter alia, failed asylum seekers from overseas, 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.<sup>11</sup> The Committee observes that the updated UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers From Sri Lanka, issued on 21 December 2012, no longer refer to a presumption of eligibility for protection of Sri Lankans simply on the grounds that they are Tamils originating from the north of the country, even though they do caution that a merits-based assessment on the basis of individual circumstances is still warranted and that Tamil ethnicity and place of origin can still be factors increasing the vulnerability of persons within other "risk profiles" whose protection claims warrant particularly close attention.

9.8 In this context, the Committee refers to its consideration in 2016 of the fifth periodic report of Sri Lanka,<sup>12</sup> when it voiced serious concern about reports suggesting that abductions, torture and ill-treatment perpetrated by State security forces in Sri Lanka, including the police, had continued in many parts of the country after the conflict with LTTE ended in May 2009.<sup>13</sup> The Committee was also concerned at the reprisals against victims of and witnesses to acts of torture and at the acts of abduction and torture in unacknowledged detention facilities, and inquired whether a prompt, impartial and effective investigation of any such acts had been undertaken.<sup>14</sup>

9.9 In the present case, the Committee observes that it is not disputed that the complainant is of Tamil ethnicity and from the Eastern Province of Sri Lanka. Although the Refugee Review Tribunal had doubts about the authenticity of the complainant's evidence concerning his alleged detention in 1993-1994, it found that, even if he were given the benefit of the doubt, there was no corroboration that the complainant had encountered problems with the Sri Lankan authorities owing to his ethnicity and/or suspected connections with LTTE since 1994, when he was released without charges by a court order. The complainant alleges that in 1999 and 2000, he was again detained and tortured by the police and the Criminal Investigation Division, respectively, and that in 1999 the officers referred to the alleged confession he had previously been forced to sign. The Committee observes, however, that he submitted no evidence in support of these allegations within the protection visa proceedings, or before. Moreover, the complainant was able to travel abroad in 2006 and to return to Sri Lanka in 2009, establishing his residence in Chenkalady/Eravur

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<sup>11</sup> See, for example, communication No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2.

<sup>12</sup> See CAT/C/SR.1472 and 1475.

<sup>13</sup> See CAT/C/LKA/CO/3-4, para. 6.

<sup>14</sup> See CAT/C/SR.1472, paras. 36 and 42; and CAT/C/SR.1475, paras. 10 and 27.

and working as a taxi driver, and his wife has continued living in Sri Lanka up to the present. He has not argued that his relatives have been subjected to persecution before or after his departure, or that they received threats addressed to him. Against this background, the Committee considers that the complainant has failed to explain why the decision of the State party's authorities to deny him a protection visa was clearly arbitrary or amounted to a denial of justice. The Committee recalls in this respect its general comment No. 1, according to which the burden of presenting an arguable case lies with the complainant of a communication (para. 5). In the Committee's opinion, in the present case, the complainant has not discharged this burden of proof.<sup>15</sup>

10. Consequently, the Committee considers that the evidence and circumstances invoked by the complainant do not show sufficient grounds for believing that he would run a real, foreseeable, personal and present risk of being subjected to torture in case of his removal 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.

11. In the light of the foregoing, 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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<sup>15</sup> See communication No. 429/2010, *Sivagnanaratnam v. Denmark*, decision adopted on 11 November 2013, paras. 10.5 and 10.6.