



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

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**Committee against Torture**

**Communication No. 716/2015\*\***

**Decision adopted by the Committee at its sixtieth session  
(18 April – 12 May 2017)**

<i>Submitted by:</i>	S.T. (represented by counsel, John Phillip Sweeney from the Edmund Rice Centre)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	23 October 2015 (initial submission)
<i>Date of present decision:</i>	11 May 2017
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Level of substantiation of claims,
<i>Substantive issues:</i>	Non-refoulement; Risk of torture upon return to country of origin
<i>Articles of the Convention:</i>	3

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\*\* The following members of the Committee took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Jens Modvig, Sapana Pradhan-Malla, Ana Racu, Sébastien Touzé and Kening Zhang.

1.1 The complainant is Mr S.T., a Sri Lankan national born on 13 March 1994. He is awaiting forced removal to Sri Lanka. He claims that his removal to Sri Lanka by the State party would constitute a violation of his rights under articles 1 and 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). He is represented by counsel. Australia made the declaration under article 22 of the Convention on 28 January 1993.

1.2 On 23 November 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. On 10 May 2016, the State party informed the Committee that the complainant remained in its territory in accordance with the Committee's request.

### **Factual background**

2.1 The complainant was born in Miravodai, Valaichenai, Batticaloa District, in the Eastern Province of Sri Lanka, and professes Hindu faith. He lived with his parents, two sisters and one brother. He completed 10 years of education in school and worked in construction as a carpenter since December 2010 until he left Sri Lanka. Following the tsunami in Sri Lanka in 2005 the complainant and his family moved to a house in Miravodai, which is a predominantly Muslim village. His father was the head of one or two Hindu temples in Miravodai. Muslim and Hindu communities in the village have had clashes concerning land disputes during decades, in which his father was involved as community leader.

2.2 Due to his father's role within the Hindu community, the complainant was assaulted on multiple occasions by members of the Muslim community. In March 2011, six persons came to the family house and threatened the family with taking their property. The complainant was dragged out from the house, tied up, beaten and left on the side of the road. They could not see the face of the aggressors but the complainant and his relatives knew they were Muslims because of their accent. Many Tamils' houses were looted and burnt. In August 2011, on his way from work to home, six Muslim persons assaulted the complainant again and left him unconscious. He got a split lip and injuries in his left arm and neck. He claims that he was found by some farmers on the following day; and that he did not go to the hospital as it was far away and he was scared to explain what happened. Nor did he report the aggression to the police because he feared his aggressors' reaction. In April 2012, persons who identified themselves as members of the Criminal Investigation Department (CID) visited the family house, asked them to leave the land, and threatened to kill them. The complainant submits that these persons were Muslims; that he filed an application to the police about the repeated assaults; and that the police failed to investigate his allegations and to detain the aggressors. He also made a complaint to the "Grama Sevaka", a public servant, without any result. In this connection, he claims that in general Muslims are better treated by the authorities than Tamils; and that the Muslim community has close links with members of the CID in Valachchenai. Since he feared to be tortured or killed, he decided to flee to Australia.

2.3 On 18 May 2012, the complainant arrived at Christmas Island, Australia, by boat without a valid visa. He was detained upon arrival as an illegal maritime arrival under the Australian Migration Act.

2.4 On 27 August 2012, the complainant filed an application for a protection visa before the Department of Immigration and Citizenship (DIC). He alleged that if deported to Sri Lanka, he would be persecuted by the CID, other authorities and persons of Muslim faith. He referred to the events that he allegedly went through prior to his departure and maintained that many Tamils were killed; that there were frequent round ups of Tamils and

interrogations about their knowledge of Liberation Tigers of Tamil Eelam (LTTE) stockpiles of arms activities; that he had been rounded up 4 times since 2010; that he would be persecuted as failed asylum seeker who left Sri Lanka unlawfully; and that, against this background he would not be protected by the Sri Lankan authorities because of his Tamil ethnicity. On 8 September 2012, his legal representative added as a ground for asylum that the complainant would be accused of having links with the LTTE since he was a Tamil from the militarized East, an area with a history of LTTE presence and support.

2.5 On 27 September 2012, the complainant was granted a bridging visa by the DIC and released from detention.

2.6 On 1 March 2013, the DIC rejected the complainant's request for protection visa. It found his accounts to be confusing and contradictory. In particular, the alleged incidents of attacks by Muslims had been fabricated or embellished for the occasion. The DIC noted that the complainant and his family lived in the same home in Miravodai since 2005, without incidents; and found no plausible that they had been targeted by local Muslims or authorities in 2011 or 2012. The DIC also 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 the LTTE. In support of this finding, it considered relevant country information,<sup>1</sup> which did not indicate that Tamils in Sri Lanka face persecution purely on account of ethnicity. It further stated that although the complainant alleged that he had been "rounded up" and questioned by the Sri Lanka authorities regarding LTTE stockpiling of munitions between 2010-2011, he had never been suspected of having any association with the LTTE or similar groups, and that neither he nor his family had ever had any contact with such groups. Likewise, the DIC concluded that the complainant would not be at risk of torture as failed asylum seeker upon arrival at the airport or in his village. Although reports indicated that Tamil failed asylum seekers had been questioned on their return to Sri Lanka upon arrival at the Colombo airport and that some had been detained; those with connections to the LTTE or links with Tamil nationalist politics were the ones particularly targeted by the Terrorist Investigation Department.<sup>2</sup> Finally it also stated that there were no grounds for believing that he might be at risk of torture if returned due to the fact that he left Sri Lanka unlawfully.

2.7 The complainant appealed the DIC's decision before the Refugee Review Tribunal (RRT) and reiterated his previous allegations. Notably he argued that his family was not associated with the LTTE but some members of the community were; and that for this reason his father was questioned on several occasions by the authorities between 2007 and 2008. During the proceedings the complainant provided documents in support of his claims, such as a letter written by his father indicating that he was informed that the CID had been making enquiries about the complainant.

2.8 On 16 May 2013, the complainant appeared before the RRT. During the hearings, the RRT highlighted the inconsistencies of the complainant's accounts and posed questions to clarify them. Notably, when asked why he would be perceived as linked to the LTTE since he had never been detained on suspicion of involvement with the LTTE, he answered that his family had been questioned by the authorities several times in 2007 and 2008. When

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<sup>1</sup> The DIC's decision refers inter alia to UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka*, 5 July 2010; US Department of State, *Country Reports on Human Rights Practices for 2011, Sri Lanka*, 24 May 2012; Danish Immigration Service Fact Finding Report, Human Rights and Security Issues concerning Tamils in Sri Lanka, October 2010.

<sup>2</sup> The CID's decision refers to UK Country of Origin Information (COI) report of 7 March 2012; Human Rights Watch, *UK: Suspend Deportations of Tamils to Sri Lanka*, 29 May 2012.

informed that according to UNHCR, persons were not harmed in Sri Lanka simply because they were Tamils, he replied that during the civil war Muslims could not do anything to Tamils, but now they were trying to target Tamils. When informed that reports of torture and other serious harm against returned asylum seekers, cited in his submission, were related to returnees who were suspected of being LTTE members or supporters or of having some involvement in criminal activities, the complainant replied that he would be harmed because he left his country of origin illegally. At the end of the hearing the RRT informed the complainant that there were a number of inconsistencies over key elements of his accounts and invited him to clarify them. The complainant stated that his village was very small and that information about the situation there never came to the outside world; and that because he was mentally disturbed he had been unable to provide the correct information at first. Subsequently, he provided the RRT with a writing submission, prepared with the assistance of his counsel.

2.9 On 27 June 2013, the RRT dismissed the complainant's appeal. The RRT stated that it was not persuaded by the complainant's explanation about the inconsistencies in his account. In relation to his alleged mental difficulties and trauma, it noted that he had not produced any expert opinion in this regard; that he did not claim to have sought any form of counselling or treatment; and that he actively participated during the hearing and did not show emotional or mental difficulties. The RRT accepted the complainant's allegations that his father was the president of a local Hindu temple or temples and that he might be regarded as a leader among Tamils in the village since he had been active in rebuilding a temple. However it stated that relevant country information, including the one cited by the complainant in his submissions, did not report acts of violence between the Hindu and Muslim communities. In light of the inconsistencies of the complainant's accounts, the RRT concluded that his allegations about the harm caused on him by Muslim gangs or Muslim members of the CID were not credible.

2.10 Concerning the complainant's allegations of being perceived with links to the LTTE, the RRT stated that although it accepted that the complainant and his father might have been subjected to some level of questioning by the authorities at various times during the civil war and in its aftermath, there was no evidence of any particular suspicion that they were involved in any way with the LTTE. It further noted that the complainant did not allege that he or his family had ever had connection with the LTTE or held political opinions against the government. In this regard, the RRT referred to information provided within the proceedings, such as the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seeker from Sri Lanka of July 2010 and December 2012 and noted that this information did not indicate that a person would be perceived as associated or linked to the LTTE only due to his/her Tamil origin from the Eastern Province.

2.11 With regard to the alleged risk as a failed asylum seeker, the RRT acknowledged the information according to which some failed asylum seekers returned to Sri Lanka had been reportedly tortured and ill-treated; and that returnees were routinely interviewed at the airport on arrival by the Immigration and Emigrant Department, the State Intelligence Service and the CID. However, the cases reported in which returnees were tortured involved failed asylum seekers that had a connection or perceived link with the LTTE. It also referred to information published in 2013 by the Sydney Morning Herald regarding six returnees from Australia who had been allegedly harassed by paramilitary groups allied to the government following their release from the airport and their return to their homes in Batticaloa, and noted that these persons claimed that they were campaign workers from the opposition Tamil National Alliance (TNA). This was not the complainant's case. The RRT also concluded that the complainant would not be at risk of torture due to his departure from Sri Lanka in breach of its immigration laws. It noted that returnees in this situation may be arrested at the airport and brought before court to apply for bail; that bail was

routinely granted; and that in general penalties eventually imposed by courts took the form of fines. Finally, it noted that there was no information that supported the complainant's allegation that he could be at risk due to his Hindu faith.

2.12 The complainant provided to the Committee a document according to which on 4 July 2013, his father reported to the Valaichenai Police Station that the complainant was a supporter of the "Tamil political party in [their] area"; that a group of four persons came to his house on 20 March 2012 looking for him, that he did not go out because he feared to be attacked; and that after his departure from the country, the persons looked for him again on 7 October and 27 December 2012 and 2 July 2013.<sup>3</sup>

2.13 On 24 July 2013, the complainant filed an application for judicial review before the Federal Circuit Court of Australia (FCCA) and claimed that the RRT's decision was affected by a legal error. On 5 September 2013, the complainant attended a directions hearing with the assistance of a Tamil interpreter but without counsel. The Court gave him leave to file an amended application and to submit further evidence. On 12 December 2013, the FCCA confirmed the RRT's decision and dismissed the complainant's appeal. In its decision, the Court noted that the complainant had difficulties in understanding the question poses to him; and that he argued that the RRT failed to take into due consideration the evidence submitted by him, in particular a letter from his father that allegedly supported his allegations; and that he received legal assistance from different professionals within the previous proceedings. In this regard, the FCCA noted he received legal assistance under the former Immigration Advice and Application Assistance Scheme (IAAAS scheme) of a high professional standard; that he never raised any issue about his legal representation with the RRT; and that in the circumstances it could not be concluded that this impacted on the outcome of his visa request.

2.14 On 31 December 2013, the complainant lodged an application for leave to appeal to the Federal Court of Australia (FCA), claiming that the FCCA failed to take into due consideration his allegations. Since the complainant appeared unrepresented, the FCA adjourned the hearing originally scheduled on 19 May 2014 in order to enable him to be referred for pro bono legal assistance and be legally represented in the proceedings. On 1 April 2015, the FCA examined the complainant's allegations and dismissed his appeal as it found that there was no legal error with the RRT's decision.

2.15 On 7 May or 17 June 2015 the complainant filed an application to the Minister for Immigration and Citizenship to request Ministerial Intervention under section 417 of the Migration Act of 1958, which was rejected by the Minister on 15 September 2015. The complainant submits that he has exhausted domestic remedies.

### **The complaint**

3.1 The complainant submits that his deportation to Sri Lanka by the State party would constitute a violation of its obligations under articles 1 and 3 of the Convention since he would be at risk of being tortured by Sri Lankan officials or members of the Muslim community due to his Tamil ethnicity, his father role as a leader and custodian of a Hindu temple in his village, and his condition as a failed-asylum seeker who left Sri Lanka illegally. Tamils who are failed asylum seekers are in a particularly vulnerable position upon arrival in Sri Lanka since reports indicate that those even with little contact with the LTTE, have been interrogated, harassed, and beaten by the Sri Lankan authorities upon his

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<sup>3</sup> The complainant attaches a copy of the complaint to the police in Tamil language and a translation into English as an annex.

return.<sup>4</sup> In this context, the complainant argues that he will probably be detained for a long period without charges, interrogated under torture and kept in poor conditions of detention.

3.2 The complainant claims that he inconsistencies in his statements before the Australian authorities were due to his young age, state of anxiety and trauma, as a result of his experiences in Sri Lanka. He tried to clarify his accounts before the RRT, but his efforts were seriously hampered by the inquisitorial nature of the RRT's interview and the need to speak through an interpreter.<sup>5</sup>

3.3 Although the FCCA itself noted that the complainant was an unsophisticated person and did not have legal representation, it requested him to specify the legal errors committed by the RRT. Therefore, he claims that in practice he had no opportunity to seek the review of the RRT's decision by a higher court. In this regard, the complainant argues that he could not afford legal representation and that at the time of the proceedings public funds were not available for application for judicial review against the RRT. The complainant further submits that the legal assistance provided to him in the DIC and RRT's proceedings under the IAAAS scheme was deficient; and that regular legal aid was usually not granted for this kind of matters.

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

4.1 On 10 May 2015, the State party submitted its observations on admissibility and merits of the complaint. It maintains that the complaint is manifestly unfounded and therefore inadmissible under rule 113(b) of the Committee's 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 thoroughly considered during the protection visa application by the DIC and the RRT. His case was also examined by the FCCA and the FCA, where he sought judicial review for legal error of the RRT's decision. They were also considered during the Ministerial intervention process. 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.

4.3 The State party recalls that the DIC found that the complainant did not face a real risk of harm if returned to Sri Lanka. Subsequently, the RRT carried out an external merits review of the DIC's decision. The complainant was present at the RRT hearing and was able to make oral submissions with the assistance of an interpreter. He was also represented by a registered migration agent, who made detailed submissions to the RRT. During the proceedings, the RRT found that there were a number of inconsistencies related to key elements of his account, such as the number and nature of alleged incidents of harassment in Sri Lanka, the profile of his father, the nature of a land dispute involving his family, his schooling, place of residence and worship and the lack of media reporting of conflict in his village. The RRT also considered that documents provided by him in support of his claims (including the two letters from a local parliamentarian and his father, attached to his complaint before the Committee) were self-serving and contradictory. As a result, the RRT

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<sup>4</sup> The complaint encloses a letter by the Head of Central Performance Office of the UK Home Office-Border Agency, dated 6 February 2013; and Edmund Rice Center, *Australian sponsored Torture in Sri Lanka? The unforeseen consequences of supporting a brutal regime to stop the boats at any cost*, 12 August 2015.

<sup>5</sup> The complaint attaches a copy of a document dated 12 May 2014, issued by a social worker, identified as accredited mental health social worker, which was not submitted to the State party's authorities previously.

did not regard them as having any evidentiary weight. Against this background, the RRT was not satisfied that he was at risk of harm or persecution because of his Tamil ethnicity, his Hindu faith, actual or imputed political opinion or his status as a failed asylum seeker or as a Tamil involved in a land dispute. Nor did the RRT consider that he would be suspected by Sri Lankan authorities of supporting the LTTE.

4.4 On 12 December 2013, the FCCA dismissed the complainant's application for judicial review of the RRT decision, concluding that there was no legal error with the RRT's decision. While not legally represented at the hearings before the FCCA, the complainant received legal advice in preparing his case, made oral submissions with the assistance of an interpreter and was granted leave to appeal for a review of the RRT's decision. Subsequently, the FCA examined and dismissed his claim against that decision. Any disadvantage that he might have faced at the FCCA hearings was remedied by the fact that he was granted leave to appeal and was legally represented at the FCA.

4.5 As to the complainant's allegation that he would be detained and torture upon return due to his Tamil ethnicity and his status as failed asylum seeker who left Sri Lanka illegally, the State party refers to the RRT's decision and maintains that current country of origin information indicates that there may be a risk of torture and mistreatment for returnees who are suspected of committing serious crimes, including people-smuggling or terrorism offences, which is not the complainant's case.

4.6 Concerning the complainant's mental health and the document dated 12 May 2014 attached to his complaint (see 3.2 above, footnote 14), the State party notes that the RRT considered to his claims that he was suffering from mental illness, including depression; that at that time, he had not produced any psychological report or attended any counselling sessions; and that on the basis of his behaviour and answers during the RRT hearings, the RRT found he was not prevented from participation in the proceedings due to mental health issues. Furthermore, the Department of Immigration and Border Protection (DIBP) assessed the allegations regarding the complainant's mental health, and noted that the document dated 14 May 2014 submitted to the Committee (but not to the Australian authorities) was not written by a psychologist or psychiatrist, but by an 'accredited mental health social worker'. As such, the DIBP found that this document cannot be considered as evidence sufficient to contradict the findings by Australian authorities that the complainant did not suffer harm in Sri Lanka in the past, and would not suffer harm in Sri Lanka if returned.

4.7 With regard to the copy of the complaint allegedly filed by the complainant's father to the police on 4 July 2013 (not submitted to Australian authorities, see footnote 10 above), the State party notes that the complainant never claimed before Australian authorities to be an active supporter of a Tamil political party. Rather, he maintained that his father's position as head of a Hindu temple and the tensions between the Hindu and Muslim communities was the motivating factor for his alleged assaults. If the complainant had been an active supporter of a Tamil political party, he would most likely have raised this fact before the State party's authorities.

4.8 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 UNHCR's, States' and well-known NGO's reports.

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

5.1 On 31 August 2016, the complainant provided comments on the State party's observations. He reiterated his previous allegations and underlined that he suffers post-

traumatic stress disorder (PTSD) as a result of the experiences he and his family went through in Sri Lanka and his fear of being sent back to his country of origin.<sup>6</sup> He also submits that the legal advice he received while preparing his appeal to the FCCA was deficient; that this advice mainly helped him to formulate the application in English; and that reference to important basic documents was omitted in the application, such as an affidavit explaining the circumstances why he missed the deadline to submit the application.

5.2 Although the State party's authorities accepted that a failed asylum seeker might be questioned at the airport, even for extended periods, they did not take into account the CID's well-known proclivity to use torture during interrogations.<sup>7</sup> In addition, the RRT did not take into account that in general the conditions of detention in Sri Lanka's prisons amounts to cruel, inhuman and degrading treatment.

5.3 The complainant submits that RRT found that his accounts were not credible due to the fact that he raised different claims throughout the proceedings. However, it is explained by the effects of the trauma he suffered due to the events he allegedly went through in Sri Lanka, his journey to Australia, and his detention in Australia.

5.4 The complainant points out that Muslim-Tamil conflict over land in the Valaichenai area was reported at least by one NGO in October 2008.<sup>8</sup> However, the RRT's decision noted that NGOs or the media had not reported such conflict, implying that his allegation was false and, therefore, assessing negatively his credibility. Although he could not provide this information during the domestic proceedings, it was for the RRT to carry out a research about reports concerning the circumstances surrounding his case.

5.5 The complainant submits that his father was active in the Tamil National Alliance (TNA); that a letter from a local member of parliament, submitted to the RRT, stated that the complainant was a supporter of the TNA;<sup>9</sup> that he himself stated before the RRT that the Sri Lankan authorities were "angry" with him because he was helping his father "in his activities"; and that he was not questioned about the nature of these activities. Moreover, it should be understood that in a small village land disputes as those in which his father was involved inevitable acquires political consequences.<sup>10</sup>

5.6 The complainant alleges that he initially applied for judicial review of the RRT's decision with the help of members of the Australian Tamil Congress, an organization that it is closely allied to the Tamil National Alliance; and that he went 5-6 times to its centre, as well as to public meetings for asylum seekers.

#### **State party's further submission**

6.1 On 15 February 2017, the State party reiterated that the complaint is inadmissible and that it does not disclose any violation of the Convention.

6.2 As to the complainant's comments questioning the quality of legal advice giving to him in the preparation of his appeal to the FCCA, in particular due to the failure to provide an affidavit explaining why an extension of the deadline was necessary, the State party

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<sup>6</sup> The complainant provides a document dated 20 August 2016, issued by S.K., identified as accredited mental health social worker.

<sup>7</sup> The complainant refers to the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Preliminary observations and recommendations on the official visit to Sri Lanka 29 April to 7 May 2016.

<sup>8</sup> The complainant refers to the International Crisis Group, Asia Report No. 1589, Sri Lanka's Eastern Province: Land, Development, Conflict, 15 October 2008, p. 19.

<sup>9</sup> The complaint provides a copy of the parliamentarian's letter in Tamil language.

<sup>10</sup> In this connexion, he refers to the International Crisis Group report of October 2008.

notes that the advice was provided after the application was filed by the complainant in August 2013; that in any case this procedural defect did not prevent the complainant from having his application heard and determined by the FCCA; and that subsequently he was represented by counsel in his appeal of the FCCA's decision to the FCA.

6.3 The country information reports provided by the complainant, such as the Edmund Rice Centre report,<sup>11</sup> do not support his allegations of risk of torture if returned to Sri Lanka. As to the 2016 'Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, on the Official joint visit to Sri Lanka – 29 April to 7 May 2016' the State party maintains that nothing in the observations of the Special Rapporteur supports the conclusion that the complainant would be detained by the TID, nor has he claimed that he would be at risk of detention by the TID. The Special Rapporteur suggests that torture is a common practice used in a majority of regular criminal investigations, and that prison conditions, such as overcrowding and dilapidated buildings, amount to cruel, inhuman and degrading treatment or punishment. However, the observations do not specifically consider the risk of torture associated with the return of persons who have departed Sri Lanka illegally and it is not clear that the process by which returnees may be charged with illegal departure should be understood as constituting a 'regular criminal investigation', as that term is used by the Special Rapporteur. Finally, concerning the report of the International Crisis Group, the State party notes that this report addresses events alleged to have occurred in 2002 and 2003 and does not substantiate the complainant's claims to have been affected by Tamil-Muslim conflict between 2005 and 2012.

6.4 The State party reiterates its observation concerning the complainant's mental health and points out that the two documents provided by the complainant to support his allegation of PTSD were issued by a social worker. However, social workers are neither trained nor qualified to make medical diagnoses.

6.5 The State party points out that the complainant has not provided any relevant evidence showing that he has links with the Australian Tamil Congress, or the Australian Tamil Congress links with the Tamil National Alliance. Nor has he articulated how these links relate to his allegations.

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

#### *Consideration of admissibility*

7.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do so 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 recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint 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 had exhausted all available domestic remedies.<sup>12</sup> The Committee therefore finds that the requirement under article 22 (5) (b) of the Convention has been met.

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<sup>11</sup> Edmund Rice Centre, 'Australian sponsored Torture in Sri Lanka? The unforeseen consequences of supporting a brutal regime to stop the boats at any cost' (12 August 2015).

<sup>12</sup> See, for example, communication No. 455/2011, *X.Q.L. v. Australia*, decision adopted on 2 May 2014, para. 8.2.

7.3 The State party maintains that the complaint should be declared inadmissible, pursuant to rule 113 (b) of the Committee's rules of procedure, as it is manifestly unfounded. The Committee, however, observes that the complainant has sufficiently detailed the facts and the basis of his claims of violations of the Convention and thus considers that the complaint has been sufficiently substantiated for the purposes of admissibility. As the Committee finds no obstacles to admissibility, it declares the present communication admissible and proceeds to its examination on the merits.

*Consideration of the merits*

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

8.2 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.

8.3 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 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>13</sup>

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.<sup>14</sup> The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case (para. 9).<sup>15</sup>

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 tortured by Sri Lankan officials or members of the Muslim community due to his Tamil ethnicity, his perceived links with the LTTE, his father's role

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<sup>13</sup> See, for example, communication No. 550/2013, *S.K. and others v. Sweden*, decision adopted on 8 May 2015, para. 7.3.

<sup>14</sup> See also *A.R. v. Netherlands*, para. 7.3.

<sup>15</sup> See, for example, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

as a leader and custodian of a Hindu temple in his village, and his condition as a failed-asylum seeker who left Sri Lanka illegally. He also refers to procedural shortcomings in the proceedings before the Australian authorities and claims, in particular, that he was not legally represented before the FCCA.

8.6 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. Relevant country information does not report acts of violence between the Hindu and Muslim communities in the years in which the alleged attacks to the complainant by Muslim persons took place. Its authorities' decisions also relied on reports that indicate that not all Tamils in Sri Lanka face persecution purely on account of ethnicity but only those who are suspected of having links to the LTTE; and that the complainant has not demonstrated that he is a person suspected of having concrete links with the LTTE. Likewise, available country information consulted by the RTT does not support the allegation that failed asylum seekers who left Sri Lanka illegally are at risk of torture, unless they have an association or perceived link to the LTTE or are suspected of committing serious crimes. The State party also maintains that the complainant was legally represented throughout the domestic proceedings, and that although his counsel was not present at the FCAA hearing, he was able to appeal and having his case examined by the FCA.

8.7 Regarding the complainant's claim that he risks being subjected to torture upon return to Sri Lanka, the Committee, while not under estimating the concerns that may be legitimately expressed with respect to the current human rights situation in Sri Lanka and 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>16</sup> In this context, the Committee refers to its 2016 consideration of the fifth periodic report of Sri Lanka,<sup>17</sup> where 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 the LTTE ended in May 2009.<sup>18</sup> The Committee has also been concerned at the reprisals against victims and witnesses of acts of torture, and at the acts of abduction and torture in unacknowledged detention facilities, and enquired whether a prompt, impartial and effective investigation of any such acts had been undertaken.<sup>19</sup>

8.8 The complainant submits that the omissions and inconsistencies in his statements before the Australian authorities referred to by the State party are explained by the effects of the trauma he suffers due to the events he allegedly went through in Sri Lanka. To support this claim he submitted to the Committee two documents dated 12 May 2014 and 20 August 2016, respectively, referring to his mental health, elaborated by a social worker, identified as accredited mental health social worker. However, these documents are not issued by mental health specialists, are very general and do not explain on which elements the conclusion that the complainant suffers from PTSD is based.

8.9 The Committee further observes that despite the acknowledgements by the DIC and RRT that reports on the human rights situation in Sri Lanka indicated that Tamils suspected of having links to the LTTE might be in need of international protection, the complainant merely argued that he would be perceived as having links to the LTTE due to his Tamil ethnicity from the Eastern Province of Sri Lanka, but did not indicate that he had such links. The complainant also submitted to the Committee a copy of a complaint allegedly

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<sup>16</sup> See, for example, communication No. 426/2010, *R.D. v. Switzerland*, decision adopted on 8 November 2013, para. 9.2.

<sup>17</sup> See CAT/C/SR.1472 and 1475.

<sup>18</sup> See CAT/C/LKA/CO/3-4, para. 6

<sup>19</sup> CAT/C/SR.1472, paras. 36 and 42, and CAT/C/SR.SR.1475. paras. 10 and 27.

filed by his father to the Valaichenai police station on 4 July 2013 -after his request for protection visa was dismissed by the RRT-, in which the father maintained that the complainant was a supporter of the Tamil political party of the area. However, the Committee considers that this document itself is not sufficient to establish that the complainant was or is wanted by the Sri Lanka authorities due to his alleged association or perceived links to the LTTE. Furthermore, the Committee observes that although the complainant alleges to have been “rounded up” and questioned by the Sri Lanka authorities regarding LTTE stockpiling of munitions between 2010-2011, he was not kept in detention or otherwise subjected to ill-treatment, and his statements do not support the conclusion that the authorities suspected him of having links with the LTTE or similar groups. Likewise the complainant has not provided evidence, which indicates that his relatives were subjected to persecution due to his alleged connection with the LTTE.

8.10 Finally, the Committee observes that the complainant’s application for protection visa was examined by the DIC and the RRT; that he was provided with legal representation under the IAAAS scheme; that subsequently he appealed for review of the RRT’s decision to the FCCA and the FCA; and that while not legally represented at the FCCA hearings, he received advice in preparing his application, and was legally represented at subsequent proceedings before the FCA. The complainant argues that the legal assistance provided by the State party was deficient. However, his allegations in this respect are very general and do not show that there was a lack of due diligence in providing such assistance so as to significantly affect the outcome his application for protection visa. Nor has he explained in which manner his appearance at the hearing before the FCCA without legal representation had a negative impact on the final examination of his case considering that his applications for leave to appeal to the FCCA and FCA were granted and both courts examined whether the RRT had incurred in a legal error; and that he had legal representation in the other stages/instances of the proceedings.

9. In view of the foregoing, 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 on the file does not enable it to conclude that the return of the complainant would constitute a violation of article 3 of the Convention.

10. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the 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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