



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

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Committee against Torture
Thirtieth session
28 April-16 May 2003

DECISION

Communication No. 191/2001

Submitted by: S.S. (represented by counsel)
Alleged victim: S.S.
State party: The Netherlands
Date of complaint: 20 September 2001 (initial submission)
Date of present decision: 5 May 2003

[ANNEX]

* Made public by the decision of the Committee against Torture.

Annex

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT**

Thirtieth session

concerning

Communication No. 191/2001

Submitted by: S.S. (represented by counsel)
Alleged victim: S.S.
State party: The Netherlands
Date of complaint: 20 September 2001 (initial submission)

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

Meeting on 5 May 2003,

Having concluded its consideration of complaint No. 191/2001, submitted to the Committee against Torture by Mr. S.S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Mr. S.S. a Sri Lankan national belonging to the Tamil population group, born on 27 November 1956 in Kayts (Jaffna), currently residing in the Netherlands and awaiting deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

1.2 On 23 October 2001, the Committee forwarded the complaint to the State party for comments and requested it, under rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant to Sri Lanka while his complaint was under consideration by the Committee. The State party acceded to this request.

The facts as submitted by the complainant

2.1 The complainant lived in the Jaffna district from 1989 until 1995, where he worked as a karate teacher and also gave lessons to members of the Liberation Tigers of Tamil Eelam (LTTE). Although he sympathized with the LTTE, he refused to give lessons at their military camps. When the Sri Lankan army took over Jaffna in late 1995, he fled to Chavakachchery, and thereafter to Killinochi, together with his wife and children.

2.2 On 7 April 1996, the complainant's mother died in Trincomalee, which was controlled partly by the LTTE, partly by the Sri Lankan army. The complainant wanted to travel to Trincomalee to pay tribute to his deceased mother but was refused a travel pass by the LTTE because he did not have anyone to vouch for him.¹ In June 1996, in return for free karate lessons which he gave to some LTTE members, he finally managed to obtain permission to travel to Mullaitivu - still located in the LTTE-controlled area - together with a guide. After staying in Mullaitivu for two months at the house of a fisherman, he travelled to the Trincomalee district on a fishing boat. He hid for two to three months with a Tamil in the Anbuvelipuram district of Trincomalee before he went to his sister's house in the centre of Trincomalee in November 1996.

2.3 On 13 December 1996, two days after the LTTE had bombed a military camp of the Sri Lankan army, the army conquered Trincomalee and arrested a large number of people, including the complainant. Everyone above the age of 12 had to stand in front of a temple where a masked man picked out the complainant and other men. The complainant was brought to a military camp in Trincomalee where he was detained for approximately two months. He was locked with four other men in a narrow cell with little light and a concrete floor and without any furniture. He was given one daily meal of poor quality. Since the cell did not have a toilet, the prisoners had to relieve themselves in the corners of the room, excrements being removed from the cell occasionally. Reportedly, the soldiers entered the cell regularly, especially following armed attacks by the LTTE, to maltreat the prisoners by kicking and beating them, sometimes asking questions at the same time. The complainant states that he was asked whether he was a karate teacher, which he denied. He and the other men were often naked or, respectively, dressed in underwear only. Frequently, the soldiers poured water on them before the beating began. The complainant was beaten in many different ways: with the flat hand, the fist, the back of a rifle and with a rubber rod. Once he was allegedly beaten on his soles with a round stick causing him severe pain in his feet for several days. Another time, he was put against a cupboard with his hands up and was hit on his back with a rubber rod causing him chronic pain in the back, which allegedly persists to date. He was fist-punched on his eye, leaving an injury on one of his eyebrows. Soldiers also beat him on the genitals and on the kidneys, which resulted in a swollen testicle and blood in his urine. Moreover, he was allegedly burned with a hot stick on his left arm, leaving scars. The big toe of his right foot was severely injured when his torturers stamped on that foot with their boots. When the soldiers hit his right hand with a broken bottle and asked him "Aren't you a karate teacher?", he lost consciousness.²

2.4 The complainant woke up in a hospital in the military camp where he stayed for a few days until an unknown Muslim man named Nuhuman managed to organize his escape. The complainant suspects that his sister had paid money to Nuhuman and that the latter had bribed the guards in front of his hospital room. The complainant states that, together with Nuhuman, he was able to leave the hospital and the military camp without any difficulty.

2.5 Nuhuman drove the complainant to Colombo from where he left Sri Lanka by plane on 14 February 1997, under the name of Mohamed Alee, using a forged Sri Lankan passport. He first flew to Dubai and then to Ukraine, where he stayed for five months. On 1 August 1997, a Russian "travel agent" took him to an unknown place by truck from where he crossed a river together with five other Tamils. They were brought to a city in Poland unknown to the complainant and took a train to Berlin. On 14 August 1997, the Russian guide brought the complainant to the Netherlands where he applied for admission as a refugee and for a residence permit on 15 August 1997. The same day, he was first interviewed by an officer of the Dutch Immigration and Naturalization Department (IND), who asked him about his identity and nationality, civil status, family connections, travel and other documents, the date and manner of departure from Sri Lanka, as well as the route by which he travelled to the Netherlands.

2.6 By letter of 16 February 1998, the complainant filed an objection with the IND against its failure to take a decision on his refugee application within the prescribed time limit of six months. On 7 April 1998, he lodged an appeal with the District Court in Zwolle against the IND's failure to take a timely decision on the objection. He withdrew the appeal on 4 June 1998 after the IND had promised to expedite its decision, but renewed it by letter, dated 28 August 1998, because IND had not kept its promise. By decision of 18 November 1998, the district court ordered the IND to decide on the complainant's application within six weeks.

2.7 On 6 October 1998, the complainant was interviewed a second time, assisted by an interpreter. In the three-hour interview, the complainant reiterated his statement made during the first interview that his wife was three months pregnant when he left her in June 1996, that he did not meet her again after he had left Killinochi, and that he was hiding during his two-month stay in Mullaitivu. As to his family situation, he stated that his father had died during a bombing raid by the Sri Lankan army and that one of his daughters had died of fever because she could not be brought to a hospital in time due to a curfew. By letter of 1 December 1998, the complainant's former lawyer challenged the circumstances of the second interview. At the same time, he submitted letters the complainant had received from his wife, indicating that she had given birth to a child on 21 May 1997.

2.8 On 11 February 1999, the complainant was heard by an IND committee. The hearing concentrated on the contradiction between the complainant's statement that his wife was three months pregnant when he left her in June 1996 and the fact that she gave birth to a child on 21 May 1997. At the end of the hearing, the complainant's former lawyer told the commission that he would clarify this matter. By letter of 26 February, the lawyer informed the IND that the complainant insisted that his wife had been three months pregnant in June 1996. Furthermore, he was not hiding in the strict sense of the word while staying in Mullaitivu and his wife occasionally visited him there. His wife had a miscarriage, a fact not easily spoken about in Hindu culture especially since, in Hindu religion, the birth of the lost child would have represented the rebirth of the complainant's deceased mother. The complainant did not even tell his closest brother about this loss until February 1999.

2.9 On 15 March 1999 and on 22 April 1999, the IND asked the Bureau for Medical Advice (BMA) whether the complainant needed medical treatment and whether he was healthy enough to travel. On 20 May 1999, the IND rejected the objection against its failure to take a timely decision on the complainant's refugee application. At the same time, the complainant was informed that his expulsion would be suspended pending receipt of medical advice by the BMA.

The IND justified its decision as follows: (a) The fact that the complainant is a Tamil was not by itself considered sufficient to be granted asylum; (b) the contradiction in the complainant's statements about the pregnancies of his wife and his hiding in Mullaitivu; (c) the implausible description of the complainant's escape from the military hospital considering that, pursuant to his own account, he was a relatively important prisoner; and (d) the absence of humanitarian reasons necessitating a staying permit. The IND concluded that the complainant would not be exposed to a risk of torture if he were returned to Sri Lanka and that there was no basis to apply the policy on post-traumatic stress disorder as a ground for admission, since his allegations of torture were not credible. The decision was accompanied by advice on applicable remedies informing the complainant that his expulsion would be suspended upon appeal to court.

2.10 On 16 June 1999, the complainant lodged an appeal with the district court in Zwolle against the above decision, arguing as follows: (a) The IND was not justified in rejecting his explanation regarding the pregnancies of his wife; (b) his detailed description of the facts as well as visible scars on his body refuted IND's conclusion that his allegations of torture lacked credibility; (c) bribing soldiers was a widespread phenomenon in Sri Lanka and a plausible explanation for his release from the military hospital; (d) the IND failed to take into account statements made by his brother 12 years ago in the context of his own application for asylum in the Netherlands confirming that the complainant had always had problems because of his karate background; and (e) that his experience of torture was sufficiently traumatizing for the policy on post-traumatic stress disorder to be applied in his case.

2.11 Medical advice by BMA was given on 14 December 1999, stating that, at the time the advice was issued, the complainant suffered from a medical condition including pain on his lower back and problems with his eyes, that he no longer received any specific medical treatment, that he was able to travel and that no medical emergency situation was to be expected.

2.12 By letter of 8 November 2000, the IND informed the complainant that the suspension of his expulsion would be lifted. By letter of 15 November 2000, the lawyer of the complainant submitted an application for an interim injunction to the Hague District Court.

2.13 At the request of the complainant's lawyer, the medical examination group of the Dutch Section of Amnesty International issued a medical report on 12 June 2001, stating that the complainant has several scars on his body and cannot fully stretch his index finger. While the scars on his body, especially burn marks on his left arm, a wound on his toe and a piece of dark skin near his eye, seemingly confirmed his torture allegations, the problem with the complainant's index finger might have been caused by the alleged hits with a broken bottle. The report also states that no anatomical damage of the complainant's back can be diagnosed but that this fact does not exclude a possible relationship between the apparent chronic back pain of the complainant and the beatings he allegedly suffered. Moreover, the report concludes that the psychological symptoms shown by the complainant, such as permanent suffering from his past experiences, his increased sensitivity and over-anxiousness, his problems of concentration, as well as insomnia, are typical signs of a post-traumatic stress disorder.

2.14 On 2 July 2001, the Hague District Court dismissed the appeal against the decision by the IND of 20 May 1999 as unfounded and declared the application for interim measures inadmissible. It considered that the complainant's allegations lacked credibility because of the contradictory statement on the pregnancies of his wife and because of his failure to state the truth

on whether he was hiding during his stay in Mullaitivu. The Court also held that no grounds existed for applying the policy on post-traumatic stress disorder and that the complainant did not suffer any disadvantage from the fact that the IND rendered its decision without having waited for the BMA's medical advice. Moreover, the Court considered that the complainant did not belong to a category of persons who would be at risk of being treated in violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, if returned to Sri Lanka.

The complaint

3.1 Counsel claims that the findings of the District Court do not rule out that the complainant runs a substantial risk of being subjected to torture or other cruel, inhuman or degrading treatment upon return to Sri Lanka and, therefore, the Netherlands would be violating article 3 of the Convention if he were returned to that country.

3.2 As to the complainant's credibility, counsel submits that the essential part of his statements relate to the time when he was detained in the Trincomalee military camp rather than to the question when his wife was pregnant or when she gave birth.

3.3 Counsel complains about the circumstances under which the second interview was conducted by the IND and about the manner in which the complainant was confronted with the inconsistencies in his statements about the pregnancies of his wife and about his hiding in Mullaitivu.

3.4 Counsel submits that, apart from the medical advice by the BMA, the IND should have considered the medical report by the Amnesty International medical research group, which, according to counsel, corroborates the complainant's allegations and confirms that he is traumatized. Counsel claims that the benefit of the doubt should be applied in favour of the complainant since foolproof evidence hardly ever exists in asylum cases.

3.5 According to counsel, the complainant cannot be returned to the part of Sri Lanka which is controlled by the LTTE, because the situation in that area is generally unsafe due to military operations by the LTTE as well as by the Sri Lankan army and because the complainant has to fear sanctions for having left that area without LTTE approval. By the same token, the complainant cannot, in counsel's view, be sent to the South of Sri Lanka where he would be at risk of being tortured since (a) his past as a well-known karate teacher would raise the suspicion of involvement with the LTTE; (b) the scars on his body may lead to the conclusion that he was involved in the armed struggle of or at least trained by the LTTE; and (c) his Tamil origin, his inability to speak Sinhalese and the fact that he neither has an ID nor a valid reason for wanting to stay in the South increase the risk of being arrested, and eventually tortured, by the Sri Lankan police.³

3.7 Counsel concludes that upon return to Sri Lanka, the complainant would be exposed to a substantial risk of being arrested and detained for a period longer than the regular 48 to 72 hours for which Tamils are frequently detained following identity checks. According to counsel, the risk of being tortured during such a prolonged period of detention is generally high.

The State party's observations on admissibility and merits

4.1 On 22 April 2002, the State party submitted its observations on the merits of the complaint. The State party does not contest the admissibility of the complaint.

4.2 The State party submits that due to the high population density in the Netherlands, the admission of asylum-seekers to the country is limited to three grounds for admission: (a) refugee status under the 1951 Geneva Convention relating to the Status of Refugees; (b) the preservation of essential Dutch interests; and (c) compelling reasons of a humanitarian nature. Refugee status under (a) requires well-founded reasons to fear persecution on the basis of religious, ideological or political convictions or nationality or on the basis of membership of a particular race or social group. In determining whether a person is a refugee, the Dutch authorities also assess if return to the country of origin would conflict with the State party's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and under article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Asylum applications are dealt with by the IND, which is subordinate to the Ministry of Justice. After a first and a second interview with the applicant, the IND officer who conducted the second interview prepares a report on which the applicant may submit comments. Based on a legal presumption, failure by the IND to take a decision on the asylum application within six months constitutes a negative decision against which the applicant may file an objection. If the applicant invokes medical grounds for his refugee claim, a medical advice with the legal value of expert opinion may be sought from the Medical Assessment Section (BMA) of the Ministry of Justice. Pending the BMA's opinion, the expulsion of the applicant, if ordered, may be suspended.

4.3 With regard to the human rights situation in Sri Lanka, the State party refers to three decisions of the District Court of the Hague and the 1996-2001 country reports by the Netherlands' Ministry of Foreign Affairs which state that the return of rejected Tamil asylum-seekers to the government controlled areas of the West, the centre and the South of Sri Lanka - where no registration with the police or another authority is required in order to settle - was still a responsible course of action. However, the 2000 report also states that in these areas Tamils are frequently detained for up to 72 hours in the context of identity checks. Moreover, in Colombo, Tamils were occasionally harassed by the Sinhalese population and sometimes tortured by the police when suspected to be involved with the LTTE. The country reports also identify a number of risk factors which contribute either to (1) the general risk of being arrested for 48-72 hours following an identity check or (2) the aggravated risk of being detained for a longer period of time in which case the danger to be tortured increases substantially. Risk factors under (1) include (a) young age; (b) little knowledge of Sinhalese; and (c) Tamil origin. Risk factors under (2) include (a) recent arrival in Colombo from one of the country's war zones; (b) non-possession of valid identity documents; (c) data contained in police files indicating that a person might be involved in LTTE activities or might have knowledge of such activities; and (d) scars on the body of a person in case a suspicion of LTTE involvement already exists. In case of firm evidence of LTTE involvement, a person can be detained for a period of up to 18 months under the Emergency Regulations or the Prevention of Terrorism Act.

4.4 With respect to the complainant's claim under article 3 of the Convention, the State party submits that, even if a consistent pattern of gross violations of human rights existed in Sri Lanka, the existence of such a pattern would not as such constitute a sufficient ground for determining that a particular person would be at risk of being subjected to torture upon return to that country. According to the Committee's jurisprudence,⁴ specific grounds must exist indicating that the individual concerned would be personally at risk of being subjected to torture. The State party also refers to the Committee's jurisprudence that "substantial grounds" in article 3 require more than a mere possibility of torture.⁵

4.5 In the State party's view, the complainant would not run a real, personal and foreseeable risk of being tortured if he were returned to Sri Lanka. The mere fact that he is a Tamil does not in itself constitute sufficient grounds to establish such a risk. Moreover, the State party submits that the complainant's statements lack credibility. This was reflected by the contradiction in his statement that his wife was three months pregnant in June 1996, and the fact that she gave birth in May 1997. The complainant had not been able to explain this contradiction when confronted with that question before the IND commission on 11 February 1999. Only in a letter of 26 February 1999 of his lawyer, he admitted that he had not been "hiding" in Mullaitivu and that he had met his wife after her miscarriage, while he was staying in Mullaitivu. The State party submits that this explanation differs in essential points from his earlier statements. Such discrepancy cannot, in the State party's view, be explained solely by criticizing the poor quality of the translation of the complainant's statements. Even if his cultural background prevented the complainant from speaking about his wife's miscarriage, there was no need for him to make incorrect statements about his stay in Mullaitivu. The State party also considers his credibility undermined by his statements regarding his escape from the military camp in Trincomalee. It was unlikely that he could escape from the camp without any difficulty, while Sri Lankan soldiers stood watching.

4.6 The State party adds that the complainant has not convincingly established that the Sri Lankan authorities would treat him as a suspect. His claim that he would encounter problems with the authorities was based on speculation unsupported by objective facts, the only evidence substantiating his claims being the letters from his family and friends. With respect to possible sanctions by the LTTE which the complainant would have to fear upon return to the LTTE-controlled part of Sri Lanka, the State party argues that such sanctions fall outside the definition of torture in article 1 and, therefore, outside the scope of article 3 of the Convention. Since according to article 1, "the term 'torture' means any act [...] inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", acts by non-State entities such as the LTTE could not, for the purposes of the Convention, be considered to constitute torture.⁶

4.7 As to the Amnesty International medical examination group report, the State party submits that it merely confirms that the complainant's medical symptoms are partly consistent with his allegations. It did not imply that he had satisfactorily established that these symptoms, as well as scars on his body, were the result of torture.

4.8 The State party concludes that, in the light of the general situation in Sri Lanka and the personal circumstances of the complainant, no substantial grounds exist for believing that the complainant would run a real, personal and foreseeable risk of being subjected to torture upon his return to Sri Lanka, in violation of article 3 of the Convention.

Complainant's comments on the State party's submissions

5.1 Counsel submits that the complainant was precluded from contesting the IND's decision of 20 May 1999 on the merits, because he had already objected to the IND's failure to take a timely decision on his asylum application, thereby losing the possibility to submit arguments on the substance of his application to the IND before bringing the case to court.

5.2 With regard to the medical evidence, counsel criticizes that the medical advice of the BMA was limited to the question whether the complainant's medical condition required his admission as a refugee without examining the issue whether his medical complaints as well as his scars corroborated his allegations of torture. Counsel further claims that the State party has failed to appreciate the weight of the medical report by the Amnesty International medical examination group, whose reports are only issued in a small number of credible cases.

5.3 As regards the general situation in Sri Lanka, counsel complains that the State party primarily based its assessment on the country reports issued by the Ministry of Foreign Affairs, without considering other relevant sources.

5.4 With respect to the State party's challenge to the complainant's credibility, counsel denies that his client's statements were inconsistent. He submits that the State party's observation that the complainant qualified the interview translation as "poor" is a simplification of his argument. What he emphasized were the different possibilities of translating the word "hiding" into Dutch, each carrying with it a different meaning.

5.5 Counsel submits that the complainant cannot reasonably be expected to prove in detail how his release from the military hospital in Trincomalee came about.

5.6 As to the complainant's personal risk to be tortured upon return to Sri Lanka, counsel submits that his reputation as a karate teacher increases this risk. In this respect, counsel criticizes the State party's failure to consider the statements on the complainant's karate background which his brother made in the context of his asylum application in the Netherlands. According to these statements, the complainant had left Sri Lanka in 1984 to live in Qatar (until 1987) because he was suspected of training LTTE militants. Furthermore, counsel argues that the fact that the complainant was tortured in the past, combined with the general danger of LTTE suspects to be tortured, connotes a high risk that he would be detained and subjected to torture if he were to be returned to Sri Lanka. This risk was increased by the likelihood that the complainant's name had been entered into the database of the National Intelligence Bureau when he was arrested in Trincomalee in 1996. Counsel considers it likely that, during a routine screening of rejected Tamil asylum-seekers by the Sri Lankan authorities, the complainant's arrest and detention in the military camp would come to light together with the information that he worked as a karate teacher in Jaffna. Moreover, the scars on his body would raise the suspicion that he had been involved in the armed combat of LTTE. Counsel concludes that the combination of these facts would expose the complainant to a high personal risk of being subjected to torture going beyond a "mere possibility".

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. The Committee also notes that the State party has not contested the admissibility of the communication. As the Committee sees no further obstacles to admissibility, it declares the communication admissible and proceeds immediately to the consideration of the merits.

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to reach its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his 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 gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.3 With respect to the general human rights situation in Sri Lanka, the Committee recalls that, in its concluding observations on the initial report of Sri Lanka, it expressed grave concern about "information on serious violations of the Convention, particularly regarding torture linked with disappearances".⁷ The Committee also notes from recent reports on the human rights situation in Sri Lanka⁸ that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and that complaints of torture are often not dealt with effectively by police, magistrates and doctors. However, the Committee equally notes the ongoing peace process in Sri Lanka which led to the conclusion of the ceasefire agreement between the Government and the LTTE of February 2002, and the - albeit currently interrupted - negotiations between the parties to the conflict which have taken place since. The Committee further recalls that, on the basis of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture is not systematic in the State party.⁹ The Committee finally notes that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002.

6.4 With regard to the complainant's claim that he would be in danger of being subjected to torture by the LTTE for having left the LTTE-controlled area of Sri Lanka without an express permission to do so and without designating someone to vouch for him, the Committee recalls that the State party's obligation to refrain from forcibly returning 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 is directly linked to the definition of torture as found in article 1 of the Convention.

For the purposes of the Convention, according to article 1, “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The Committee observes that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention, unless the non-governmental entity occupies and exercises quasi-governmental authority over the territory to which the complainant would be returned.¹⁰ Since the complainant can be returned to territory other than that under the control of LTTE, the issue, on which he bases part of his claim, that he would suffer retribution from the LTTE upon his return to Sri Lanka cannot be considered by the Committee.

6.5 With respect to the risk that the complainant might be subjected to torture at the hands of State agents upon return to Sri Lanka, the Committee has noted the complainant’s claim that he is at high personal risk owing to his previous activities as a karate teacher, that he has allegedly already been severely maltreated by soldiers of the Sri Lankan army, and that he bears scars which the authorities would likely assume to have been caused by fighting for the LTTE. It has considered the claim that, because of the failure by the Dutch Immigration and Naturalization Department (IND) to take a decision on the complainant’s refugee application within the prescribed time limit, the complainant was precluded from filing an objection regarding the merits of the IND’s final decision, dated 20 May 1999. The Committee has further noted that the IND took this decision before the Bureau for Medical Advice (BMA) gave its advice on the complainant’s medical condition. Similarly, the Committee has noted the attention drawn by the State party to a number of inconsistencies and contradictions in the complainant’s account, which are said to cast doubt on the complainant’s credibility and the veracity of his allegations.

6.6 The Committee notes that the medical evidence submitted by the complainant confirms physical as well as psychological symptoms, which might be attributed to his alleged maltreatment at the hand of the Sri Lankan army. However, the Committee observes that, even if the complainant’s allegation that he was severely tortured during his detention at the Trincomalee military camp in 1996 were sufficiently substantiated, these alleged acts of torture did not occur in the recent past.

6.7 In the Committee’s view, the complainant has not demonstrated any other circumstances, other than the fact that he worked as karate teacher in Jaffna until 1996 and the presence of scars on his body, which would appear to make him particularly vulnerable to the risk of torture if he were to be returned to Sri Lanka. Moreover, the Committee again notes that the positive development of the peace negotiations between the Sri Lankan Government and the LTTE and the implementation of the peace process under way give reason to believe that a person in the situation of the complainant would not be under such risk upon return to Sri Lanka. The Committee therefore finds that the complainant has not provided sufficient evidence for substantiating that he would be in danger of being subjected to torture, were he to be returned to Sri Lanka, and that such danger is present and personal.

7. 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.

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

Notes

¹ Counsel submits that the travel pass system applies to everyone wishing to leave the LTTE-controlled area and is intended to raise funds for the armed struggle of LTTE. In order to ensure that the departure of Tamils does not result in a loss of contributions, each Tamil planning to leave the LTTE-controlled area needs someone with sufficient assets to guarantee for his return.

² The complainant's description of most of these torture details is documented in a medical report, dated 14 June 2001, by the medical examination group of the Dutch Section of Amnesty International.

³ Counsel refers to several reports on the human rights situation in Sri Lanka as well as a judgement of the European Court of Human Rights in order to support these claims. However, Committee members should beware that the complaint dates from October 2001 and that the situation might have changed since then.

⁴ The State party refers to the Committee's decisions in *A. v. the Netherlands*, Communication No. 91/1997, United Nations document CAT/C/21/D/91/1997, 13 November 1998, paragraph 6.3 and in *K.N. v. Switzerland*, Communication No. 94/1997, United Nations document CAT/C/20/D/94/1997, 20 May 1998, paragraph 10.2.

⁵ See *E.A. v. Switzerland*, Communication No. 28/1995, United Nations document CAT/C/19/D/28/1995, 10 November 1997, paragraph 11.3. The State party further refers to the Committee's General Comment No. 1, Implementation of article 3 of the Convention in the context of article 22, United Nations document A/53/44 (1998), annex IX, paragraph 6.

⁶ In that regard, the State party refers to the Committee's decision in *S.V. et al. v. Canada*, Communication No. 49/1996, United Nations document CAT/C/26/D/49/1996, 15 May 2001, paragraph 9.5.

⁷ Committee against Torture, twentieth session, Concluding observations of the Committee against Torture: Sri Lanka, 19 May 1998, United Nations document A/53/44, paragraphs 243-257, at paragraph 249.

⁸ See Amnesty International Report 2002, Sri Lanka, AI index: POL 10/001/2002; Amnesty International, Sri Lanka: Torture prevails despite reforms, AI index: ASA 37/14/1999.

⁹ Report A/57/44, Chapter IV.B, at paragraph 181.

¹⁰ See Committee against Torture, twenty-second session, *Sadi Shek Elmi v. Australia*, Communication No. 120/1998, Views adopted on 14 May 1999, United Nations document CAT/C/22/D/120/1998, paragraph 6.5. Cf. also Committee against Torture, twenty-eighth session, *M.P.S. v. Australia*, Communication No. 138/1999, Views adopted on 30 April 2002, United Nations document CAT/C/28/D/138/1999, paragraph 7.4; Committee against Torture, twenty-sixth session, *S.V. et al. v. Canada*, Communication No. 49/1996, Views adopted on 15 May 2001, United Nations document CAT/C/26/D/49/1996, paragraph 9.5.
