



# 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. 754/2016\* \*\*

<i>Communication submitted by:</i>	H.L. (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Australia
<i>Date of complaint:</i>	27 April 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 16 June 2016 (not issued in document form)
<i>Date of adoption of decision:</i>	22 July 2021
<i>Subject matter:</i>	Deportation to Sri Lanka
<i>Procedural issues:</i>	Admissibility – <i>ratione materiae</i> ; non-substantiation of claims
<i>Substantive issue:</i>	Risk to life or risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	1, 3

1.1 The complainant is H.L., a national of Sri Lanka born in 1983. He claims that Australia would violate his rights under article 3 of the Convention if it removed him to Sri Lanka. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 28 January 1993. The complainant is represented by counsel.

1.2 On 18 May 2016, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures under rule 114 of the Committee's rules of procedure.

#### Facts as submitted by the complainant

2.1 The complainant is of Tamil ethnicity and Muslim faith. He was a polling agent on the day of the Kalmunai municipal election of 8 October 2011. His brother stood as a candidate for the Sri Lanka Muslim Congress. The complainant had been campaigning for his brother, including by giving speeches for the Congress. The complainant's role on the

\* Adopted by the Committee at its seventy-first session (12–30 July 2021).

\*\* The following members of the Committee have participated in the consideration of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ilvija Pūce, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



day of the election was to check voter identification to ensure that they originated from the given area. He stopped between 10 and 20 people from voting because they had no identification. Two “thugs” entered the polling station and attacked him, upon which security guards ejected them. The complainant then received threatening phone calls, about which he complained to the police. As far as he is aware, the police did nothing with the complaint. Testimonies from community members and leaders confirm the events.

2.2 Around two days later, the complainant received more threatening calls and after a while, he did not return home and did not answer his phone. Out of fear, he stayed with friends. On 14 February 2012, he was followed by a white van. Aware that Tamils were being abducted in white vans and disappearing, he decided to leave Sri Lanka.

2.3 He arrived in Australia on 1 July 2012 and applied for a protection visa on 23 November 2012. On 5 August 2013, a delegate from the Minister for Immigration and Citizenship denied his application. The Refugee Review Tribunal upheld the decision on 15 April 2015. The complainant’s appeals to the Federal Circuit Court and the Federal Court of Australia were dismissed on 7 February 2015 and 4 April 2016, respectively. His application for intervention by the Minister for Immigration and Citizenship was refused on 22 April 2016.

### **Complaint**

3.1 The complainant claims to have undergone torture in Sri Lanka because he received death threats. He further claims that, upon return to Sri Lanka, he will suffer torture at the hands of the Criminal Investigation Department and the guards of the Negombo Prison, where he will be detained and charged under the Immigrants and Emigrants Act owing to his illegal departure from Sri Lanka.<sup>1</sup> Persons who have left Sri Lanka illegally and failed asylum seekers are immediately detected and taken into custody upon arrival at the Colombo airport. The complainant would be held longer and subjected to closer scrutiny than most returnees owing to his Tamil ethnicity and adherence to Islam. His involvement with the election violence could also come to light. His Tamil ethnicity and status as a failed asylum seeker would also be a reason for the Sri Lankan authorities to impute to the complainant support of the Liberation Tigers of Tamil Eelam (LTTE) and to harm him on this ground. The detention conditions in the Negombo Prison are overcrowded, unsanitary and unhygienic, amounting to torture and inhuman, cruel and degrading treatment and punishment.<sup>2</sup>

3.2 The fact that the Sri Lankan authorities did not act on the complainant’s police complaint against the violent harassment at the polling booth implies that the aggressors are politically well-connected. Internal relocation is not an option for people who have defied politically powerful people in Sri Lanka, as their reach is national.

3.3 The complainant refers to publicly available information on human rights violations in Sri Lanka, including torture and white van abductions following election violence.<sup>3</sup> The information referred to includes concluding observations of the Committee, in which it expressed serious concern about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment of suspects in police custody, and about reports that suggested that torture and ill-treatment perpetrated by State actors, both the military and the police, had continued in many parts of the country after the conflict ended in May 2009, and were still occurring in 2011.<sup>4</sup> Anyone apprehended by the Sri Lankan

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<sup>1</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; Sri Lanka, Department of Foreign Affairs and Trade report to the Refugee Review Tribunal, No. 1478, 28 February 2013; Immigration and Refugee Board of Canada, “Sri Lanka: information on the treatment of Tamil returnees to Sri Lanka, including failed refugee applicants; repercussions, upon return, for not having proper government authorization to leave the country, such as a passport” (LKA103815.E), 22 August 2011.

<sup>2</sup> Edmund Rice Centre, “Australian sponsored torture in Sri Lanka?”.

<sup>3</sup> Ibid.; International Truth and Justice Project Sri Lanka, “Silenced: survivors of torture and sexual violence in 2015”, January 2016; Freedom from Torture, “Tainted peace: torture in Sri Lanka since May 2009”, August 2015; and Human Rights Watch, “Country summary: Sri Lanka”, January 2015.

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

security forces, including failed asylum seekers and anyone remotely connected with the losing side in the civil war, faces a real risk of cruel treatment justifying the granting of international protection.<sup>5</sup> There is thus a consistent pattern of gross, flagrant or mass human rights violations in Sri Lanka.

#### State party's observations on admissibility

4.1 The State party submitted its observations on admissibility by note verbale of 14 September 2016. With reference to rule 113 (a) of the Committee's rules of procedure, it submits that the complaint is inadmissible *ratione materiae*, because the claims do not fall within the definition of "torture" contained in article 1 of the Convention. The complainant does not articulate the specific nature of the threatening telephone calls. Nevertheless, before the Refugee Review Tribunal, he claimed that the caller had threatened to shoot him. The State party adds that it is unaware that the Committee has formed the view that threats alone can constitute torture.<sup>6</sup> Moreover, the complainant does not identify the caller(s) nor assert that they are public officials or acted in an official capacity, other than to imply that they are "well connected politically". Given that the claim regarding the calls does not involve torture, it is inadmissible *ratione materiae*.

4.2 The complainant's claim of a risk of cruel, inhuman or degrading treatment at the hands of the Criminal Investigation Department and in the Negombo Prison is also inadmissible *ratione materiae*, as the non-refoulement obligation in article 3 of the Convention relates to a risk of torture and does not cover cruel, inhuman or degrading treatment or punishment.<sup>7</sup>

4.3 The State party additionally submits that the complaint is inadmissible as manifestly unfounded, with reference to article 22 (2) of the Convention and rule 133 (b) of the rules of procedure. It is for the complainant to demonstrate substantial grounds for believing that he would be in danger of being subjected to torture.<sup>8</sup> This requires showing a foreseeable, real and personal risk of being subjected to torture, beyond mere theory and suspicion.<sup>9</sup> With respect to his claim that the conditions in the Negombo Prison constitute degrading treatment, the State party refers to the views in *G.R. v. Australia*, where the Committee found that the complainant had relied on general information, including on the situation in the Negombo Prison, without demonstrating a personal risk.<sup>10</sup> In the present case, the complainant has not provided credible material either to demonstrate a personal risk of harm in the Negombo Prison on account of his illegal departure, Tamil ethnicity or any political connections.

4.4 The State party further refers to the complainant's claims that, as a failed asylum seeker and owing to his ethnicity, he is at risk of harm upon return to Sri Lanka because LTTE sentiments will be imputed to him, and he will be subjected to closer scrutiny because of his Muslim faith and involvement with the election violence. However, the existence of a general risk of violence does not suffice to show a personal risk of being subjected to torture.<sup>11</sup> The complainant has not *prima facie* established such a risk.

4.5 Moreover, the issues raised by the complainant were thoroughly considered in robust domestic processes. The Australian Department of Immigration and Border Protection and the Refugee Review Tribunal considered country information provided by governmental and

<sup>5</sup> Yasmin Sooka, the Bar Human Rights Committee of England and Wales and the International Truth and Justice Project Sri Lanka, "An unfinished war: torture and sexual violence in Sri Lanka 2009–2014", March 2014, p. 5.

<sup>6</sup> The State party refers to *R.S. et al. v. Switzerland* (CAT/C/53/D/482/2011), para. 8.4. The State party adds that, in the Committee's conclusions and recommendations to Israel, adopted in 1997, the Committee had formed the view that threats, including death threats, in combination with restraining in very painful conditions, hooding under special conditions, sounding of loud music for prolonged periods, sleep deprivation for prolonged periods, violent shaking, and using cold air to chill could constitute torture (A/52/44, para. 257).

<sup>7</sup> The State party refers to its submissions in *Y.Z.S. v. Australia* (CAT/C/49/D/417/2010), para. 4.10.

<sup>8</sup> *Paez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5.

<sup>9</sup> *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

<sup>10</sup> *G.R. v. Australia* (CAT/C/57/D/605/2014), paras. 9.7–9.8.

<sup>11</sup> *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.3.

non-governmental organizations and concluded that his claims were not credible, that he had no actual or perceived links to LTTE, and that there was not a real chance that he would suffer serious harm on that ground, or as a Tamil Muslim. The decision by the Refugee Review Tribunal was subject to judicial review by the Federal Circuit Court and the Federal Court of Australia. The complainant also unsuccessfully sought ministerial intervention under section 417 of the Migration Act of 1958. He did not provide any new evidence in his complaint before the Committee.

4.6 The State party recalls that the Committee gives considerable weight to findings of fact made by the organs of a State party.<sup>12</sup> It requests that the Committee accept that its authorities have thoroughly assessed the claims. Even though the complainant submits that he was attacked by two people after stopping several people from voting, he does not elaborate on the way in which it could cause him to be scrutinized more closely than others. His claim of a risk of cruel, inhuman or degrading treatment or punishment is therefore manifestly unfounded.

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

5.1 On 10 February 2017, the complainant notes having specified the nature of the threatening telephone calls as death threats before the Refugee Review Tribunal. He reported to the Tribunal threats received on his mobile telephone on 8, 11 and 13 October 2011. After switching it off, he received more threats on a landline until January 2012. Having escaped from men in a white van, the threatening calls began again and continued until he left the country in June 2012. The complainant also notes that the inaction of the police following his complaint was due to political pressure. In any case, the definitional requirement that torture be at the hands of public officials includes the failure to prevent it. Given that the police did not act on his complaint, that inaction will continue with respect to the death threats. The threats and the police's inaction qualify as torture, given that torture may be of a psychological nature.<sup>13</sup>

5.2 The complainant argues that the detention conditions in the Negombo Prison present the danger that the cruel, inhuman or degrading treatment there will spill over into torture. Given his status as a failed asylum seeker, his denunciation of election violence and his suspected LTTE links, he runs the risk of being subjected to torture through prolonged detention and interrogation. As noted in relation to Sri Lanka by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, torture is a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigation Department of the police. The Special Rapporteur further concluded that access to a detainee for continuous questioning and to obtain confessions of criminal suspects could also be an incentive for torture.<sup>14</sup>

5.3 The complainant disputes the State party's argument that his claim was assessed through robust domestic processes. Under section 474 of the Migration Act and as confirmed by domestic jurisprudence, decisions of the Refugee Review Tribunal cannot be invalidated except if the complainant was denied due legal process.<sup>15</sup> This severely restricted his capacity to appeal a decision that could result in his refoulement.

5.4 The complainant argues that the Refugee Review Tribunal's credibility findings were unreasonable. On the basis of his incorrect answers about the history of his brother's career,

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<sup>12</sup> Committee against Torture, general comment No. 4, para. 50.

<sup>13</sup> Human Rights Committee, communication No. 74/1980, views of the Committee in the case of *Miguel Angel Estrella v. Uruguay*, para. 8.3; Inter-American Court of Human Rights, *Maritza Urrutia v. Guatemala*, Judgment, 27 November 2003, para. 92; and *Cantoral Benavides v. Peru*, Judgment, 18 August 2000, para. 102.

<sup>14</sup> Office of the United Nations High Commissioner for Human Rights, "Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the official joint visit to Sri Lanka – 29 April to 7 May 2016", 7 May 2016. Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E).

<sup>15</sup> High Court of Australia, *SZBEL v. Minister for Immigration and Multicultural and Indigenous Affairs*, 15 December 2006.

the Tribunal decided that he was not involved at all with his brother's political activities. Nevertheless, it did not find that that person was not his brother. He did not know much about his brother's political activities as he did not act out of political convictions. Moreover, the fact that there exists an age difference of more than 10 years between them means that their worlds are different. The complainant did not understand the context of the questions posed by the Tribunal, which placed an unreasonable weight on his answers. With regard to inconsistencies in his account of his involvement in the elections, the Tribunal did not accept his reply that he was nervous and that the events had occurred two and a half years ago. However, he is only required to provide substantial grounds for believing there is a risk of torture upon return, not to provide full proof of the truthfulness of his allegations.<sup>16</sup> He stated on several occasions that he was scared and nervous and could have been so identified under the guidelines on vulnerable persons issued by the Australian authorities. The Tribunal did not consider the possibility mentioned in the guidelines of impaired memory, produced in the complainant's case by a possible trauma due to the death threats. He did not produce evidence in that regard because he was unaware of his condition. The Tribunal discounted relevant factors mentioned in the guidelines on the assessment of credibility, including interpretation difficulties, the effects of anxiety, background, education and the level of knowledge that would reasonably be expected.

5.5 The complainant claims that although the Refugee Review Tribunal accepted that there could have been issues with the interpreter in the entry interview, it did not take that possibility into consideration with respect to later interviews. The reasoning of the Tribunal is opaque, in that it stated that certain issues were found to be unclear owing to interpretation problems, even though it also found that any other interpretation difficulties should have been raised earlier. The complainant was still unaware of the degree of consistency expected of him, as issues of consistency were not put to him until the Tribunal interview. Moreover, his representative was chosen and paid for by the authorities, which convinced him that the representative was not concerned with his case. The representative consulted very little with the complainant. The Tribunal acted with prejudice where it decided to place no weight on the documents submitted because it had already concluded that the complainant lacked credibility, showing that it did not consider the documents in its credibility assessment. Its decision to discard the documents solely on the basis of the prevalence of document fraud in Sri Lanka is discriminatory. Despite the advice contained in the guidelines on the assessment of credibility, there is no record that the prevalence of document fraud was put to the complainant.

5.6 The complainant refers to information stating that the police's response to election violence in Sri Lanka has been uneven.<sup>17</sup> Those who threatened him knew about his police complaint. The police were likely taking orders from politically involved people.

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

6.1 The State party provided its observations on the merits by note verbale of 11 September 2017. It reiterates its view that the complaint is inadmissible or without merit.<sup>18</sup>

<sup>16</sup> David Weissbrodt and Isabel Hörtreiter, "The principle of non-refoulement: article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in comparison with the non-refoulement provisions of other international human rights treaties", *Buffalo Human Rights Law Review*, vol. 5 (No. 1), 1999, p. 55.

<sup>17</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation, *Sri Lanka: COI Compilation* (December 2016), p. 118.

<sup>18</sup> The State party also submits that the Committee's consideration of the State party's submissions on admissibility owing to a lack of substantiation in certain cases, namely the Committee's observation that the complainant had sufficiently detailed the facts and basis of the claim for a decision, was not detailed enough. See *Y.S. v. Australia* (CAT/C/59/D/633/2014), para. 6.3; *K.V. v. Australia* (CAT/C/58/D/600/2014), para. 6.2; and *D.M. v. Australia* (CAT/C/58/D/595/2014), para. 8.3. The State party further submits the practice of the Committee in other cases of proceeding to examining the merits after having observed that the issues raised in respect of admissibility are closely related to the merits does not satisfy rule 118 of the rules of procedure that admissibility must be properly determined before consideration of the merits. See *E.S. v. Australia* (CAT/C/59/D/652/2015), para. 8.2; *R.K. v. Australia* (CAT/C/58/D/609/2014), para. 7.3; and *T. v. Australia*

6.2 The State party observes that, following a decision made by the Refugee Review Tribunal, a protection visa applicant can only challenge the legality, not the merits, of the decision. According to the State party, the Committee has previously considered that the Australian legal system offers a robust process of merits and judicial review to ensure that any error made by an initial decision maker can be corrected.<sup>19</sup> The Tribunal afforded the complainant several opportunities to provide written and oral responses to the adverse information that led to the credibility findings. The Federal Circuit Court and the Federal Court of Australia confirmed that the Tribunal's decision does not contain legal errors.

6.3 The State party reiterates that the complainant provides no evidence for his assertion that the threatening telephone calls were carried out with the acquiescence of the police. Such threats alone do not fall within the definition of torture under article 1 of the Convention. As for the claimed conditions in the Negombo Prison, the complainant relies on general information, without demonstrating a personal risk of harm.

6.4 In response to the complainant's claims concerning the credibility findings by the Refugee Review Tribunal, the State party reiterates that it is appropriate for the Committee to give considerable weight to findings of fact made by the Australian authorities. A decision maker of the Department of Immigration and Border Protection interviewed the complainant and considered his written claims, the interview record, post-interview submissions, the Office of the United Nations High Commissioner for Refugees eligibility guidelines for assessing the international protection needs of asylum seekers from Sri Lanka, and country information. The decision maker concluded that Muslims and Tamils are not persecuted in Sri Lanka on any general basis, such that the complainant's fear of serious harm on these grounds is not well-founded. Laws relating to illegal departure are of general application. The decision maker also found that there is no real chance of persecution owing to the political opinion imputed to the complainant, as he had made no claim that he or any family members had been detained on suspicion of being an LTTE member or supporter. It was concluded that the complainant's claims were not substantiated and not credible and that he was not a refugee under the Refugee Convention and does not qualify for complementary protection.

6.5 Upon review of the merits, the Refugee Review Tribunal considered the complainant's oral and written submissions and country information from various sources. The Tribunal had significant concerns about his credibility, but allowed for the possibility of discrepancies arising out of genuine memory lapses, nervousness and the way in which questions were asked. The Tribunal only accepted the complainant's claims regarding his origins, residence, religion, language, perceived ethnicity and marital status, and his claim that he would be viewed as a failed asylum seeker and returnee from Australia. It rejected his claim that he was actively involved in the Sri Lanka Muslim Congress, but accepted that he supported it and voted for it. It considered his written submissions, including the police report, and placed no weight on it owing to his lack of credibility and information on the prevalence of document fraud. The Tribunal found no evidence that he was of interest to anyone, including the authorities and opposition parties, because of his low level of support for the Sri Lanka Muslim Congress. Neither did it accept that he would be targeted as a Tamil Muslim from the East or, on that ground, that he would be labelled as a government opponent or LTTE supporter. The Tribunal accepted the possibility, owing to his illegal departure, that he would be remanded in conditions that are overcrowded, unsanitary and uncomfortable, but did not accept that such conditions amount to persecution. The Tribunal therefore confirmed the first-instance decision.

6.6 The Federal Circuit Court dismissed the complainant's application for judicial review of the decision of the Refugee Review Tribunal. It found that the Tribunal had had regard to the ministerial guidelines, the nature of prison conditions in Sri Lanka and the enforcement of the Sri Lankan Immigrants and Emigrants Act of 1949, which it did not find had been applied selectively, arbitrarily or discriminatorily. The Federal Court of Australia upheld the

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(CAT/C/58/D/599/2014), para. 7.3. The State party requests that the Committee specifically consider and respond to the arguments made by the State party in respect of the admissibility of the present complaint.

<sup>19</sup> The State party refers to its submissions in *Y.Z.S. v. Australia*, para. 4.13.

Federal Circuit Court's decision, finding additionally that there was nothing to suggest that the Immigrants and Emigrants Act is applied irrationally, unreasonably or capriciously by every immigration official at the Colombo airport. Furthermore, the complainant's case was found not to engage the non-compellable power of the Minister for Immigration and Border protection to intervene.

6.7 In response to the complainant's claim that the conclusion that he had fabricated documents was discriminatory and his observation that the Refugee Review Tribunal had regard to not more than two of the factors listed in the guidelines on the assessment of credibility, the State party submits that the factors listed are neither prescriptive nor exhaustive. A credibility assessment is a matter for the Tribunal to determine, having regard to the individual circumstances and evidence.

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

7.1 On 16 May 2019, the complainant noted that the State party had acknowledged that migration decisions could not be reviewed on the merits. He argues that the position of the State party, namely that its authorities are free to make negative credibility findings as long as they are free of legal error, weakens the robustness of the Australian legal process. The complainant argues that Australian judicial system does not always correct its own mistakes.<sup>20</sup> The State party has not responded to his arguments on the credibility findings, including on his involvement in the confrontation about electoral violence and his claim that it was unreasonable to reject the documentary evidence.

7.2 The State party misrepresents the complainant's argument on acquiescence by a public official, which he argues in relation to the possibility of torture upon return. The complainant underlines that his argument that cruel, inhuman or degrading treatment or punishment may spill over into torture is based on the findings of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment. He reiterates that prolonged detention presents a real danger of torture owing to his status as a failed asylum seeker and his denunciation of election violence. Even though illegal departure is known to only generate a short period of time in the remand section of the Negombo Prison, the complainant's denunciation of election violence means that there is no assurance about the length of detention in his case, in contrast to *G.R. v. Australia*.

7.3 Furthermore, the 2019 Easter bombings show that the complainant's profile as a Muslim, in particular given his political activities, leaves him exposed to anti-Muslim sentiments in Sri Lanka, in which the police are refusing to intervene.<sup>21</sup>

### **State party's additional submissions**

8.1 In a note verbale dated 6 November 2019, the State party provided additional submissions, observing that the complainant's comments of 16 May 2019 had not altered its position on the admissibility and the merits.<sup>22</sup> In response to the complainant's argument that the Australian migration legislation does not provide asylum seekers with a fair or robust process, the State party observes that the complainant was interviewed to assess his protection visa application and that he was assisted by interpreters and a counsel throughout the proceedings. Decision makers are legally required to provide applicants with procedural fairness, and the Government of Australia is obliged to act honestly and fairly in handling claims. Each domestic authority thoroughly examined the complainant's claims and found

<sup>20</sup> The complainant refers to Justice Rangiah, "Procedural fairness in the courtroom: a speech to Federal Circuit Court Conference in Brisbane", 25 January 2017.

<sup>21</sup> Zamira Rahim, "Sri Lanka riots: one dead as anti-Muslim violence spreads in wake of Easter massacre", 14 May 2019; and Al Jazeera, "Sri Lanka orders nationwide curfew amid anti-Muslim riots", 14 May 2019.

<sup>22</sup> The State party also reiterates that a transparent and reasoned admissibility consideration by the Committee is a key procedural element and welcomes the Committee's decisions in *I.P.W.F. v. Australia* (CAT/C/63/D/618/2014), *T.T.P. v. Australia* (CAT/C/65/D/756/2016) and *V.M. v. Australia* (CAT/C/67/D/723/2015).

that his account was not credible, that he did not appear to be of adverse interest to anyone and that he did not engage the State party's non-refoulement obligations.

8.2 In response to the complainant's claim of a risk of torture and prolonged detention because of his status as a failed asylum seeker, the State party refers to a country information report dated 23 May 2018. In that report, it is indicated that, even though failed asylum seekers who returned to Sri Lanka could receive a custodial sentence, most cases only resulted in a fine.<sup>23</sup> Moreover, even though there have been reprisal attacks against Muslims in Sri Lanka following the Easter bombings, the state of emergency was lifted in August 2019 and all those responsible appear to have been killed during the attacks or arrested. Furthermore, the complainant's reference to the existence of general violence does not suffice to show that a particular person would be in danger of being subjected to torture upon return.<sup>24</sup>

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

9.1 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.

9.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not challenged the admissibility of the complaint on this ground. Accordingly, the Committee considers that it is not precluded by article 22 (5) (b) from examining the present complaint.

9.3 The State party submits that the complaint is inadmissible *ratione materiae* insofar as the complainant claims that he would run a risk of being subjected to cruel, inhuman or degrading treatment or punishment upon return to Sri Lanka. The Committee recalls that article 3 of the Convention extends the principle of non-refoulement to persons at risk of ill-treatment commensurate with a risk of torture.<sup>25</sup> The Committee notes that the complainant additionally claims a risk of being subjected to torture. The Committee therefore finds that it is not precluded, in this respect, from examining the complaint.

9.4 The State party also submits that the complaint is inadmissible *ratione materiae* insofar as the death threats that the complainant claims to have received do not amount to torture. The Committee notes that the complaint concerns an alleged violation of article 3 of the Convention and that the complainant has raised the death threats among other elements in support of his claim. The Committee therefore finds that it is not precluded *ratione materiae* from examining the complaint.

9.5 The State party further submits that the complaint is inadmissible as manifestly unfounded. The Committee considers, however, that the complainant has sufficiently substantiated his claims, for the purposes of admissibility, by sufficiently detailing the facts and the basis of the claim for a decision by the Committee. As the Committee finds no obstacles to admissibility, it declares the complaint admissible and proceeds with its consideration of the merits.

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<sup>23</sup> Department of Foreign Affairs and Trade, "DFAT country information report: Sri Lanka", 23 May 2018, para. 5.32.

<sup>24</sup> *V.M. v. Australia*, para. 7.2.

<sup>25</sup> Committee against Torture, general comment No. 4 (2017), paras. 14–16 and 28; general comment No. 2 (2008), paras. 6, 15 and 25; *Flor Agustina Calfunao Paillalef v. Switzerland* (CAT/C/68/D/882/2018), paras. 8.1–8.2, 8.5 and 8.8; *Harun v. Switzerland* (CAT/C/65/D/758/2016), para. 8.6; *A.N. v. Switzerland* (CAT/C/64/D/742/2016), para. 7.3; and *G.R. v. Australia*, para. 8.3.

*Consideration of the merits*

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

10.2 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.

10.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture or other cruel, inhuman or degrading treatment commensurate with a risk of 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 complainant would be personally at a foreseeable and real risk of being subjected to torture in the country to which he 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>26</sup>

10.4 The Committee recalls its general comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, according to which the non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing removal, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee also recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".<sup>27</sup> The Committee 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, by virtue of article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

10.5 The Committee notes the complainant's claim that he would be at risk of being subjected to torture and cruel, inhuman or degrading treatment or punishment upon return to Sri Lanka through prolonged detention and interrogation at the hands of the Criminal Investigation Department and the guards of the Negombo Prison, owing to his status as failed asylum seeker, his illegal departure from Sri Lanka, his Tamil ethnicity, Muslim faith, possible associations with LTTE and denunciation of election violence. The complainant also submits that the danger posed by the death threats against him remains current and that, given the inaction on the side of the police, the authors of the threats must have political influence.

10.6 The Committee also notes that the authorities of the State concluded that there were no substantial grounds for believing that the complainant would face a foreseeable, present, personal and real risk of harm, including torture, upon return to Sri Lanka. In this regard, the Committee observes that the authorities of the State party identified inconsistencies affecting the credibility of material elements of the complainant's account, including his assistance to his brother's campaign, the number of people whom he refused to allow to vote and of the other polling agents, whether or not the men who were refused to vote tried to assault him, whether or not the complainant was the only polling agent to check the identity cards of these people and how much time passed between the election day and the first telephone call. The Committee notes that the Refugee Review Tribunal accepted that there had been interpretation difficulties in the entry interview and that it did therefore not rely on any

<sup>26</sup> See, for example, *S.K. and others v. Sweden* (CAT/C/54/D/550/2013), para. 7.3.

<sup>27</sup> General comment No. 4, para. 11.

adverse information from that interview. It also notes that the complainant was afforded several opportunities to provide written and oral submissions. While taking note of the complainant's argument that the authorities of the State party did not duly consider his documentary submissions, the Committee finds, in the light of the foregoing, that this argument does not resolve the identified credibility concerns. As for the police complaint, the Committee notes the State party's argument that the complainant does not substantiate his claim that the police did not act on it owing to pressure from influential people. Considering the different elements of his claim, the Committee finds that the fact that the complainant was not aware that the Sri Lankan police had followed up on the complaint does not show that his return to Sri Lanka would engage article 3 of the Convention.

10.7 The Committee further notes the complainant's claim that the Sri Lankan authorities would have an adverse interest in him owing to his involvement with the Sri Lanka Muslim Congress, his Tamil ethnicity and Muslim faith, and his status of a failed asylum seeker who left Sri Lanka illegally, especially following the Easter bombings. The Committee further notes that the authorities of the State party have observed that Muslims and Tamils are not persecuted in Sri Lanka on a general basis. As for the situation in Sri Lanka following the Easter bombings, the Committee finds that this does not discharge the complainant from the requirement of adducing additional grounds to show that he would be personally at risk. The authorities of the State party also found that the complainant's brother continued to live at the family home and worked for the Government, without indications that he had suffered harm, had been targeted or had hidden. Given that his brother, as noted by the State party, would have had a higher political profile, as a candidate for the Sri Lanka Muslim Congress, than the complainant, the Committee is not convinced, in the present case, that the combination of the complainant's involvement with the Sri Lanka Muslim Congress, his Tamil ethnicity or his Muslim faith shows that he would be personally at risk. The Committee takes into account, in this regard, that the complainant has not claimed that he has, or any family members have, been detained on suspicion of supporting LTTE and that he claims to have openly campaigned for his brother and worked in a polling station in the election for the municipal authorities.

10.8 As for the complainant's status as a failed asylum seeker who left Sri Lanka illegally, the Committee notes that the authorities of the State party accepted that the complainant might be remanded in conditions that are overcrowded, unsanitary and uncomfortable upon return, but that laws relating to illegal departure are of a general application and that such treatment does not engage the State party's non-refoulement obligation. The Committee also notes that the complainant acknowledges that illegal departure is known to only generate a short period of detention. The Committee finds that the complainant's claim that his denunciation of electoral violence means that there is no assurance about the length of detention does not show a personal risk of a violation of article 3 of the Convention.

11. In the light of the above considerations, the Committee concludes that, in the particular circumstances of the present case, the evidence and circumstances invoked by the complainant have not adduced sufficient grounds for believing that he would face 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.

12. In these circumstances, 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.